



REPORT OF THE
Consultative Group on the Past



Presented to the Secretary of State for Northern Ireland, in accordance with the Terms of Reference given to the Consultative Group on the Past on 22 June 2007.

23 January 2009

“To look backward for a while is to refresh the eye, to restore it, and to render it more fit for its prime function of looking forward.”

Margaret Fairless Barber (b. 1869, d. 1901)

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LIST | of Abbreviations

CAIN – Conflict Archive on the Internet	NIO – Northern Ireland Office
CCRC – Criminal Cases Review Commission	OFMDFM – Office of the First Minister and deputy First Minister
CRC – Community Relations Council	PDMU – Personal Development and Mutual Understanding
CVSNI – Commission for Victims and Survivors for Northern Ireland	PPSNI – Public Prosecution Service for Northern Ireland
DPPNI – Director of Public Prosecutions for Northern Ireland	PSNI – Police Service of Northern Ireland
ECHR – European Convention on Human Rights	PTSD – Post Traumatic Stress Disorder
ECtHR – European Court of Human Rights	R IRISH (HS) – Royal Irish (Home Service)
HET – Historical Enquiries Team	RUC – Royal Ulster Constabulary
HTR – Healing Through Remembering	SEUPB – Special European Union Programmes Body
ICLVR – Independent Commission for the Location of Victims’ Remains	TAP – Trauma Advisory Panel
INLA – Irish Nationalist Liberation Army	UDR – Ulster Defence Regiment
IRA – Irish Republican Army	
MEP – Member of the European Parliament	
MLA – Member of the Legislative Assembly	
MOD – Ministry of Defence	
MP – Member of Parliament	
NIAC – Northern Ireland Affairs Committee	



FOREWORD
**by the Co-Chairs of the
Consultative Group on the Past**



FOREWORD | by the Co-Chairs of the Consultative Group on the Past

The Consultative Group on the Past was established to find a way forward out of the shadows of the past. The goal was to enable our society to do this together and this was to be achieved through the widest possible consultation. This engagement had to be voluntary which led to fears that only a few would actually engage with us.

However, the Group was overwhelmed with the level of engagement from across our society. The response underlined the immense amount of work that had already been done to create a society truly at peace with its past. However, it also highlighted the depth of hurt and suspicion that still exists in every part of our society.


Northern Ireland has made tremendous progress out of the dark days of the violence towards peace and stable Government. But it became clear to us that finding a better way of dealing with the past would help cement that progress. To take now the final steps out of conflict will be difficult for many. However, the divisions that led to the conflict in the first place are all too present and only by honestly addressing the past can we truly deal with it and then leave it in the past.

This report has been guided and shaped by those who gave up their time and shared their ideas on what would work best in our society. This report belongs to those people and to the wider society they represent. One of the key contributions this Group has been able to make was to bring together the work and visions already developed by many organisations and individuals.

In the months ahead there will be much debate and discussion on the recommendations the Group has put forward. Debate and discussion are healthy for any society emerging from years of violence and conflict.

The Group has endeavored to remain true to what has been said during the consultation. It will now be up to the Governments and the Executive to work with all of society to make the recommendations and vision of this report a reality.

Robin Eames



Denis Bradley



SUMMARY | of Main Recommendations

The Legacy of the Past and Reconciliation

- An independent Legacy Commission should be established to deal with the legacy of the past by combining processes of reconciliation, justice and information recovery. It would have the overarching objective of promoting peace and stability in Northern Ireland.
- A Reconciliation Forum should be established through which the Legacy Commission and the Commission for Victims and Survivors for Northern Ireland (CVSNI) would liaise to tackle certain society issues relating to the conflict.
- The Legacy Commission should be given a bursary of £100m to tackle these society issues.

Victims and Survivors

- The suffering of families from Northern Ireland and Great Britain should be recognised. The nearest relative of someone who died as a result of the conflict in and about Northern Ireland, from January 1966, should receive a one-off ex-gratia recognition payment of £12,000.
 - The CVSNI should take account of, and address in their work programme, the present and future needs and concerns of victims and survivors, devoting attention to provision of services, funding, healthcare needs and compensation.
 - The Reconciliation Forum would also have a mandate to promote the improvement of services for healthcare issues attributable to the conflict, such as trauma, suicide and addiction.
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The Legacy Commission

- The Chair of the Legacy Commission should be an International Commissioner, who would also have specific responsibility within the Commission for addressing society issues through the Reconciliation Forum, tackling sectarianism, promoting reconciliation and administering the bursary. There would be two other Commissioners.
- The mandate of the Legacy Commission would consist of four strands of work:
 - helping society towards a shared and reconciled future, through a process of engagement with community issues arising from the conflict;
 - reviewing and investigating historical cases;
 - conducting a process of information recovery;
 - examining linked or thematic cases emerging from the conflict.
- The Legacy Commission's mandate would be for a fixed period of five years.
- The Office of the First Minister and deputy First Minister (OFMDFM) should join the British and Irish Governments in implementing this initiative.

Society Issues

- Society issues arising from the conflict which should be tackled include: addressing sectarianism; promoting remembering activities; working with young people; providing improved services for healthcare needs; ensuring an even spread of economic benefits; and helping those exiled from Northern Ireland during the conflict to return.
 - The Reconciliation Forum should help to address these issues by analysing activity undertaken; considering the need for further activity; giving advice to Government and others; advising on strategies and on the development and delivery of services; and deciding on priority areas of activity.
 - The Legacy Commission should act as a champion for these society issues.
 - The Legacy Commission should take the lead in ensuring that sectarianism continues to be addressed, including through setting the direction for the debate and by highlighting the contribution that all sectors of society can make.
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- The Legacy Commission should engage specifically with the Christian Churches in Northern Ireland to encourage them to review and rethink their contribution to a non-sectarian future in the light of their past, particularly in the area of education.
- The guidance produced by the Quigley-Hamilton working group, to eliminate discrimination against those with conflict-related convictions, should be incorporated into statute and made applicable to the provision of goods, facilities and services as well as recruitment.

Processes of Justice and Information Recovery

- A new independent Unit dealing with historical cases would be created within the Legacy Commission, which would continue to review and investigate historical cases, backed by police powers. This would constitute the second strand of the Commission's work.
 - The new Review and Investigation Unit would take over the work of the Historical Enquiries Team and the Police Ombudsman's Unit dealing with the historical cases. The need for these would fall away when the new Unit is established. The new Unit would build on the work they have done to date.
 - The process of recovering information of importance to relatives (information recovery) would be separated from the investigation procedure and be subject to a distinct process within the Legacy Commission under a separate Commissioner. This would constitute the third strand of the Commission's work.
 - In the fourth strand of its work, the Legacy Commission would examine themes arising from the conflict which remain of public concern, such as specific areas of paramilitary activity, or alleged collusion. This thematic examination would take place without public hearings. This would facilitate more open and frank disclosure and avoid the constant publicity of present inquiry proceedings.
 - There would be no new public inquiries. The question whether to proceed with the promised Finucane Inquiry is a matter for the British Government but the issues raised by this case could be dealt with by the Legacy Commission.
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- The outstanding Inquests would remain with the Coroners Service. Criminal case reviews would continue to be pursued through the Criminal Cases Review Commission.
- The Group is not proposing an amnesty but recommends that the Legacy Commission itself make recommendations on how a line might be drawn at the end of its five-year mandate so that Northern Ireland might best move to a shared future.

Remembering

- The Legacy Commission should, through the Reconciliation Forum, support CVSNI in facilitating and encouraging the telling of stories, including by young people, about the impact of the conflict on individuals and communities; and the stories of intra-communal difference.
 - CVSNI should also be supported in developing the existing ways in which the conflict and its impact are remembered. This should include the development of educational projects; providing support and guidance for those facilitating remembering projects in line with certain criteria; and promoting the value of remembering across society as a means of achieving reconciliation.
 - Future Storytelling initiatives should be developed taking account of certain criteria.
 - Full support should be given by government, the private and voluntary sector, including the churches, to the continuation of the annual Day of Reflection, initiated by Healing Through Remembering, on 21st June each year. Consideration should be given to renaming the event a Day of Reflection and Reconciliation.
 - Each year, on or around the Day of Reflection and Reconciliation, the First Minister and deputy First Minister should together make a keynote address to the Northern Ireland Assembly and invited guests, reflecting on the past in a positive way and confirming their commitment to lead Northern Ireland society towards a shared and reconciled future.
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- The Reconciliation Forum should take the lead in implementing an initiative, at the end of the five year mandate of the Legacy Commission, whereby Northern Ireland, with the support of the two Governments and the Northern Ireland Assembly, should conduct a ceremony remembering the past and all those who suffered during the conflict.
 - The Group therefore recommends that the Commission should, at the end of its work, challenge the people of Northern Ireland, including political parties and whatever remnant or manifestation of paramilitary groups remain, to sign a declaration to the effect that they will never again kill or injure others on political grounds.
 - A shared memorial to remember the conflict in and about Northern Ireland should be kept under consideration by the Reconciliation Forum and criteria should be observed, in working towards a shared memorial conducive to reconciliation. The Legacy Commission should, at the end of its five year life span, make recommendations to Government in this regard.
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EXECUTIVE | Summary

| BACKGROUND

On 22 June 2007 Peter Hain, the then Secretary of State for Northern Ireland, announced the formation of an independent Consultative Group. The Group was asked to:

- consult across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years;
- make recommendations, as appropriate, on any steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the events of the past;
- present a report, which will be published, setting out conclusions to the Secretary of State for Northern Ireland, by summer 2008.

The Right Reverend Lord Eames OM, former Archbishop of Armagh, and Mr Denis Bradley, the first Vice-Chairman of the Policing Board, co-chaired the Consultative Group on the Past. The following were members of the Group: Mr Jarlath Burns, Rev. Dr. Lesley Carroll, Professor James Mackey, Mr Willie John McBride MBE, Ms Elaine Moore, and Canon David Porter.

Mr Martti Ahtisaari, former President of Finland, recent Noble Peace Prize winner and founder of the Crisis Management Initiative, and Mr Brian Currin, former chair of the South African Prison Audit Committee and founder of the National Directorate of Lawyers for Human Rights, acted as international advisers to the Group. Mr Jeremy Hill acted as the Group's Legal Adviser.

Because of the breadth of the mandate and the extent of the consultation, the Group was not able to report until January 2009.

| THE CONSULTATION

The Group conducted an extensive consultation exercise. 290 written submissions and 2086 standardised letters were received, as well as many letters providing general commentary and offering support. The Group met privately with 141 individuals or groups, many of which were representing hundreds more. It conducted meetings across Ireland, north and south, and in Great Britain. Over 500 people attended public meetings in Belfast, Omagh, Armagh, Ballymena, Bangor, Enniskillen and Derry/Londonderry.

It was clear that much excellent work had already been done in the field of dealing with the past. The Group took account of this and the extensive research already available. It also drew on the experiences of other post-conflict countries.

Overview of the Consultation

The main themes which emerged from the consultation were the desire for reconciliation, truth and justice. All were agreed on one thing: that such a conflict should never happen again. A way should be found to deal fairly with the outstanding legacy of the past without it dominating the future. There were already impressive initiatives dealing with the needs of victims and other aspects of the legacy. But more could be done.

A number of principles emerged from the consultation: principles against which the Group's recommendations and the way forward should be measured.

One key principle stood out.

The past should be dealt with in a manner which enables society to become more defined by its desire for true and lasting reconciliation rather than by division and mistrust, seeking to promote a shared and reconciled future for all.

From this, other working principles flowed:

- Dealing with the past is a process and not an event
- Sensitivity towards victims and survivors is essential
- Recommendations should be human rights compliant
- Relationships matter and are the foundation for reconciliation
- Consensual agreement is the ideal.

One of the Group's main challenges has been consulting a society which, despite the significant achievements made towards peace and stable government, remains divided along age old lines deeply rooted in the past.

| REMEMBRANCE OF THE PAST FOR RECONCILIATION

The consultation also underlined the complexities around the timeframe of 'the past', disagreements about how the past can be dealt with and indeed how it should be described. Some believe we cannot change our understanding of the past. Some believe the past should be laid out for all to see and that truth should be sought and told. Others say that the past should be forgotten in the interests of the future.

Divided communities carry different experiences and understandings of the past in their minds and indeed it is this that divides them. Their accounts of the past differ deeply. They are used as a marker to determine and make positive, but more frequently negative, moral judgements on each other and so continuing the legacy of suspicion, mistrust and hatred.

These different moral assessments are seen most clearly in each side's often strident retelling of their own story. If these conflicting moral assessments of the past are to change, then all sides need to be encouraged and facilitated to listen and hear each other's stories. This listening must then lead to honest assessment of what the other is saying and to recognition of truth within their story. In such a process it might be possible to construct a remembrance of our past which is more humane, comprehensive and rounded.

| RECONCILIATION, TRUTH AND FORGIVENESS

As a consequence of a more rounded understanding of the past, a better future is possible. Much of our remembrance of the past teaches us what to do or not to do for the best possible future. This is identified as an, if not the, essential element of the Group's vision for the future.

The fruitful beginning of sustainable reconciliation and a truly shared future centres upon a genuine and general acknowledgment of the moral dignity of our common humanity. This reconciliation requires for its integrity and success two other elements, namely, a willingness for mutual forgiveness and a willingness to address the truth of the matters to which the mutual forgiveness is to apply.

It is not possible to complete an act of forgiveness unless a wrong is acknowledged. In the case of the divided communities of Northern Ireland, this means that both sides must somehow be enabled to reach agreement that there was wrongdoing on both sides. This is not a matter of balancing amounts of wrongdoing but of acknowledging that wrong was done on both sides. Only then is mutual forgiveness possible.

Truth is crucial to the prospect of reconciliation. Genuine conversations, to establish, and as far as possible agree, what that truth is, should take place between those involved in the conflict, while recognising that complete truth is unattainable. Conversations between the divided communities must be about the conflicting moral judgements and not just the facts as put forward by one or both sides of the conflict.

| IMPACT OF THE CONFLICT

The Ongoing Conflict

Throughout the consultation a number of areas of contention arose repeatedly – how victims are defined and, in particular, the use of definitions which produce a hierarchy of victims that is broadly structured along sectarian lines. Continuing this already highly politicised debate is both fruitless and self-defeating and the Group has, for the purposes of its work, accepted the definition as set out in the Victims and Survivors (Northern Ireland) Order 2006.

Other issues arose reflecting a belief that there is a rewriting of history, an ‘Ulsterisation’ of the blame, and disagreements about the true nature and extent of collusive activity. The ‘blame game’ has a damaging effect on organisations and on society in general. It undermines efforts to build reconciliation.

The Legacy Commission, proposed by the Group and detailed later, should be used as a vehicle for examination of the themes and issues arising from the conflict.

Victimisation of Communities

The Group was told how large sections of our society were subjected to many types of victimisation throughout the conflict. Particular areas bore the brunt of the violence during the last 40 years. Working class and border areas, in particular, experienced victimisation, ranging from economic and social deprivation to the oppressive presence of military and paramilitary forces.

The facilitation of storytelling is a key strand of activity for the Commission for Victims and Survivors for Northern Ireland (CVSNI). The Group recommends that, as well as individual stories, the CVSNI should facilitate and encourage the telling of stories about the impact of the conflict on communities and of intra-communal difference.

Impact on Young People

One of the issues that most exercised people was the impact the conflict had, and has, on young people. Many attributed the high suicide rates now seen in Northern Ireland, as well as the high rates of dependency on alcohol or drugs, or both, to the legacy of the conflict. Many want to ensure that future generations will not repeat the mistakes and horrors of the past. They believe in the importance of education in building a better understanding of the nature and causes of the conflict. They are concerned that resources are not being made available to support the next generation to cope with the legacy of the conflict.

Young people are an important influence on the older generation. They may be the best equipped people to challenge sectarian norms and assist society towards a shared and reconciled future. Positive early interventions are needed to better equip young people for the future.

The Group recommends that the Legacy Commission, working with CVSNI through the Reconciliation Forum (both of which are detailed later), should ensure that young people are encouraged to participate in storytelling initiatives and that education programmes are developed which inform young people, in a balanced way, about the nature and impact of the conflict.

Sectarianism

Our recent conflict was in itself the legacy of a long past of violence and division arising from political, religious, national and cultural differences and territorial dispute. Past generations failed to effectively address the prolonged antagonism that infected every institution and sector in our society. This in turn ensured yet another generation suffered from and added to the pain and hurt of the past.

A large number of those consulted aspired to a new Northern Ireland where toleration, respect for cultural and religious diversity, equality and justice are the foundations of our relationships. They want a secure, safe, stable and 'shared Northern Ireland' where politically motivated violence or its threat is removed. This does not mean obliterating all signs of difference and diversity but rather it means developing a respectful relationship with those who are different from us.

Given the strong Christian tradition in Northern Ireland, the Christian Churches have a particular responsibility to take a lead role within communities in addressing the destructive presence of ongoing sectarianism.

The Group recommends that the Legacy Commission, detailed later, should take the lead in ensuring that sectarianism continues to be addressed, highlighting the contribution that all sectors of society, particularly the Christian Churches in Northern Ireland, can make.

Socio-Economic Impact

The Group heard stories of businesses lost through bomb explosions; of people being put out of business; of people getting business from only one side of the community, or only being able to access services in one side of the community; of high security costs; of extortion; of harassment, bullying and unfairness in the workplace; of the brain drain from Northern Ireland; and how the violence kept out investors and tourists.

In more recent times, there has been a recognisable sea-change in our fortunes, although the present recession will slow this progress. Many pointed to the recent investment conference as evidence that local politicians have our economic well being at the forefront of their minds. But those we engaged with also noted that the economic well-being felt by some is not being felt by all and it needs to; it needs to touch the parts of Northern Ireland that felt the damage of the past most.

The Group recommends that the Legacy Commission, working with CVSNI, through the Reconciliation Forum, acts as a determined champion to ensure attention is kept focused on the most deprived areas of Northern Ireland to ensure that the economic benefits experienced across post-conflict Northern Ireland are equally experienced in deprived areas.

Exiles

Although exact figures are hard to establish, it is estimated that around 4,600 people were exiled from Northern Ireland over the period 1980 to 2005. Most have not returned to Northern Ireland, largely because of fear of reprisal. Many others, who have put down roots elsewhere, have no desire to return.

A repatriation programme needs to be developed for those who wish to return to Northern Ireland. The Commission for Victims and Survivors for Northern Ireland (CVSNI) have identified a need to reach out to victims and survivors of the conflict, including those exiled from Northern Ireland. The Group recommends that the Legacy Commission, working through the Reconciliation Forum, should support their endeavours in this regard.

Conflict-Related Convictions

In the course of the consultation a number of people drew attention to the difficulties experienced by those with conflict-related convictions. In particular, ex-prisoner groups noted that applying for jobs, or obtaining a mortgage, and even lesser forms of credit, are problematic where the applicant has a criminal record relating to the conflict.

The Group recommends that the guidance produced by the Quigley-Hamilton working group, to eliminate discrimination against those with conflict-related convictions, be incorporated into statute and made applicable to the provision of goods, facilities and services as well as recruitment.

Victims and Survivors

With over 3,500 people having lost their lives and many thousands injured both physically and psychologically, victims and survivors are the most visible legacy of the conflict in Northern Ireland.

The lives of those lost cannot be restored. For those who survived, and for those who are left only with the memory of loved ones lost, no process or policy can ever take away their pain. The dignity and courage of many victims and survivors is a testimony to their strength and an invitation to all in society to do everything in our power to stop our differences and prejudices spiralling downwards into the kind of violence that we have known in the past. It is in all our hands to make sure we, as a society, do not create a new generation of victims.

The difficulties of making recommendations regarding victims and survivors are many and complex. When the needs and concerns of one group are addressed, another group is likely to be offended. Placing the concerns of victims and survivors within the wider context of legacy issues is also problematic. Yet this approach, which may be difficult for some to endorse, is ultimately important for the health and well-being of society as a whole.

Finding a way to deal with the past, which does not add to the experiences of isolation and hurt described by many, is challenging. Even the designation, 'victims and survivors', can be a matter of contention, some preferring to be called 'victims', others rejecting that designation in favour of 'survivors'. The phrase 'victims and survivors' is used throughout this Report with the intention of being as inclusive as possible, although it is acknowledged that, for some, this is unsatisfactory.

Victims and survivors raised with the Group the many issues dealt with elsewhere in this summary. But the following issues are particular to victims and survivors and to meeting their needs:

- The multiplicity of services in some geographical areas, or areas of need, but in contrast, the gaps in others;
 - The inadequacy of funding to meet the needs of, and provide services for, victims and survivors: the lack of strategic focus;
 - The preference in some cases for local community, rather than statutory, interventions;
 - The role of, and support for, carers now and in the coming years;
 - The need for more to be done to relieve the burden of victims and survivors, while acknowledging the help afforded by the statutory schemes established to assist members of the security forces;
 - The real and pressing concerns about the longer term future of funding to meet the needs of victims and survivors;
 - Understanding of, and responses to, trauma: more needs to be done to create a greater understanding of trauma, to ensure effective responses to it, adequate service provision and the accessibility of those services.
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There are many groups, statutory and non-statutory, working to meet the needs of victims and survivors. These groups provide much needed help and support in many diverse ways.

Securing funding has become a highly politicised issue. In the coming years the added pressure on limited resources will mean that groups and their funding providers will have to think radically about how they operate. While recognising that individuals have the right to choose how and where they get help, measures to remove duplication and to amalgamate services and support mechanisms must be considered. Questions also arise as to whether certain practices of some victim and survivor groups are contributing to a shared and reconciled future or whether they are compounding the divisions and suspicions. It is vital that sensitive measures are put in place to help resolve these issues.

The CVSNI is best placed to respond to these issues and the Group recommends that CVSNI should take account of, and address these issues, as they develop their work programme.

Compensation

Concerns were expressed about compensation, largely relating to the amounts paid in the 1970s and 1980s to the families of people killed as a result of the conflict. There was almost unanimous agreement that many payments were inadequate, not least because compensation was primarily based on loss of earnings and did not take into account the loss felt by the family. Although many families continue to need financial assistance, the call for compensation was not primarily about money but rather a need for recognition of the loss or injury they endured. In many cases families appeared before compensation hearings while still traumatised and did not therefore engage adequately with the process.

The issue of compensation for those killed during the conflict, who were citizens of the Republic of Ireland, was addressed by the Irish Government's Remembrance Commission through an Acknowledgement Payment.

The Group therefore recommends similar recognition of the suffering of families from Northern Ireland and Great Britain and recommends that the nearest relative of someone who died as a result of the conflict in and about Northern Ireland, from January 1966, should receive a one-off ex-gratia recognition payment of £12,000.

REMEMBRANCE

The importance of remembering for reconciliation has been outlined in an earlier section of this summary.

A vast amount of work is being done around Northern Ireland, and indeed in Britain and the Republic of Ireland, to give people the opportunity to share stories of their experiences of the conflict.

It is important that people are free to participate in the form of remembering that they feel is most appropriate to them. We focus on three broad processes that aid public and private remembering because these featured most in our consultation: Storytelling, a Day of Reflection and Memorials.

Storytelling

Storytelling is an important feature of any conflict transformation process. Groups should be encouraged to take a positive attitude to all those who wish to participate. Future initiatives should be developed with a number of criteria in mind.

- Any storytelling project should involve listening to the stories of others as well as the telling of our own story.
 - Individuals participating in storytelling projects must be able to tell their story freely in a private context, but should be able to omit information which may put them at risk – either from prosecution or retaliation – before their story is put in the public domain.
 - Initiatives should take place in a context where the experience of those involved can be validated.
 - There must be oversight of stories made available to the public to ensure that the risk of prosecution or retaliation is not increased.
 - In line with the views of many, storytelling must not be used to fit a political agenda. Rather it should be seen as a process designed to facilitate individual and societal healing and to break the cycle of conflict.
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Day of Reflection

The Group fully supports the idea of a shared day of reflection (first initiated in Northern Ireland in 2007 by Healing Through Remembering (HTR), open to all, and accepts 21st June as an appropriate day. Consideration should be given, in keeping with the vision of the Group's Report, to renaming the day a Day of Reflection and Reconciliation.

An inclusive day of reflection should not replace the established or more localised events and days of remembrance, nor should people be criticised for participating in these. Rather, individuals should be able to reflect on the past at a time appropriate to them and in a forward looking manner.

The Group recommends that full support is given by government, the private and voluntary sector, including the churches, to the continuation of the annual Day of Reflection, initiated by HTR, on 21st June each year.

The Group also recommends that, on or around this day each year, the First Minister and deputy First Minister should together make a keynote address to the Northern Ireland Assembly and invited guests. This address would provide an opportunity for the elected leaders to lead by example by directing society to reflect upon the past in a positive way and to confirm their commitment to lead us towards a shared and reconciled future.

Memorials

For a great many people, having a structure or space which remembers the conflict is of great importance. For some a memorial is simply a place to go to direct their grief and suffering, perhaps as an alternative to a grave, whilst others need a place to reflect upon the past and consider the future. Many people who engaged with the Group were positive about the healing quality of memorials; others considered the way in which memorialisation has taken place in Northern Ireland to be divisive, only serving to perpetuate sectarianism.

The Group does not believe that a shared memorial can be agreed at this time. It remains a contentious issue for many and poses many challenging issues around which we could not see any consensus. A shared memorial should be kept under consideration by the Legacy Commission, through the Reconciliation Forum, and criteria (detailed later) should be observed in working towards a shared memorial, conducive to reconciliation.

A memorial should contain something to direct people to the future and in particular a shared and reconciled future. If, therefore, the decision to establish a shared memorial was taken, this memorial should commemorate the impact of the conflict on all of society and need not be prescriptive by including names or categories of people who are to be remembered. Such a memorial should be created in a way that is respectful of the past and the sacrifices made by many in society, whilst also looking forward. In order to capture this, serious consideration should be given to any memorial being a living memorial.

Before a shared memorial can be created, the issue of sharing space must be given further thought in order that people are not immediately alienated from the memorial or adversely affected by it. Equally, those who wish to erect public memorials, which commemorate a particular group or community within society, should be encouraged, when considering its nature, to do so in a way which takes account of the perspectives of those likely to encounter the memorial.

| REMEMBERING AND WIDER SOCIETY

How we, as a society, remember the past is highly significant as we move out of conflict. The CVSNI is developing its work programme and remembering comprises a core part of that strategy. While we welcome this, and believe they have a lead role to play, it is important that remembering encompasses all sectors of society and not just victims and survivors.

In taking the lead on how the conflict is remembered, the CVSNI must go beyond the narrow field of victims and survivors and challenge wider society. Organisations such as governments, churches, business and others must not be allowed to neglect their role in the past and how it is remembered. Whilst of course victims and survivors should have a prominent role in remembering, to place the entire burden on them would be self-defeating.

The Reconciliation Forum should take the lead in implementing an initiative, at the end of the five year mandate of the Legacy Commission, whereby Northern Ireland, with the support of the two Governments and the Northern Ireland Assembly, should conduct a ceremony remembering the past and all those who suffered during the conflict.

The Group recommends that the Legacy Commission should, through the Reconciliation Forum (both of which are detailed later), support CVSNI in developing the existing ways in which the conflict and its impact are remembered. This should include developing educational projects; providing support and guidance for those facilitating remembering projects in line with certain criteria; and promoting the value of remembering across society as a means of achieving reconciliation.

| THE CASE FOR CHANGE IN HANDLING LEGAL PROCESSES

The Group gave considerable thought to the existing legal processes which are examining historical cases. The Group concluded that there is a tendency to re-fight the conflict through the courts; to pursue truth through litigation; to deal with the past without a perspective for the future.

Public inquiries have proved protracted and expensive with a narrow focus on a very few cases. The issue of the promised Inquiry into the death of Patrick Finucane remains unresolved. The PSNI have found it increasingly difficult to service the demands of historical inquiries. While both the Historical Enquiries Team and the Police Ombudsman's Unit are dealing effectively with historical cases, both have become an increasing burden on the PSNI and the Police Ombudsman respectively. Neither the PSNI nor the Police Ombudsman can build for the future if they are burdened by the past. The mandate of the Historical Enquiries Team to resolve unanswered questions does not sit easily with the primary task of a police unit to pursue criminal justice.

The issue of alleged collusion has not been properly dealt with. Other themes arising from the conflict remain of public concern.

The present legal processes are not fully meeting society's needs. A way should be found to draw a line, in the future, while preserving the requirements of truth and justice.

| THE LEGACY COMMISSION

The Group proposes the establishment of a Legacy Commission, which would deal with the past by combining processes of reconciliation, justice and information recovery. Its overarching objective would be to promote peace and stability in Northern Ireland, and its activities and decisions would be guided by that perspective. It would address both society issues, on which it would work closely with CVSNI, and legal processes.

Establishment

The Legacy Commission would be headed by an International Commissioner who would act as Chair with overall responsibility for strategic direction and for supervising the work of the whole Commission. The International Commissioner would also have specific responsibility for addressing society issues in the first strand of the Commission's work. Two further Commissioners would have responsibility respectively for Review and Investigation, and for Information Recovery and Thematic Cases, explained further below. The Commissioners would be appointed by the British and Irish Governments. The approval of the Office of the First Minister and deputy First Minister (OFMDFM) should also be sought.

The Commission would be established by the British Government under primary legislation in Westminster. In recognition of the Irish Government's special interest in Northern Ireland and of the fact that the legacy of the past in Northern Ireland is of mutual concern to the Irish Government, the Group considers that the Irish Government should join the British Government in implementing the initiative and make an appropriate contribution towards costs.

Mandate

The Commission would exist for a fixed period of five years. Its mandate would embrace four strands of work, to:

- help society towards a shared future;
- review and investigate historical cases;
- conduct a process of information recovery;
- examine linked or thematic cases emerging from the conflict.

The Four Strands

In the first strand of its work, the Commission would identify areas of activity to address Society Issues arising from the conflict, for example, tackling sectarianism and working towards reconciliation. It would administer funds made available to address these issues where these are not being met by other programmes. The Commission, acting through its Chair, would work with other partners, particularly the CVSNI, through a Reconciliation Forum to ensure proper co-ordination of activities on a range of issues including storytelling and work with young people.

In the second strand, under the process of Review and Investigation, the Commission would review and investigate historical cases, which resulted in death. It would establish whether there was a realistic chance of prosecution, taking into account the receding possibilities.

In the third strand, under the process of Information Recovery, the Commission would seek, after completion of the Review and Investigation, and with the agreement of the family, to provide answers to unresolved questions of importance to victims' families in individual historical cases.

In the fourth strand, under the process of Thematic Examination, the Commission would examine themes emerging from historical cases and the conflict as a whole, for example, a particular area of paramilitary activity, or allegations of collusion. In this process there would be no public hearings or adversarial procedure; statements could not be used in criminal or civil proceedings against the person making them.

The Commission would thus assume responsibility for the tasks of the Historical Enquiries Team (HET) and the Police Ombudsman in respect of historical cases. These would then cease to have a role in respect of such cases.

The Commission would provide Reports to the families on individual cases, a public summary of these Reports, and Reports giving its conclusions on themes examined under the fourth strand.

Society Issues

Acting through its Chair, the Commission would work with other partners, particularly the CVSNI, to ensure proper coordination of activities to address society issues arising from the conflict. The CVSNI should convene a Reconciliation Forum of which the Chair of the Commission would be a key member along with the Community Relations Council.

The Chair would play an active role, including through the Forum, in promoting cross-sectoral activity across the following society issues:

- sectarianism;
 - remembering activities (including storytelling, memorialising and a day of reflection) at both an individual and community level;
 - work with young people so that they are provided with the skills necessary to ensure there is no repeat of the past, including through education programmes, to inform young people, in a balanced way, about the nature and impact of the conflict;
 - the provision of improved services to meet healthcare needs attributable to the conflict, including dealing with trauma, suicide and addiction issues;
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- ensuring that the economic benefits experienced across post conflict Northern Ireland are equally experienced in deprived areas; and
- ensuring that any of those exiled from Northern Ireland during the conflict can return, if it is their desire to do so, including through the development of a repatriation programme.

The Chair of the Commission would act as a ‘champion’ for these issues but would not assume operational responsibility for them. The Chair of the Commission would have a lead role in relation to addressing sectarianism and promoting reconciliation.

Particular Legal Issues

On particular legal issues:

- The Group intends that the new process for information recovery and thematic examination would avoid the need for further public inquiries.
 - The Group recommends that the British Government should make its position clear on its commitment to establish a public inquiry into the death of Patrick Finucane. That is a decision for the British Government to take in conjunction with the Finucane family. The Group believe that the processes within the new Commission would be capable of delivering an independent internationally-led investigation into the death of Patrick Finucane as well as an examination of allegations of collusion as a theme in a broader context. This argument would fall away if the Commission was not established and the case for a public inquiry, compliant with Judge Cory’s recommendations, would then receive the Group’s full support.
 - Without bringing the Omagh case formally within its processes, the Group believes that the Commission could play a role in engaging with the Omagh families to help find a way to bring resolution to their concerns and unresolved questions.
 - Outstanding inquests would continue and no change would be made to the procedure for dealing with criminal case reviews. However, the Commission should monitor the burden of historical cases on the Coroners Service and the Criminal Cases Review Commission (CCRC) and if necessary make recommendations to Government.
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- For 'on the runs' it has proved difficult to devise a scheme which avoids the criticisms leveled against the failed Northern Ireland Offences Bill. If a privileged procedure is accorded to one group of people accused of crimes relating to the conflict, it would be difficult to deny that procedure to others accused of similar crimes. The case for a special solution is also weakened by the fact that *prima facie* evidence of criminality exists in respect of relatively few people classified as 'on the run'. The Group therefore proposes no change.
- The Group is not proposing an amnesty but recommends that the new Commission itself make recommendations on how a line might be drawn at the end of its five year mandate so that Northern Ireland may best move to a shared future.
- The Group also proposes that the Commission should at the end of its work, challenge the people of Northern Ireland, including political parties and any remaining paramilitary groups, to sign a declaration to the effect that they will never again kill or injure others on political grounds.

Cooperation with the Republic of Ireland

To be fully effective, the Commission will need cooperation from the Irish Government in implementing its tasks. This assistance will need to cover issues such as the production and protection of documents, and the protection afforded to witnesses in making statements to the Commission.

The Commission, with the cooperation of the British and Irish Governments, should seek to resolve the questions which remain of concern to the families of those who died in the Dublin and Monaghan bombings. The Group also considers that the Irish Government should review the Inquiry into the deaths of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan.

| COSTS

The Group estimates that the recognition payments to be made to the closest relative of those who died during the conflict would amount to approximately £40 million.

The costs of the Commission over five years would amount to approximately £170 million. The cost of paying for historical investigation through the existing HET and Police Ombudsman alone would be, over the next five years, in the region of £100 million.

In addition the Commission would be able to look at wider themes and more cases than a single public inquiry. A single public inquiry into one set of linked cases could cost between £60 million and £140 million. For that same money the Group believes that the Commission could examine wider perspectives of the past.

In addition the Group recommends that a bursary of £100m should be made available to the Legacy Commission to address the society issues identified.

The Group considers that the costs of the proposals should be met by the British Government and that, in light of their special interest, the Irish Government should make an appropriate contribution.

| CONCLUSION

The Group's recommendations represent significant challenges for many within society. The Report will generate further debate on how the past should be dealt with. The Group expects that, at the end of a period of debate, the British Government would give its formal response. The Group would invite the Irish Government and the OFMDFM to do likewise.

The Report represents a sizeable body of work for implementation. The Commission involves complex procedures. Primary legislation will need time and care to prepare. But the Group believes that the Commission could be established by late 2010.

Other recommendations within the Report should also be developed further by an Implementation Group. In particular, the Group would urge that the recognition payments to those who suffered the death of a relative during the conflict should be made as soon as practicable.

The Group's recommendations, including the Legacy Commission, are ambitious. But the Group believes that they are the best way of meeting the needs of victims, survivors and wider society; of pursuing the desire for justice and truth; and of moving to a shared and reconciled future.



SECTION 1

**Work of the Group and a Road
Map for the Future**



CHAPTER 1 | The Work of the Group

The Consultative Group on the Past

On 22 June 2007 Peter Hain, the then Secretary of State for Northern Ireland, announced the formation of an independent Consultative Group. The Group was asked to:

- consult across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years;
- make recommendations, as appropriate, on any steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the events of the past;
- present a report, which will be published, setting out conclusions to the Secretary of State for Northern Ireland, by summer 2008.

The Group was also asked to consider:

- the landscape of initiatives that have already been taken by Governments and non-Governmental groups;
- work already done – and ongoing – in this area, including consultative exercises;
- the resources that would be required to implement any recommendations that it makes.

Membership of the Consultative Group

The Secretary of State asked the Right Reverend Lord Eames OM, former Archbishop of Armagh, and Mr Denis Bradley, the first Vice-Chairman of the Policing Board, to co-chair the Consultative Group on the Past and invited the following to become members of the Group:

- Mr Jarlath Burns, Vice Principal of St Pauls High School Bessbrook and former captain of Armagh GAA team
 - Rev. Dr. Lesley Carroll, Presbyterian Minister at Fortwilliam & Macrory Church in North Belfast
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- Professor James Mackey, former Lecturer in Philosophy at Queen's University Belfast and Visiting Professor at Trinity College Dublin
- Mr Willie John McBride MBE, former Captain of the British and Irish Lions Rugby Team
- Ms Elaine Moore, Addiction Counsellor at Northlands Treatment Centre, based at Magilligan Prison
- Canon David Porter, Canon Director for Reconciliation Ministry at Coventry Cathedral and former Director of the Centre for Contemporary Christianity in Ireland

Mr Martti Ahtisaari, former President of Finland, recent Noble Peace Prize winner and founder of the Crisis Management Initiative, and Mr Brian Currin, former chair of the South African Prison Audit Committee and founder of the National Directorate of Lawyers for Human Rights, were asked to act as international advisers to the Group. The Group appointed as its legal adviser Mr Jeremy Hill, former Legal Counsellor to the Foreign and Commonwealth Office and former British Ambassador to Lithuania and Bulgaria.

The Group was supported by Sinead Simpson, Secretary to the Group, and Brendan Giffen, Sandra Holben, Jan Cole and Lynn Baird.

Pen pictures of the Co-Chairs, the Group members and the International Advisers can be found in Appendix 1 to this Report.

The Group's Engagement with Society

In early September 2007 the Group announced a process of engagement, inviting any individuals or groups to share their views on how Northern Ireland society could best approach the legacy of the past 40 years. The Group emphasised that its role was to make recommendations about a process for dealing with the past and that the Group itself was not that process. On that basis views were invited on:

- the legacy of the events of the past 40 years,
 - any lessons to be learned; and importantly,
 - the steps that might be taken to support Northern Ireland society in building a shared future that was not overshadowed by the events of the past.
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The Group acknowledged that most of those engaging with the process would be living or working in Northern Ireland. However, it equally encouraged people who had been affected by the conflict¹, currently living or working in the Republic of Ireland, in Great Britain and elsewhere, to contribute to the process. The Group considered that all those affected by the conflict had a legitimate right to be part of the process to build a shared and reconciled future.

The Group sought advice from the Equality Commission for Northern Ireland, who helped ensure that the consultation was as accessible as possible. Victim Support Northern Ireland also helped to provide support for those engaging with the process.

The Group announced the public engagement by placing advertisements in the main Northern Ireland newspapers, as well as key newspapers in the Republic of Ireland and in Great Britain. Press releases and an 'Open Letter' were distributed to media outlets, including some in the USA.

Letters were also sent to a wide range of interested groups inviting them to participate. Existing organisational networks were utilised to increase awareness and to make the Group more accessible. Articles were made available for publication in various newsletters and radio and television interviews were given in support.

A website was created so that members of the public could gain information about the work of the Group, make submissions and express views publicly in a discussion forum.

At the conclusion of the consultation 290 written submissions and 2086 standardised letters had been received, as well as many letters providing general commentary and offering support.

The Group met privately with 141 individuals or groups, many of which were representing hundreds more. These meetings took place in various venues across Ireland, North and South and in Great Britain. Members of the Group also engaged individually in many informal meetings and discussions. These private meetings were a crucial part of the Group's engagement, allowing it to hear from those who were not comfortable engaging in more formal meetings.

In addition to the many private meetings, public meetings were held in Belfast, Omagh, Armagh, Ballymena, Bangor, Enniskillen and Derry/Londonderry. These locations were chosen to make the meetings as geographically accessible to as many people as possible. The aim was to give an opportunity to all those who had not directly engaged with the Group, in private meetings, to share their views.

1. Chapter 2 explores this terminology in more detail.

In advance of these public meetings advertisements and articles were featured in the respective local media outlets. Notices were placed in libraries and other key facilities in the surrounding areas. Letters were sent to relevant MPs, MLAs, MEPs and local councils, asking them to raise awareness of the meetings.

Over 500 people attended the public meetings. The Group received valuable contributions both from those who spoke publicly and from those who completed submission forms.

During the course of the public engagement many groups and organisations independently convened seminars, workshops or conferences on the subject of how to deal with the past. Group members and staff endeavoured to attend as many of these as possible. Where this was not possible the Group received written or verbal feedback on the issues considered. These proved to be of considerable assistance, both in analysing the outcomes of the consultation and reflecting on a way forward.

The issues that emerged from these meetings and from the submissions received formed the foundational challenges for this Report and, more importantly, for society. Appendix 2 gives more detail on those who engaged in the consultation either through meetings or written submissions.

The Landscape of Initiatives

In setting the terms of reference the Secretary of State asked the Group to consider the landscape of initiatives that had already been taken by Governments and non-Governmental groups to deal with the past. These are explored in more detail in subsequent chapters.

From the outset it was obvious that much excellent work had already been done in the field of dealing with the past by a range of individuals, by voluntary and community groups, by non-Governmental organisations, by statutory bodies and by both Governments². In particular we recognise the significant contribution made by Healing Through Remembering (HTR).

The Group also took account of the extensive research on dealing with the past, which was already available. Many groups and individuals have undertaken exceptional work in this field. The Group is grateful for the various reports, books, articles, speeches and newsletters sent from a wide range of sources. These are detailed in Appendix 3.

2. Many of these groups engaged with the consultation process and are included in the list at Appendix 2.

The Group also found it useful to draw on the experiences of other post-conflict countries. Issues explored included Truth Commissions around the world; the use of amnesties; forms of apology and acknowledgement; reparation for victims and society in general; how others have dealt with problems around sectarianism and segregation; and the important role played by victims in other post-conflict situations. Some of this research is included in subsequent chapters. While the Group concluded that no one model emerged from other countries that was entirely suitable for Northern Ireland, it learnt much from the examples of their good practice and experience. The help of the International Advisers in this regard was invaluable.

CHAPTER 2 | Developing a Road Map for the Future

The Group's Guiding Principles

During the consultation process a number of general principles emerged, which have subsequently assisted in the development of the Group's recommendations. Among these, one key principle has stood out.

The past should be dealt with in a manner which enables society to become more defined by its desire for true and lasting reconciliation, rather than by division and mistrust, seeking to promote a shared and reconciled future for all.

This key principle resists the urge to allow the past to dominate the future and, in doing so, to render the future no different from the past. It enables reconciliation to be realised and a society to emerge which will not resort to violence, either to enforce deeply held views or to express the discontent of any section of the community. Every discussion and recommendation should be measured against this key principle.

From this key principle others have developed.

Dealing with the past is a process and not an event

There are many issues involved in dealing with the past as well as a variety of different approaches. However, common among these is the understanding that dealing with the past cannot be a one-off event or a quick fix. Dealing with the past is a process, and allowing this process to evolve is critical. Debate and discussion should and will continue long after the Group has made its recommendations.

Sensitivity towards victims and survivors³ is essential

Any processes recommended should be sensitive to victims and survivors – ‘victim sensitive’. Choosing the phrase ‘victim sensitive’ recognises the significant community of victims and survivors who are part of the legacy of the past. It also acknowledges that dealing with the past is a concern for society as a whole and the many other parts that constitute it, including the perpetrators.

Recommendations should be human rights compliant

A new approach to dealing with the past is required. But it must be shaped in a way which recognises the rights and responsibilities defined by the European Convention on Human Rights (ECHR) and the decisions of both the domestic and international courts. Alongside the legal rights of the individual, a society has the right to live peaceably and create a better future for all.

Relationships matter and are the foundation for reconciliation

A reconciling society is evidenced when it is defined less by the divisions of the past and more by the potentials envisaged for the future. Such a future emerges from working together and that already requires a degree of reconciliation between divided communities. A reconciling society takes collective responsibility for the past instead of attributing blame and avoiding responsibility. If this future is to emerge, good relationships are crucial.

Consensual agreement is the ideal

The Group has sought to assess the degree of consensus that exists and the potential to build on this for the future. Consensus is difficult to achieve in a society with a history of division and dispute and with competing needs and desires. It is the responsibility of the leaders of our society to draw together the existing elements of a consensus and to lead and assist society in building upon them.

3. The terminology ‘victims and survivors’ is explored in Chapter 4.

One of the major challenges for the Group has been consulting a society which, despite the significant achievements made towards peace and stable government, remains divided along age old lines deeply rooted in the past. Seeking consensus where divisions still exist is a complex but necessary process. Through conducting inclusive consultations the Group has sought to judge where consensus may lie.

The Conflict

A potentially contentious issue for the Group has been the terminology used to describe the past – was it the ‘Troubles’, the ‘Conflict’ or the ‘War’? While acknowledging that there are many different interpretations of the past and what it represented, for the purposes of this Report the Group has chosen to use the phrase ‘the conflict in and about Northern Ireland’⁴ or simply ‘the conflict’. This is a pragmatic choice, which is not intended to reflect any particular historical or legal interpretation.

The Past

Under its terms of reference the Group was asked to consult on how Northern Ireland society can best approach “the legacy of the events of the past forty years”.

The term ‘*the past*’ has been widely used both in the remit of the Group and by those who have contributed to the consultation process. The past as understood and expressed in the many views presented to the Group goes far beyond its forty year remit. For some the last forty years does not provide significant enough background and context to the issues that they believe formed the catalyst for the most recent conflict. This, in their view, can then create an unbalanced assessment of who might be considered more as perpetrators than victims, so keeping the divisions alive.

4. This is a phrase taken from the work of Healing Through Remembering (HTR). Many of their publications are detailed in Appendix 3.

The Group has, for the most part, adopted a flexible interpretation of “the past 40 years” and engaged with all those who wanted to make a contribution, whether they had been directly or indirectly affected by events, and regardless of when those events occurred. In some instances, for example when speaking of ‘historical cases’, the Group has adopted a more precise definition of the period it has in mind. This is made clear in the appropriate sections of the Report.

Not only are there complexities around the timeframe of the past but there are also disagreements about how the past can be dealt with. Some believe we cannot change our understanding of the past. Some believe the past should be laid out for all to see and that truth should be sought and told. Others say that the past should be forgotten in the interests of the future.

As those who carry the scars of the past know, and as the divisions in our society continue to illustrate, the past cannot be forgotten.

Buried memories fester in the unconscious minds of communities in conflict, only to emerge later in even more distorted and virulent forms to poison minds and relationships. The animosity between the communities continues, as is clear not least in the politics of the Stormont Assembly. When future generations ask ‘why?’, they will, if reasons are not considered and recorded, make up their own minds about what happened based on age old beliefs of the communities they come from.

Most importantly for present purposes, one should emphasise that, although the past is past, it continues to exist in people’s minds. That past affects how people live their lives and how they experience the world.

Divided communities carry different experiences and understandings of the past in their minds, and indeed it is this that divides them. Their accounts of the past differ deeply. They are used as a marker to determine and make positive, but more frequently negative, moral judgements on each other and so continuing the legacy of suspicion, mistrust and hatred.

These different moral assessments are seen most clearly in each side's often strident retelling of their own story. If these conflicting moral assessments of the past are to change, then all sides need to be encouraged and facilitated to listen and hear each other's stories. This listening must then lead to honest assessment of what the other is saying and to recognition of truth within their story. In such a process it might be possible to construct a remembrance of our past which is more humane, comprehensive and rounded.

Remembrance for Reconciliation

Many during the consultation process believed that we cannot change the past. Yet to endorse this would mean the continuation of two irreconcilable versions of the past in the memories and beliefs of the still divided people of Northern Ireland. These two versions of the past differ not so much in the facts of what happened but more in the moral assessment of the rightness and wrongness of what was done by opposing sides.

But the consultation has also shown that the past, as it exists in the memories and beliefs of the people of Northern Ireland, can be changed. Those individuals and organisations who spoke to the Group about working for reconciliation and a shared future demonstrate this. They acknowledged that, while the recorded facts of the past cannot be changed, the opposing moral assessments of what was done and suffered by each side can be revisited; and in so doing can prove to be the beginning of the road to reconciliation as experienced by them.

They realised that the process of revising their moral views could allow them to see good and bad on both sides, thus allowing them to see the moral dignity and moral failures of both sides, thereby leading to mutual forgiveness and reconciliation and a movement away from the divided past.

Reconciliation, Truth and Forgiveness

The fruitful beginning of sustainable reconciliation and a truly shared future centres upon a genuine and general acknowledgement of the moral dignity of our common humanity. This *reconciliation* requires for its integrity and success two other elements, namely, a willingness for mutual *forgiveness* and a willingness to address the *truth* of the matters to which the mutual forgiveness is to apply.

Forgiveness is a frequently misunderstood term. It is often confused with forgetfulness, as in the all too common phrase, 'forgive and forget'. Forgetfulness plays no useful part in true forgiveness. The most common and most self-defeating misunderstanding of forgiveness consists in thinking that it can be done unilaterally. It is simply not possible to complete an act of forgiveness unless a wrong is acknowledged. In the case of the divided communities of Northern Ireland, this means that both sides must somehow be enabled to reach agreement that there was wrongdoing on both sides. This is not a matter of balancing amounts of wrongdoing but of acknowledging that wrong was done on both sides. Only then is mutual forgiveness possible.

That leads further to the matter of truth: truth telling and truth recovery. Truth is crucial to the prospect of reconciliation. Genuine conversations, to establish, and as far as possible agree, what that truth is, should take place between those involved in the conflict, while recognising that complete truth is unattainable. The truth about the parties in conflict cannot be established for the purposes of reconciliation solely by an academic process, for the truth at issue concerns the good and evil done by each side to the other. Conversations must take place between the divided communities and they must be about the conflicting moral judgements and not just the facts as put forward by one or both sides of the conflict.

To get the process of mutual forgiveness and eventual reconciliation up and running, the conversation need not result in either side admitting to being always and entirely in the wrong. In fact, given the moral imprecision for which fallible human beings are renowned, it would be strange indeed if in such cases one side were ever found to be always and entirely in the right. It would be sufficient that there is an admission that, just as rights were present on both sides, so also wrongs were committed on both sides.

It might even be sufficient for the process of forgiveness and reconciliation to begin if parties would agree that they are dealing with genuine moral agents like themselves, people who can make mistakes in their moral decisions and who also have the moral stature to move beyond them. Even on such narrow ground the seeds of future forgiveness and reconciliation can grow.

As cross-community storytelling and other forms of memorialisation proceed and increase, it is quite possible that the overall futility of recourse to arms to solve the problems of a divided Northern Ireland might begin to dawn on those who took part. It is neither unreasonable nor overbearing to recommend that the remembrance of the armed violence of the recent conflict, together with a moral reassessment by all sides involved, should lead to a realistic hope that by the end of the work of the Commission proposed in Chapter 7, Northern Ireland should have moved to a different place to where it presently finds itself. In the consultation the Group heard impassioned pleas that people on this small island should have the right to live free from any fear or prospect that they would be killed or injured on political grounds. We have been persuaded that this desire should be formalised.

The Group therefore recommends that the Commission proposed in Chapter 7 should, at the end of its work, challenge the people of Northern Ireland, including political parties and whatever remnant or manifestation of paramilitary groups remain, to sign a declaration to the effect that they will never again kill or injure others on political grounds.

The power of good example can never be overestimated; and if only because of Northern Ireland society's notoriety for allegedly killing each other on political and religious grounds, it is in a position to exercise its good example more effectively and widely than most.

Information and Truth

The emergence of this truth should be encouraged through all forms of remembrance, detailed further in this Report, and also by a legal process of information recovery about individual cases and themes arising from the conflict. This should not be read as a copy of the South African Truth and Reconciliation Commission. There was much advice given to the Group that it was essential to create a new type of mechanism suited to the culture and history of Northern Ireland. The Group has therefore favoured a mechanism which would be private, non-judicial and non-adversarial in preference to the public, judicial or quasi-judicial commissions of other countries.

In Northern Ireland we are dealing with communities that have been in conflict for a long time, each as likely as the other to be in denial of the wrong that has been done in its name and of the goodness of the other. One of the goals should be to enable these communities to face the past together in a way that enables each to admit a substantial share in the accumulated and generic guilt of all the hostility-ridden years.

The Group has also taken account of the view, made clear during the consultation, that the past should not be allowed to continue to shape the future in a way which is unhelpful and divisive. The process, which the Group proposes, is therefore time-limited in order to allow the past to be the past. Some will, no doubt, view this process as enabling them to get what they want, and for some that may be no more than acknowledgement, for others justice. Others will view the process as a way of 'drawing a line under the past', and no more than that.

But as long as there are enough people who are willing, in the next few years, to increase opportunities for remembering and judging past deeds and experiences together with their former enemies, in a spirit of wanting to recover their common human dignity, the vision of a peaceful and prosperous society will begin to become a reality.

This new process of information recovery makes its contribution in the context of a strategy of remembrance in which, instead of each community continuing to tell its own story to itself, the two should come together on all occasions possible so that each can tell its version of their common story to the other.

The lack of readiness among many to listen to others, or to tell them their part of the common story, may present difficulties. But this process is already being practised by many organisations and is at the heart of what the Group proposes. It is at its most powerful and transforming when it happens across ‘peace lines’ and amongst victims groups from different communities.

The Principle of Justice

Another issue in the process of reconciliation is the demand for and the delivery of justice.

Since Northern Ireland now has a justice system as worthy as any other society, and will soon have more local control over it, people who claim justice from that system cannot have their claims denied. The programmes and processes that are designed to deliver justice must continue to hold an essential place.

During the consultation many expressed the wish that the legacy of the past should be kept out of the courts and that society should be allowed a breathing space from the constant disclosures that result from court and inquiry proceedings. There was also a tendency for one community to press for the continued prosecution of perpetrators from the other community, while not accepting the possibility of further prosecutions of perpetrators from their own community. There was therefore sometimes an ambiguous position on the issue of amnesty. Many people privately felt that drawing a line in some way might be the best way forward but could not bring this out publicly because members of their community were still pressing for prosecutions of the 'other side'.

The Group has covered the issues of legal processes and amnesty in more detail in Chapter 7. It has concluded that the possibility of bringing prosecutions should remain open and there should be no amnesty. But it recognises that the very demand for justice can militate against the main goal of reconciliation, in ways and degrees that range from postponement to virtual rejection. A long and determined pursuit of penal justice could be viewed as a means of continuing the conflict rather than enabling healing. The Group has recommended that the historical cases resulting in death should continue to be reviewed and investigated, but that the Legacy Commission proposed in Chapter 7 should, at the end of its work, make recommendations on how a line might be drawn so that Northern Ireland may best move to a shared future.

CHAPTER 3 | The Conflict and the Impact on Society

Overview

The conflict has had a significant impact on the lives of many in Northern Ireland and beyond. Thousands lost their lives, tens of thousands more suffered injuries which they continue to live with and few escaped unscathed either at an individual or a community level. There are many interpretations of the nature and causes of the conflict, as many as there are sectors within our society. The legacy of the conflict continues to dominate the lives of many, either because of the separation which derives from sectarian attitudes and systems or because of the deprivation that continues to pervade some communities. The conflict continues to be fought out in other ways and through other channels. Finding an honest way to examine the conflict is important if we are to spare the next generation from repeating the same mistakes we made.

The Facts and Figures⁵

The facts about the conflict in and about Northern Ireland are well documented. Many reports and studies were presented to the Group during the consultation process.⁶ Yet the causes and exact nature of the conflict remain the subject of much debate. Not only are the origins of the conflict contested, there exist many different accounts of its impact on individuals and communities. Inevitably there are different understandings of where blame lies.

Victims and survivors do not need reminding of the horrifying statistics that surround the conflict. However, others may find it helpful to reflect on what the facts and figures reveal.

Between 1969 and 2001, 3,523 people were killed as a result of the conflict. Almost 60% of the victims were killed by Republicans, almost 30% by Loyalists and 10% by the British and Irish security forces.

5. All facts and figures in this chapter have been taken from CAIN
<http://cain.ulst.ac.uk>

6. These are included in Appendix 3.

Responsibility for killing	
Responsible party	No.
Republican Paramilitary Groups	2055
Loyalist Paramilitary Groups	1020
Security Forces	368
Persons unknown	80

Most of those killed were civilians (1855) or members of the security forces (1123), with smaller groups of victims identified with Republican (394) and Loyalist (151) paramilitary groups. Due to the secretive nature of paramilitary organisations it is often disputed whether or not some civilians were members of paramilitary groups and indeed the families of some of those killed would strongly dispute such allegations.

Most deaths occurred within Northern Ireland, especially Belfast, although surrounding counties in the Republic of Ireland, Dublin and large English cities such as London and Birmingham, were also affected. Occasionally, violence took place in Continental Europe, especially against the British Army in Germany.

Geographical distribution of deaths in Northern Ireland conflict	
Location	No.
County Antrim	207
County Armagh	276
East Belfast	128
North Belfast	576
County Tyrone	339
West Belfast	623
County Down	243
County Fermanagh	112
Derry City	227
County Derry/Londonderry	123
Republic of Ireland	113
England	125
Continental Europe	18

The significant impact on the lives of many was not limited to those whose loved ones were killed. Some 47,000 people sustained injuries in 16,200 bombing and 37,000 shooting incidents. There were 22,500 armed robberies, 2,200 arson attacks and some 19,600 people were imprisoned for scheduled offences.⁷

These statistics only begin to help us understand the impact of the conflict on individuals and communities. Such facts and figures are often used as evidence of blame and hurt caused. They are also evidence of a society that has been badly and extensively damaged by violence. There is a consensus among all who contributed to the Group's work that there must never be a return to such violence.

Defining the Impact on Society

Each section of the community in Northern Ireland defines the legacy of the conflict in its own way and explains the conflict from its own perspective. Throughout the consultation many presented their individual and collective perceptions about what happened.

The following paragraphs attempt to summarise the perspectives that were presented. If we are to deal effectively with the past and build a shared and reconciled future, these narratives must be told by those who hold them and have to be heard and addressed by all.

Victims and Survivors represent a broad cross-section of views. On the one hand, there are those who believe their loss has not been recognised and who, therefore, want the opportunity to tell and document their story. On the other hand, there are those who choose to get on with their lives, going about their business without retelling their story of hurt and bearing their suffering in silence.

Victims and survivors face difficult issues, including accessing support services, securing justice for the death of their loved one, or establishing the truth of what happened. Added to this they are now faced with the challenge of a society that wants to move on.

7. Scheduled offences are defined in successive Northern Ireland (Emergency Provisions) Acts and comprise those offences most likely to have been committed by those using violence to pursue the conflict. They range from murder and manslaughter through kidnapping, serious assaults, and armed robbery, to a wide range of firearms and explosives offences.

For many in *Wider Society* the ‘Troubles’ happened on television. People distanced themselves from the violence and did so by not asking questions about the causes of the conflict. The vast majority simply got on with their lives and tried to keep the ‘Troubles’ from their door and prevent their families from becoming involved. In fields such as education, healthcare, business, and community work, people expressed the view that, by sustaining provision of a service, they helped people to experience a level of normality. They argued that this prevented the conflict from escalating to greater levels. Some believe that there should now be a line drawn under the past.

For many within the *Republican Community* the armed struggle was necessary to free that part of Ireland that was still occupied. They saw a heavy-handed response to their legitimate demands from those in power. They saw no distinction between the British Army, the RUC and Loyalist paramilitaries, whom they considered as all part of the British war machine. This, together with pressure from within their own community, led the Republican leadership to believe that there was no alternative to an armed struggle. Lives were lost in the course of active service for the cause. Many thousands spent years in prison; their families were inevitably affected and their suffering was rarely noted outside their own community. For many the policy of ‘Ulsterisation’, introduced under Secretary of State Roy Mason, sectarianised a political conflict.

The broader *Nationalist Community* believed in the need to achieve civil rights but not through the use of violence. Some experienced harassment from the security forces on one side and intimidation from the paramilitaries on the other. They felt that the British Government did little to help the cause of Irish Nationalists, making victims out of an entire community. They felt powerless in the face of the security response and could see that Government responses to events such as Internment, the Hunger Strike and the use of informers were counter-productive. Many blamed the state for compounding the conflict, especially through colluding with Loyalist paramilitaries.

The *Loyalist Community* felt it had to respond to an IRA campaign of terror. They saw their people targeted because of their religion, their place of residence or their connection with the security forces. Some Loyalists also saw a need to take up arms to defend their links with the rest of the United Kingdom. Many Loyalists considered themselves to be victims, caught up in a cycle of violence and unfairly blamed for defending their community against a sustained Republican onslaught.

The great majority of the *Unionist Community* perceived the IRA campaign as a direct attack on their constitutional position within the United Kingdom and their British identity. They did not acknowledge legitimate motivation for the IRA campaign. They felt that those within their own community who lived in social and economic poverty were as much discriminated against as Catholics in similar circumstances. They saw the violence meted out by the IRA as at best the killing of people who were simply doing their job to protect their country and at worst the murder of innocent civilians.

Those who served in the *Security Forces*, together with their families, saw the violence from all sides as unlawful and a direct challenge to the rule of law carried out by terrorists. They resented, and were disturbed by, any suggestion of a widespread policy of collusion but pointed to the actions of a few individuals who should be subject to the law. Ultimately they considered themselves to be law-keepers, not law-breakers. They felt strongly that there was insufficient appreciation of the number of innocent lives which were saved by their work and devotion to duty. They were emphatic that history should not reflect any equivalence between the actions of terrorists and the response of the forces of law and order. For them the work of the security forces was simply the legitimate response of a society defending itself from unlawful attack.

The *Churches* found themselves unprepared for the escalation of violence. They quickly became engaged in the pastoral care of the grieving and injured, overwhelmed at times by the demands made of them and unprepared for the consequences of the years of violence. The Churches saw themselves as playing a role in stemming the tide of violence through persistent public opposition and calls for another way to be found to deal with differences. Church men and women, by and large, got on with the everyday effects of the violence within local parishes and congregations, helping to provide greatly needed local stability through church based organisations and activities, particularly for young people.

Like many in our society, the *Media* were caught up by the daily events that engulfed Northern Ireland, particularly in the late 1960s and early 1970s. Some journalists, reporters and commentators acknowledged the view that the reporting at times added to the demonisation of entire communities and did not impartially reflect the realities of the conflict. Others argued that members of the press were courageous in their efforts to report truly the violence and turmoil, and indeed some lost their lives doing so. Many considered that they covered the stories of the conflict with professionalism and integrity. They emphasised that, as in any profession, there were good and bad practitioners, and it was inevitable that the personal beliefs of some journalists may have made them unduly sympathetic to one side in the conflict or another.

Understanding Perspectives

As Chapter 2 of this Report has pointed out, if society is to move towards reconciliation, a way should be found to enable these differing perspectives to be shared and heard. Conversations need to take place in a safe environment and need to be supported. The differing perspectives on the nature and causes of the conflict as well as its impact on our society need formal acknowledgement. Much good work has been done in starting to facilitate such a process but there is a long way still to go.

Furthermore, the moral impact of events during the conflict has been profound. Death and injury; bereavement and incarceration; action and retaliation; ill-judged language and a lack of understanding; violence and lack of respect for human life. These have all arisen as a result of the different moral interpretations made about the State, the violence, political aspiration, and cultural and religious diversity. In the difficult situations borne out of such moral interpretations choices were made, many of which were less than perfect.

The Ongoing Conflict

Throughout the Group's consultation it was evident that, while we have left the violence behind us, we have found new ways to continue the conflict. This is evidenced by the contention around the language used when describing the conflict and those who played a role in it. In this section some of these continuing issues are explored.

Victims Issues

People from both sides of the community emphasised how victims and survivors must be central to any recommendations for dealing with the past.

However, two areas of particular contention arose repeatedly – how victims are defined and, in particular, the use of definitions which produce a hierarchy of victims that is broadly structured along sectarian lines.

The lack of agreement on a definition of a victim reflects the diversity that exists both within the victims and survivors community, and wider public opinion. Some made impassioned arguments that there should be no equivalence between victim and perpetrator while others argued, just as passionately, that there must be no hierarchy of victims and that everyone should be treated equally. For others it was important to recognise not a hierarchy of victims but rather a hierarchy of perpetrators. Most agreed that the pain and hurt of the families of both victims and perpetrators is the same.

Debate continues within the political arena inside and outside the Assembly. Political parties are rightly under pressure to represent victims groups and to keep their issues at the top of the political agenda. Indeed, in the Group's consultation it was argued that some victims groups are becoming more like small political parties working to advance a partisan political agenda rather than the needs and concerns of victims.

In the consultation process a definition of a 'victim', acceptable to everyone, did not emerge. The contention the Group encountered around this issue is nothing new.⁸

In Article 3, paragraph 1 of the Victims and Survivors (Northern Ireland) Order 2006,⁹ a 'victim and survivor' is defined as:

- “(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.”*

The Order goes on to state that:

“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.”*

Several organisations expressed a desire to get beyond this contentious debate. They argued that we need to reach a point where there is acceptance of the reality of suffering across the political spectrum.

8. In his report 'We Will Remember Them' (May 1998) Sir Kenneth Bloomfield outlined the difficulties surrounding this issue, as did Bertha McDougall, in her report 'Addressing the Human Legacy' (January 2007).

9. Statutory Instrument 2006 No. 2953 (N.I. 17).

| REFLECTIONS

The Group regrets and rejects the politicisation of victimhood. The true nature of the hierarchy of victims lies in the level of loss and suffering experienced during the conflict. It is the difference between having your loved one killed or severely injured against having a car destroyed or your house damaged. That is the true hierarchy of victims.

The Group is, therefore, convinced that to continue the already highly politicised debate about the definition of a victim and the hierarchy of victims is both fruitless and self-defeating. It is of greater importance to respond to the needs of victims and survivors. On this basis, and for the purposes of its work, the Group has accepted the definition as set out in the Victims and Survivors (Northern Ireland) Order 2006.

'Ulsterisation' of the Blame

Former members of the security forces and their families expressed anger arising from their belief that they are now being made scapegoats for the actions of others, when they simply did what duty required during the conflict. Some went so far as to describe this as the 'Ulsterisation' of the blame. Some former members of the RUC and UDR/R IRISH (HS) believe that the British Government is trying to put the blame for alleged collusion on them and will not allow those allegations to be directed at other agencies such as the Ministry of Defence (MOD) and the Security Services.

For many within the local security forces there is a deep and real feeling of being as much victims of the conflict as those traditionally thought of in that category. There is also resentment that Public Inquiries and examinations of the past appear to accept that blame must inevitably fall on them.

| REFLECTIONS

The Group recognises and acknowledges how differing moral assessments in this context have a damaging effect on organisations and on society in general. It undermines efforts to build reconciliation. While there are undoubtedly issues which need to be examined, this needs to happen in a safe and focused environment. This exploration is more conducive to a moral reassessment of the past than the often seen and heard examinations in newspaper articles and documentaries.

The Group recommends that the Legacy Commission proposed in Chapter 7 should be used as the vehicle for examination of the themes and issues arising from the conflict.

Extent of Collusive Activities

Throughout the public consultation the question of collusion and ‘shoot to kill’ policies arose with claims that collusion was an agreed policy, sanctioned by those in power, rather than the actions of a few who stepped outside the law. Some also considered that a ‘shoot to kill’ policy was in operation, again approved by those in authority within the agencies of the State and within Government. The ineffective response of agencies to deal with so called ‘rogue members’ was seen as evidence that it was not simply the actions of a few who had stepped outside their own rules but a coordinated policy which led to the loss of life.

Others expressed anger that the agencies of the State who had upheld law and order through difficult periods of the conflict were being tarnished by the actions of a few. They rebutted any accusation that collusion was a widespread policy approved by those in authority, arguing that there was no substantial evidence to support this. They considered that any incidents of inappropriate contacts between state agencies and paramilitary groupings could be put down to some members of those agencies acting outside the law and that those people should be brought before the courts and dealt with appropriately. Additionally, many currently serving and former police officers pointed to the ‘Ulsterisation’ of the blame, as detailed above, around the issue of collusion.

REFLECTIONS

The debate about collusion continues: the definition of collusion; what actions can be described as collusive in the malevolent sense of the word; whether it was a policy or the actions of a few; and who should be held to account for the mishandling of agents.

There have been a number of high profile investigations¹⁰ into alleged collusion and 'shoot to kill' practices including by Stalker, Sampson, Lord Stevens, Judge Cory and the Police Ombudsman.

The Group appreciates that there are many widely held beliefs around the question of whether collusion was a sanctioned policy of the State, a pervasive culture that went unchallenged, or the actions of a few rogue members of a particular agency. Indeed, the Group recognises and understands the differing perspectives on what actually constitutes collusive activity. For example, the Group has heard conflicting stories about the handling of agents: who was in control of their activities or indeed whether anyone was.

At an earlier stage the Co-Chairs delivered a speech¹¹ setting out some of the perceptions and beliefs that have been shared with us and our initial thoughts on the issue. The differing perspectives on the issue of collusion are in some measure built upon the differing perspectives of the cause of the conflict. But the previous inquiries, summarised in Appendix 4, have made findings of collusion in certain cases, including the finding that, on occasions, collusive actions resulted in deaths which could have been prevented.

Based on the information presented to the Group, it considers that there remain serious questions to be answered concerning allegations of collusion. The Group does not think that these are best explored through normal judicial processes. Rather, they would be best examined under procedures designed specifically for the purposes of information recovery and reconciliation.

The Group recommends that the Legacy Commission, proposed in Chapter 7, conducts an examination of themes arising from the conflict, which would include further examination of allegations of collusion.

10. These are summarised in Appendix 4.

11. See Appendix 5.

Victimisation of Communities

There has naturally been a strong concentration on individual pain and loss, often to the neglect of whole communities who have been victimised during the conflict. These were the communities that were least equipped to deal with the added burden because they were already the most socially and economically deprived. Such communities existed and still exist on both sides of the divide.

The Group heard how they had to endure over many years the presence in their midst of their 'own paramilitaries' and at the same time absorb the concentration of heavy military and police presence. Those presences over the years became more and more oppressive. The burden was further added to when their 'own paramilitaries' acted as judge and jury in punishing anti-social behaviour in the most harsh and brutal manner. These punishments often resulted in horrendous injuries to the individuals concerned and further emotional disruption to their families. Others were exiled from their communities because they were suspected or accused of anti-social behaviour or of providing information to the security forces.

While the Group recognises that intelligence gathering is an integral part of security activity, the sense of oppression was even further increased by the numbers of people who were recruited by the State and induced to act as informers. The Group was told that a significant number of such agents were recruited, many more than was imagined at the time. Whatever service they did for the State, it was at a price to their own lives and the self-esteem within their own community.

These communal stories must form part of the storytelling recommended in this Report. Forgiveness and reconciliation need to take place within communities as well as between communities. Some of the stories will be difficult to tell and to listen to but all the more important that they be told and that they be heard. This, of course, will only happen and then only tentatively when people and communities are convinced that the conflict is over and done with and that a truly safe place exists for all.

This is not to recommend that people from within these communities publicly admit to having been recruited as agents or to having passed on information to the security forces but rather to face the truth that these communities were never completely of the same mind or conviction as to the legitimacy of what was being done. These communities were made up of people who were fallible and under enormous pressure. Some acted according to their own moral code while others bent under the pressure.

The Group, therefore, recommends that the Commission for Victims and Survivors for Northern Ireland (CVSNI) should facilitate the telling of these stories about intra-communal difference. This should be done in a manner which enhances reconciliation within; which engages both the paramilitaries and the state agencies; and where all are aware of the residue of hurt and bitterness still present in some of these communities and are challenged to find better ways to relate and interact.

The Impact on Young People

Throughout the consultation, one of the issues that most exercised people was the impact the conflict had, and has, on young people.

Thirty years of violence have led to problems in Northern Ireland which affect our children and young people, some of whom still need particular support and help. Several groups represented these needs and expressed concern about the extent to which parents are passing on their prejudices and bitterness, wittingly or unwittingly. This results in ongoing sectarian division and even violence in society.

Many want to ensure that future generations will not repeat the mistakes and horrors of the past. They are concerned that resources are not being made available to support the next generation to cope with the legacy of the conflict and these are needed to assist them to guard against any distorted perspective on normality.

For young people one of the key messages of the conflict has been that life itself has little value. This is seen by some as a contributing factor to the high suicide rates now seen in Northern Ireland. The Group also heard of high rates of dependency on alcohol or drugs or both. A number of sources suggest that, in order to properly address these issues, services for young people – as with other victim, survivor and trauma services – need to be more coordinated and holistic.

Young people whom the Group met were strongly of the opinion that the stories about our past need to be shared. As one young person said “we need to know whether we would have done anything different if we had walked in their shoes”.

Organisations devoted to youth provision experience the same problems facing other victim and survivor groups. Securing and retaining funding in the medium to long term was a common problem. This was acutely felt where the work undertaken, for example in the educational field, was considered by funding bodies to be a statutory responsibility and not something they were prepared to fund.

Many emphasised the importance of education in building a better future and suggested that there should be more opportunities for integration. In order to address properly the ills of the past and the isolation of communities, they said that we need to look at segregation within our society in all its manifestations. While some were committed to an enforced system of integrated schooling, others felt that Northern Ireland society was not ready for such a step.

People also suggested that more value should be placed on good citizenship, for example through volunteering, and the skills for living with difference. As there is no common understanding of the conflict, others highlighted the value of specific education programmes to encourage and enable young people to understand better the nature and causes of the conflict and how society has emerged from it. In this context the benefit of using creative arts as a means of enabling young people to engage with, and express their views on, the conflict and its legacy was highlighted. Such analysis will, we were told, be all the more fruitful because of the increasing emphasis that is being placed on emotional and social intelligence, for example Personal Development and Mutual Understanding (PDMU) which is part of the revised curriculum.

| REFLECTIONS

While we in society have no right to place the burden of securing a better future on the shoulders of the next generation, young people are an important influence on the older generation. They may be best equipped to challenge sectarian norms and assist society towards a shared and reconciled future.

The stories about the impact the conflict had on children and young people across the communities need to be told and listened to. The Group acknowledges that the needs of children and young people will differ across and between communities but the many examples that exist of collaborative working between schools should be developed with these storytelling needs in mind.

There is impressive work done by many statutory and non-statutory groups in attempting to engage young people in society generally, but also specifically on legacy issues. But even they agree that more needs to be done. The focus needs to be kept firmly on the future and those who will take us there. The good work done by many groups needs to be supported.

The Group is encouraged by the many joint schools' initiatives enabling pupils from both sides of the divide to work together on social, humanitarian and overseas development programmes. The Group takes the view that such cooperation builds new understanding and trust between young people at a formative stage in their development.

But you cannot lay the burden on schools as they cannot provide the answers that society is not providing itself.

Even if young people claim not to be well educated or interested in the past they are actually finding their own ways to re-enact the age old conflict. But they now do so through online social networks or in their loyalty to, and following of, certain football teams.

Furthermore, as conflict has come to an end, the transitional period from paramilitary control to acceptable policing has created a context in which anti-social behaviour has gone unchallenged. There is a responsibility on all, parents and community groups alike, to collectively address these issues and to provide direction. Under the devolution of policing and justice higher priority should be given to the development of creative community policing initiatives, which have a particular emphasis on engaging with young people.

The Group therefore recommends that the Legacy Commission, proposed in Chapter 7, should, working through the Reconciliation Forum, ensure that young people are encouraged to participate in storytelling initiatives and that education programmes are developed which inform young people, in a balanced way, about the nature and impact of the conflict.

Sectarianism

The impact of segregation and separation, driven by sectarianism, was increasingly evident throughout our consultation. There are a greater number of so-called 'peace' walls now than existed throughout the conflict. The costs attached to a doubling up of services are further evidence of how the past continues to infect our public life. For many people it remains the one thing which, if not properly tackled, could drag us back into the abyss.

A large number of those consulted aspired to a new Northern Ireland where toleration, respect for cultural and religious diversity, equality and justice are the foundations of our relationships. They want a secure, safe, stable and shared Northern Ireland where politically motivated violence or its threat is removed. This does not mean obliterating all signs of difference and diversity but rather it means developing a respectful relationship with those who are different from us.

The Group heard of the positive contribution that sporting organisations have made to providing diversionary activity, including cross community events, for young people at a time when sectarian attitudes and systems could so easily have sucked them into a spiral of destructive behaviour. Many of these organisations lost members and had premises destroyed during the conflict and the development of sport in general was affected for many years in Northern Ireland as a result of the ongoing situation.

| REFLECTIONS

Conflict has far reaching consequences for any society including a legacy of deep rooted sectarianism. This is not by any means peculiar to Northern Ireland. Its most destructive consequences are seen when it interfaces with power and privilege to dominate individuals or groups.

Sectarianism produces a spectrum of negative behaviour seen in ordinary everyday activities, such as where we shop or the judgements we make about people when we are introduced to them by name. This is, however, the 'soft' end of the spectrum of divisive and destructive behaviours arising from sectarianism.

At the other end of the spectrum, sectarianism is sometimes used to justify harm, injury or death inflicted on an individual or community because they are different and judged to be the lesser. It is unlikely that anyone has escaped unscathed given that we have lived within a sectarian society and have learned at best to tolerate it and at worst to accept and reproduce it.

Non-sectarianism is easy to request but difficult to achieve unless it is addressed at all levels of society and becomes part of our ethos, structures, policies for, and behaviour in, government. To engage in attitudinal change we must understand the complex relationship between intentions and consequences. This enables us to judge whether speech, actions or decisions are potentially or actually sectarian.

Many of our sporting activities remain divided along sectarian lines and the Group recognises the efforts that have been made to address these issues. Much work remains to be done, however, and the Group would urge sporting organisations, to consider and review their policies and practices in the context of whether they further good community relations and reconciliation.

Much progress has been made in ‘making the peace’ and establishing institutions for self-governance. The debate around sectarianism and how it should be tackled is viewed by some as harking back to the ‘bad old days’ and not in keeping with the new dispensation.

Sectarianism, however, remains as a dark reminder within our society of how things were and could be once again if not acknowledged and tackled.

Any society moving forward from conflict has no choice but to address the separations that exist between its people. These separations are negative and destructive when they exist in housing, employment and social life. Specifically the arguments about the ethos or quality of education provided in the faith based sectors have to be balanced against the reality that reconciliation may never be achieved if our children continue to attend separated schools.

By definition and nature sectarianism involves religion and the destructive patterns of relating that arise from a negative mixing of religious belief and politics. When religion is used to draw boundaries, whether communal or territorial, and to reinforce patterns of inequality and social conflict, then prejudice and discrimination are given divine sanction, even if such behaviour contradicts the professed belief of its adherents.

The Christian churches carry a particular historical responsibility, for they not only gave the language which both shaped and fuelled division, but often gave sanction to those who exploited theological disputes and differences for political and territorial gain. Catholic and Protestant became the identifying labels of the political and national allegiances of each side of the divide. Too often the violence and bitterness of communal strife was allowed to increase the suspicion and gulf between the two Christian traditions. There was a failure by the institutional church bodies to make a sustained united impact during the conflict. Often it was the actions and initiatives of individual congregations, organisations and church people that made a significant difference.

Yet some of the churches have recognised and addressed the religious dimension from the earliest days of the conflict. In their public statements some have accepted responsibility for nurturing attitudes which have contributed to the strength of sectarianism in the wider community. Indeed significant initiatives have taken place in recent years to identify and challenge sectarianism in their life and practice.

Any move by the churches to acknowledge and respect the integrity of each other's tradition does make a significant impact on the context in which wider society can address the legacy of sectarianism. There is a strong Christian tradition in Northern Ireland. Therefore Christian churches have a particular responsibility to take a leading role within communities for addressing the destructive presence of ongoing sectarianism.

The Group recommends that the Legacy Commission, proposed in Chapter 7, should take the lead in ensuring that sectarianism continues to be addressed, including through setting the direction for that debate and by highlighting the contribution that all sectors of society can make to address the problem.

The Group recommends that the Legacy Commission engages specifically with the Christian churches in Northern Ireland to encourage them to review and rethink their contribution to a non-sectarian future in the light of their past, particularly in the area of education.

Socio-economic issues

The exact impact of the conflict on the economy was difficult to quantify through our consultation and research. The Group heard stories of businesses lost through bomb explosions; of people being put out of business; of people getting business from only one side of the community, or only being able to access services in one side of the community. The Group was also told of high security costs; of extortion; of harassment, bullying and unfairness in the workplace; of the brain drain from Northern Ireland; and of how the violence discouraged tourism and investment.

In more recent times, there has been a recognisable sea-change in our fortunes, although the present economic downturn will slow this progress. Many pointed to the recent investment conference¹² as evidence that local politicians have our economic well being at the forefront of their minds. But those the Group engaged with also noted that the economic well-being is not being felt by all. It needs to touch the most vulnerable parts of Northern Ireland where the damage of the past was most keenly felt.

| REFLECTIONS

Economic success and the resulting benefits can lead to the pretence that the past is 'past and gone'. Such success can exploit the human tendency to believe that all is well when it is not. Any process for dealing with the past in Northern Ireland needs to meaningfully address the economic, as well as the social legacy of the conflict. How the economy is built in the future, particularly in time of recession, and the social impacts of a successful economy should be part of the considerations if new divisions are not to be set up and reinforced.

12. US/NI Investment Conference, Belfast, May 2008.

At this time of economic hardship there is a need for training in skills for relevant employment, particularly in economically deprived areas. Equally, there is a need to encourage the many who left Northern Ireland, as part of the brain drain during the conflict, to return and use their economic and business skills to assist our economy.

The Group recommends that the Legacy Commission, proposed in Chapter 7, working through the Reconciliation Forum with other relevant bodies, acts as a determined champion to keep attention focused on the most deprived areas of Northern Ireland to ensure that the economic benefits experienced across post-conflict Northern Ireland are equally experienced in deprived areas.

Exiles

During the consultation the plight of those exiled from Northern Ireland was raised. While for obvious reasons exact figures are hard to establish, it is estimated that around 4,600 people were exiled from Northern Ireland over the period 1980 to 2005. Most have not returned to Northern Ireland, largely because of fear of reprisal. Many others who have put down roots elsewhere have no desire to return.

Local politicians have recognised the importance of dealing properly with the issue, some demanding that before anything is done with respect to ‘on the runs’¹³ there must be *“guarantees that those ‘exiled’ by the paramilitaries can return to Northern Ireland in safety”*.¹⁴

| REFLECTIONS

Aside from the organisations delivering guarantees that those exiled can return safely, further discussions are required with the relevant agencies and authorities about a repatriation programme for those who wish to return to Northern Ireland.

13. Further detail on the category of persons known as ‘On the Runs’ can be found in Chapter 6 of this report.

14. Eileen Bell, Alliance Party, Northern Ireland Assembly debate on ‘On the Runs’, February 2002.

Clear leadership is needed in promoting the debate on this issue across the various agencies and ensuring that any actions identified are implemented. The CVSNI has identified a need to reach out to victims and survivors of the conflict.¹⁵ In discussions with the CVSNI it is clear that this includes those exiled from Northern Ireland.

The Group recommends that the Legacy Commission, proposed in Chapter 7, supports the CVSNI in their endeavours to address this issue.

Conflict-Related Convictions

In the course of the consultation a number of people drew attention to the difficulties experienced by those with conflict-related convictions. In particular, ex-prisoner groups noted that applying for jobs, obtaining a mortgage and even lesser forms of credit are problematic where the applicant has a criminal record. Many expressed a desire to put their past, and the actions they committed as part of paramilitary organisations, behind them and to lead normal lives. Some wanted to give something worthwhile back to their community. The implications of their criminal record for conflict-related offences make it difficult to secure a permanent occupation and so provide for their family.

| REFLECTIONS

The Group is persuaded that more should be done to allow those with conflict-related convictions to become integrated into society by affording them equality of access to jobs, goods and services. Many have played active and positive roles in conflict transformation.

15. Draft Initial Work Programme for CVSNI, June 2008 – March 2009, action point 5, page 12/13.

In particular the Group took account of the findings of the Quigley–Hamilton working group¹⁶ established to address this issue. The basic principle of the working group’s main report, as set out the employer’s guidance,¹⁷ is that:

“any conviction for a conflict-related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.”¹⁸

This guidance, which was issued prior to the restoration of devolution, advises that a tripartite review panel would review the operation of the guidance after a period of 18 months. It goes on to state that:

“If there is evidence that the voluntary arrangement is demonstrably not working it is the view of the Government that the voluntary arrangement should be put on a statutory basis.”

The Group understands that the tripartite review panel has not yet been fully established and, therefore, this review will not take place until 18 months after the formation of the panel. However, from perspectives presented to us during our consultation, the Group understands that the voluntary guidance is not being used by the vast majority of employers and as such there is a pressing need for new arrangements to address this.

The Group believes that the guidance produced by the Quigley–Hamilton working group effectively outlines parameters which, if properly utilised, would help prevent conflict-related convictions impinging on an individual’s ability to play a part in society, without taking the more controversial step of fully expunging their record.

The Group recommends that the guidance produced by the Quigley–Hamilton working group to eliminate discrimination against those with conflict-related convictions, should be incorporated into statute and made applicable to the provision of goods, facilities and services as well as recruitment.

16. The group, co-chaired by Sir George Quigley and Nigel Hamilton and made up of representatives from governments, trade unions, industry and ex-prisoners, developed a guide for employers on recruiting people with conflict-related convictions. The guide, published on 1st May 2007, focuses on recruitment but is “readily transferable to deal with goods, facilities and services”.

17. ‘Recruiting People with Conflict-Related convictions: Employer’s Guidance’, OFMDFM report, May 2007, http://www.ofmdfmi.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf

18. Section 1.5 of the guidance refers. The guidance suggests that on application for a job it is only after the interview process that a conviction can be considered. If the employer opts not to employ an ex-prisoner because they consider their conviction to be materially relevant, it is their responsibility to prove this is the case, rather than that of the applicant to prove it is not. The guidance also provides that the applicant can appeal and the matter will be referred to a tripartite, non-statutory review panel. See sections 5–7 of the guidance.

CHAPTER 4 | Victims and Survivors

Overview

With over 3,500 people having lost their lives and many thousands injured both physically and psychologically, victims and survivors are the most visible legacy of the conflict in and about Northern Ireland.

The lives of those lost cannot be restored. For those who survived and for those who are left only with the memory of loved ones lost, no process or policy can ever take away their pain. The dignity and courage of many victims and survivors is a testimony to their strength and an invitation to all in society to do everything in our power to stop our differences and prejudices spiralling downwards into the kind of violence that we have known in the past. It is in all our hands to make sure we, as a society, do not create a new generation of victims.

The legacy of the past is most personally carried by the victims and survivors in their ongoing suffering and ever-changing needs. Injuries inflicted years ago bring new challenges with the passing years and calls to ‘move on’ can be simplistic and facile; easy to say if you do not live everyday with the painful physical, and emotional, legacy of the conflict.

The difficulties of making recommendations regarding victims and survivors are many and complex. When the needs and concerns of one group are addressed, another group is likely to be offended. Placing the concerns of victims and survivors within the wider context of legacy issues is also problematic. Yet this approach, which may be difficult for some to endorse, is ultimately important for the health and well-being of society as a whole.

Victims and survivors are not an unfortunate side-effect of the conflict. They exist because, as a society, we failed to develop a context in which human beings could grow and flourish together rather than sow divisions and inflict injury on one another. Victims and survivors are, therefore, painful reminders of society’s failure. This pain should not be shirked or curtailed for it bears no comparison to the ongoing pain of the bereaved and injured. It should, rather, spur society on to build a shared and reconciled future.

Finding a way to deal with the past, which does not add to the experiences of isolation and hurt described by many, is challenging. Even the designation, ‘victims and survivors’, can be a matter of contention, some preferring to be called ‘victims’, others rejecting that designation in favour of ‘survivors’. The phrase ‘victims and survivors’ is used throughout this Report with the intention of being as inclusive as possible, although it is acknowledged that for some this is unsatisfactory.

The need to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation was identified in the Agreement¹⁹ and subsequent reports²⁰.

Many victims and survivors made themselves available during the consultation. Many groups who work with, and on behalf of, victims and survivors shared their learning and experiences. Other victims and survivors, who did not ‘belong’ to any group, were more reluctant to speak of their experiences. Some of them met privately with individual Group members. Many were reluctant to meet at all, preferring to carry their grief in private or simply not wishing to relive painful memories. Their choice not to engage is also respected.

Victims and survivors also raised with the Group the many issues dealt with in other chapters of this Report. But the following issues are particular to victims and survivors and to meeting their needs.

19. Known as the Belfast or Good Friday Agreement, 10 April 1998. See section 6 Rights, Safeguards and Equality of Opportunity: Reconciliation and Victims of Violence (page 22–23, points 11–13) where it is recognised that victims have a right to remember as well as to contribute to a changed society. The achievement of a peaceful and just society would be the true memorial to the victims of violence.

20. ‘We will remember them’ by Sir Kenneth Bloomfield (May 1998) and ‘Addressing the human legacy’ by Bertha McDougall (January 2007), the then Interim Victims Commissioner, specifically explored the needs of victims and survivors and how those should be addressed.

Provision of Services and Funding

Many victims and survivors were aware that some of the services they required were available from the statutory sector. However, they often felt that their specific needs could be overlooked by these services and that local, non-governmental groups had a better understanding of their complex needs.

In some localities a number of victim and survivor groups showed how they had worked in collaboration with one another. But in other cases several different groups had been delivering similar services in the same locality and were competing for limited resources. Too often the knowledge and experience of the best ways of meeting the needs of victims and survivors were not shared among groups and the opportunity to share valuable experiences was lost. The reasons for this were complex but a major factor was the lack of interaction between groups representing different communities and, in some cases, the same community.

The role and support of carers was also raised as a particular challenge now and in the coming years. The devotion and loyalty of carers remains unflinching but there is a real sense of anxiety about the future. As the years go by, the needs of those injured during the conflict change and carers themselves are becoming older. They do not perceive anyone giving consideration to these longer term issues.

A significant number of those killed or injured during the conflict were employees of the State – police and prison officers and members of the armed services. Although the statutory schemes established to assist members of the security forces have alleviated much of the burden on many families, more could have been and still can be done. On several occasions victims and survivors and their families in this sector expressed dismay that society appeared not to have given due credit to their service and sacrifice.

The recent service²¹ to commemorate those who served in Northern Ireland helped to address feelings of isolation. During the preparation of this Report, the UDR/R IRISH (HS) Aftercare Service was announced to address the needs of former members. This, together with the UDR Benevolent Fund, will meet many of the concerns that exist in this community. However, many felt that the Ministry of Defence (MOD) needed to develop a more pastoral and holistic approach to ex-service personnel. While the five year funding for the Aftercare Service was broadly welcomed, many felt a longer term funding strategy was required.

21. On 10 September 2008, in St Paul's Cathedral, London, an official service was held to honour members of the UK Forces and civil servants who lost their lives or were injured in Northern Ireland during Operation Banner, the official

title for military operations in Northern Ireland, between 1969 and 2007. The service also paid tribute to over 300,000 personnel who served in Northern Ireland on Operation Banner.

The Group was told that the needs of those who served within the Prison Service are much less well catered for than other sections of state agencies, with considerably less funding devoted to meeting their needs.

Many strong views were expressed about the inadequacy of funding that is generally available to meet the needs of, and provide services for, victims and survivors.²² The chief criticism was the lack of strategic focus evident in the piecemeal and short-term approach to funding. Many groups argued that this impacted on their ability to secure and retain good staff in the longer term and ignored the fact that often the needs of victims and survivors do not emerge for a long time after a traumatic event.

Many victim and survivor groups were acutely concerned about the impact of Peace 2 money coming to an end; about the gap between this and Peace 3 money being made available; and ultimately about the impact of European monies coming to an end completely.

REFLECTIONS

Funds are administered by a number of bodies each with their own bidding requirements. The complex application and auditing processes are cumbersome for small organisations. Staff employed to deliver services to victims and survivors are diverted from their important work in order to secure or manage funding; to direct it according to bidding criteria; or to adapt programmes to those criteria.

Securing funding has become a highly politicised issue. There is often suspicion that victim and survivor groups from one section of the community receive more funding than those belonging to the other side of the community.

In the coming years the added pressure on limited resources will mean that groups and their funding bodies will have to think radically about how they operate. While recognising that individuals have the right to choose how and where they get help, measures to remove duplication, and to amalgamate services and support mechanisms, must be considered. It will be a difficult journey for many to take and they must be allowed to take the necessary steps at their own pace.

22. Funding for the provision of services to victims and survivors is available from a range of sources including OFMDM and the Special European Union Programmes Body (SEUPB), commonly known as PEACE money, administered through the Community Relations Council and Border Action.

Questions also arise as to whether certain practices of some victim and survivor groups are contributing to a shared and reconciled future or whether they are compounding the divisions and suspicions. It is vital that sensitive measures are put in place to help resolve these issues.

The Group is concerned that victims and survivors can be politicised to the point of being used to achieve political ends and that some groups are little more than mini political parties. While groups remain separated from one another, huge potential remains for their political exploitation. However, any suggestion of partnership or even amalgamation must take account of the real sense of threat that many still experience.

A significant criticism of some victim and survivor groups is that they claim to represent more than they actually do. This can lead to the misrepresentation of the views of the victims and survivors they claim to speak for. There are many who choose not to belong to any group and are, therefore, under-represented in the discussion. This too must be recognised.

Many people from throughout Great Britain also suffered because of the conflict in and about Northern Ireland. It is important to reach out to those victims and survivors and to provide them with an opportunity to talk about their experiences, both good and bad. This outreach should be considered as part of future services for victims and survivors.

Understanding of and Responses to Trauma

In the consultation the Group learned that for many people experiencing a traumatic event has resulted in an array of conditions, such as alcohol or drug dependency, depression or domestic abuse. Those who work with people who have suffered such experiences consider that the root cause of the conditions they exhibit is not sufficiently identified as being associated with a person's involvement in a conflict-related incident. Inter-generational trauma is similarly not recognised as a root cause of the problems many young people face. Many are affected by the legacy of the past while often having only indirect experience of that past.

Efforts have been made in this field and the work of the Trauma Advisory Panels (TAPs), which were set up throughout Northern Ireland by the statutory sector²³, is valued by many. These multi-agency panels coordinate the provision of services for victims and survivors in response to local need.

23. This followed recommendations by the Social Services Inspectorate Report 'Living with the Trauma of the Troubles' (1998) and the report 'We Will Remember Them' by Sir Kenneth Bloomfield (May 1998).

However, the public consultation indicates that much more needs to be done in the area of post traumatic stress: to create a greater understanding of trauma; to ensure effective responses to it; to ensure adequate service provision and accessibility of those services. The provision of dedicated trauma centres was one suggested method of addressing these issues.

The healthcare system was portrayed as, at times, inflexible and unduly wedded to certain therapeutic responses, some of which may not be the most effective. Difficulties with the benefits system were also highlighted because, for example, Post Traumatic Stress Disorder (PTSD) is seen as not fitting into strict assessment criteria. Not all of those consulted welcome the emphasis on trauma. Some highlighted the need for other services, such as ‘befriending’, which many find more appropriate to their needs. They emphasised the importance of delivering services appropriate to individual needs, supported by proper investment.

| REFLECTIONS

There are many dedicated people working in this very complex area who hold differing views on the best way forward. However, better mechanisms need to be devised to make sure those affected get the help they need at the right time for them. This is especially urgent given that during the conflict people did not always have the time, understanding, or support to deal with their symptoms and pain.

Conflict-related trauma is a major public health issue. More than many other issues it has the capacity to pass on a negative legacy to future generations. The neglect of this reality is indicative of the failure of our society to acknowledge the complexity and pain of our past. Conversely, to address it openly and constructively will help to build a shared and reconciled future. The provision of mental health services needs to take fuller account of the mental health legacy of the conflict and reflect this in both the provision of services and ongoing operational priorities.

The Commission for Victims and Survivors for Northern Ireland

The establishment of the Commission for Victims and Survivors for Northern Ireland (CVSNI) is a most positive development in dealing with the needs of victims and survivors. The Commissioners must be uncompromising in taking on the challenges, and addressing the many issues facing victims and survivors.

The concerns regarding funding and services and how they can best be addressed form a central part of their draft strategy.²⁴ A substantial financial package has also been announced by the Office of the First Minister and deputy First Minister (OFMDFM) to support their work. The publication of the updated draft strategy by OFMDFM²⁵ is also a welcome development.

The CVSNI is best placed to respond to the shortfalls in services that are highlighted in this Chapter along with the longer term funding issues that must be addressed. Their appointment should enable changes to be made which will allow those working with victims and survivors to plan for the future. The CVSNI should be given full support as they identify the needs of victims and survivors and develop a strategy to meet those needs. They need to be allowed to undertake this important work without partisan interference or pressure.

Among the priorities for the CVSNI is the promotion of better interaction between groups and a strong interface between such groups and the statutory sector. There needs to be a more joined up approach if we are to move to a position where future funding is dependent on a meaningful process of dialogue between groups from different traditions.

One important part of the work of the CVSNI will be the establishment of a Victims and Survivors Forum. Although this will initially face some resistance from those who do not want to interface with groups traditionally hostile or at least suspicious of each other, it will be the best place to begin to address the process of reconciliation. The Victims and Survivors Forum must provide a safe environment where groups can share their fears, suspicions and different experiences and so make progress in dialogue and relationships.

24. Their draft work programme can be found on the CVSNI website at www.cvsni.org

25. www.ofmdfmi.gov.uk/outline-draft-strategy-for-victims-and-survivors-consultation-paper.pdf

Another priority for the CVSNI is addressing the needs of carers. Carers deserve to have quelled any anxieties they may still suffer. A funding mechanism needs to be put in place to address issues such as emotional and physical exhaustion, and the financial difficulties of carers. The CVSNI has undertaken to deal with this issue in their draft work programme and they are encouraged to give this urgent attention.

The CVSNI should also consider as a priority the needs of ex-service personnel, who served with the Armed Forces from Great Britain, and of those who served within the Prison Service. The CVSNI is making efforts to contact this often neglected and hard to reach constituency. The UDR/R IRISH (HS) Aftercare service and its administration should be reviewed by the CVSNI to ensure that the best possible outcomes are achieved.

The Group recommends that the CVSNI should take account of and address the issues highlighted throughout this Chapter as they develop their work programme.

The Issue of Compensation

How families and individuals were compensated during the conflict was highlighted on many occasions during the consultation process. This has also been commented on in several reports.²⁶

In Northern Ireland, there have been schemes in place since 1968, which allow people to claim compensation for injury suffered, or for the death of a family member, as a result of a violent offence. The Criminal Compensation Division of the Northern Ireland Office – now replaced by The Compensation Agency – was established to operate compensation schemes on behalf of the Secretary of State for Northern Ireland.

Between 1977 and 2002, claims for compensation were governed by The Criminal Injuries (Compensation) (Northern Ireland) Order of 1977 and subsequently that of 1988. These schemes excluded compensation being paid to anyone who had ever been a member of a proscribed organisation or had been involved in an unlawful act.

26. 'We Will Remember them' (May 1998), 'Review of Criminal Injuries Compensation' (2000) by Sir Kenneth Bloomfield and 'Addressing the human legacy' by Bertha McDougall (January 2007).

These schemes were replaced in May 2002 by the Northern Ireland Criminal Injuries Compensation Scheme, known as the 'Tariff Scheme'. This Scheme is tariff-based in respect of all levels of injury, providing applicants with greater clarity, about what they can expect in terms of awards, than would have been the case for earlier compensation arrangements.

Concerns about compensation, expressed during the consultation, largely relate to the amounts paid in the 1970s and 1980s to the families of people killed as a result of the conflict. There was almost unanimous agreement that many payments were inadequate, not least because compensation was primarily based on loss of earnings and did not take into account the loss felt by the family.

Although many families continue to need financial assistance, the call for compensation was not primarily about money but rather a need for recognition of the loss or injury they endured. In many cases families appeared before compensation hearings while still traumatised and did not therefore engage adequately with the process.

Compensation payments for those injured was also highlighted. Issues such as late or delayed diagnosis of injuries made claiming compensation at times virtually impossible.

| REFLECTIONS

The issue of compensation is a complex matter and is not easily addressed. However, the Group strongly believes that this has to be confronted in a way that is fair to all those who have lost loved ones because of the conflict.

The CVSNI is currently working on ways to meet the needs of those injured as a result of the violence. This work is very welcome and they are best placed to address the long term needs of the physically and psychologically injured.

However, this work by the CVSNI will not address the feelings of despair of families of those who died as a result of the conflict and who have never had any acknowledgement of their grief. The Group is painfully aware that we cannot fully address their loss and that no amount of compensation will ever make things right. The Group has therefore decided not to recommend a review of compensation paid to families during the conflict. Instead, the Group believes that all families of those who died should receive recognition of their suffering regardless of past compensation payments.

The issue of compensation for those killed, during the conflict, who were citizens of the Republic of Ireland was addressed by the Irish Government's Remembrance Commission through an Acknowledgement Payment.²⁷

The Group therefore recommends similar recognition of the suffering of families from Northern Ireland and Great Britain and recommends that the nearest relative of someone who died as a result of the conflict in and about Northern Ireland, from January 1966, should receive a one-off ex-gratia recognition payment of £12,000.

We recommend that the payments be funded by the UK Government and to allow payments to be made quickly, we recommend that an existing organisation should take on the task of processing the payments.

This payment should have no bearing on, nor set any precedent for, any current or past arrangements for compensation. The payment would be tax free and would not affect any social security benefits, pensions or the delivery of any service paid for through public funds.

27. See details of the Remembrance Commission Scheme at http://www.justice.ie/en/JELR/Pages/Remembrance_Commission

For the purposes of this payment the nearest relative would be defined as follows and in order:

1. Husband or wife
2. Son or daughter
3. Father or mother
4. Brother or sister
5. Grandparent
6. Grandchild
7. Uncle or aunt
8. Nephew or niece

Where there is more than one eligible applicant, the payment would be distributed evenly to all. For example, if the nearest living relatives are two brothers, then each brother would receive £6,000.

Where more than one member of a family was killed, then the family should receive a recognition payment for each person.

In compiling guidance for the administration of the payment, the following criteria should be drawn upon. Payments would be open to the closest relative of anyone who died as a result of paramilitary or security force activities directly related to the conflict. This would include:

1. As a direct result of paramilitary group action
2. As a direct result of security force action
3. Of accidental death as a result of paramilitary group action
4. Of accidental death as a result of security force action.

This is not an exhaustive list and the administrator of the scheme should be able to show flexibility in deciding on payments.

In terms of the administration of the payment consideration should be given to the Remembrance Commission scheme operated by the Irish Government.

On acceptance of this recommendation the UK Government should issue guidance on the practicalities of the scheme as soon as possible.



SECTION 3
**Processes for Dealing
with the Past**



CHAPTER 5 | Remembering

Overview

Whether and how the past should be publicly remembered featured heavily in the consultation. Many groups and individuals shared their view that public remembrance is a crucial element of healing in a post-conflict era. It allows them to reflect openly on the past and come to terms with its impact upon their life. It is an important way of celebrating and honouring the lives of those who were lost in the conflict. It provides comfort for those who have experienced trauma or loss. Public remembering is also a way of rebuilding, pointing to the shortcomings of the past, and shaping resolve for a different future.

Many people expressed the view that remembering must not become a political issue. Whilst remembering does inevitably carry political associations, in the development of shared initiatives the perspectives of one sector of society should not be given precedence over another. All remembering should be conducted from the perspective of our common humanity and of the best and the worst that is in all of us.

In Northern Ireland remembering has had an important role in life and culture. Many organisations have been actively involved in remembrance initiatives in relation to the most recent period of conflict. Some of these initiatives are accessible to anyone who wishes to participate and involve members of all sides of the community. Others are specific projects for a particular group or community.

How public remembering should take place is a particularly contentious issue in Northern Ireland. Some favour a physical structure; others prefer the sharing of stories in a public place; yet others support private reflection on a specifically recognised day of a day of significance to them.

As the past only exists now in memory, in order for us and future generations to truly understand the past and move towards a shared and reconciled future, all of society, not just victims and survivors, should be encouraged to remember.

While remembering is a positive process for many people, for others it holds a number of potential problems, including the potential to re-traumatise people, to stir up triumphalist posturing, or simply engender feelings of bitterness and hatred.

It is important that people are free to participate in the form of remembrance that they feel is most appropriate to them. From that perspective no particular approach may seem better than another.

Northern Ireland is not alone in its desire to remember its past conflict. Many countries around the world have chosen a variety of methods of public remembrance, some of which have been extremely controversial. However, this Report focuses on three broad processes that aid public and private remembering: Storytelling, a Day of Reflection and Memorials. These are highlighted because of the significance placed on them by those who took part in the consultation.

Storytelling

A vast amount of work is being done in and around Northern Ireland, and indeed in Great Britain and the Republic of Ireland, to give people the opportunity to share stories of their experiences of the conflict with others.

The methods by which such stories are being shared vary and may not even be specifically labelled as 'storytelling projects'. In many cases, it is simply people within victim and survivor groups verbally sharing their perspectives and background with other members. In other instances, dedicated residential projects have been organised to devote time purely to oral storytelling.

Many advocate the cathartic nature of sharing their story and placed great value on having others, especially their former enemies, listen and appreciate their situation. The involvement of qualified support services was also considered to be key to ensuring participants are not left re-traumatised. Storytelling, as it is already taking place locally, has led to some degree of healing and should continue.

For many, storytelling is a means of confronting their past and articulating their stories, involving elements of both narrative and moral reassessment. Through storytelling, people realise that, although they feel their cause was just, not all that they did in pursuit of it was either the right thing to do, or altogether necessary. Whatever the starting point, many agreed that effective storytelling must be a two way process: listening to the stories of those on the 'other side' as well as telling their own.

The opportunity to place their testimony on record in a permanent archive was important for many. The process of telling the story was a significant aspect of healing but the stories themselves were also significant as a tangible, end product.

There were various opinions on how and where an archive of stories could be held. Many felt that archives of stories from all sides could provide a resource, accessible to the general public, from which all might learn to acknowledge the perspectives of the other side. Others preferred that archives should be private, or that story tellers should have control over who can hear their story. This was of particular concern in relation to the disclosure of sensitive information.

As for location, some people suggested a physical structure such as a museum. Others favoured an online archive as a more economical and modern alternative. The issue of memorials and museums is explored later in this Chapter.

Many people considered that the gathering of stories from all sections of society should be encouraged. Many within wider society could provide perspectives that have not as yet been publicly represented, particularly those working within healthcare, media, education, business, politics and other areas of civic society during the conflict.

In Northern Ireland archiving has become increasingly popular over recent years, particularly with the advance of technology. There are numerous video and audio archives available online or on DVD or CD. Some of these contain stories of a specific group within society. Others deliberately encompass all those involved in the conflict. Written testimonies have also been recorded in autobiographical or biographical form.

Storytelling initiatives often involve the use of language as the primary means of sharing stories. There are, however, a number of projects ongoing in Northern Ireland that have adopted an artistic approach. These groups have chosen to use painting, sculpture, ceramics and other abstract forms of art to convey their story visually. Many individuals and groups suggested that stories should continue to be collected locally but that a central archiving project should be established to collate them after this stage.

| REFLECTIONS

Storytelling is an important feature of any conflict transformation process. Groups should be encouraged to take a positive attitude to all those who wish to participate.

There are many excellent examples of local storytelling initiatives but those who facilitate such initiatives need to feel comfortable with the purpose of the storytelling and comfortable with their facilitation role.

Future initiatives should have a number of goals in mind.

Firstly, any storytelling project should involve listening to the stories of others as well as the telling of our own story. Only by listening to the perspectives of others who were involved in the conflict can we move towards understanding their moral truth and towards some form of reconciliation.

This is not to say that people should necessarily undertake the process of telling and listening to stories in the presence of those whom they believe are responsible for their hurt. Rather, those involved in storytelling should accept the importance of all sectors of society telling their stories. How and when this acceptance develops into active listening and understanding is an issue for each individual to address. While it is this listening which could ultimately help contribute to reconciliation in our society, such a process will not be easy for those who have experienced great suffering during the conflict.

Some of those consulted expressed the need for their stories to be heard by an 'authoritative' listener. An opportunity should therefore be provided for storytelling to take place in a context where the experience of those involved can be validated.

Individuals participating in storytelling projects must be able to tell their story freely in a private context, but should be able to omit information which may put them at risk – either from prosecution or retaliation – before their story is put in the public domain.

There must be oversight of stories made available to the public to ensure that the risk of prosecution or retaliation is not increased. The inclusion of any information which could provoke violent reactions or lead to legal consequences would not be conducive to reconciliation, nor be in line with other objectives of the storytelling process. It would make people reluctant to share their stories in future.

In line with the views of many, storytelling must not be used to fit a political agenda. Rather it should be seen as a process designed to facilitate individual and societal healing and to break the cycle of conflict.

Day of Reflection

Healing through Remembering (HTR) launched a Day of Private Reflection²⁸ on 21st June 2007. Its purpose was to remember those who live with the consequences of the conflict; to reflect on our own attitudes and on what we can do to enhance the quality of life of others; to acknowledge the hurt and loss caused by the conflict; and to make a commitment that these two communities would not engage in armed conflict again.

Whilst the private nature of the event means it has been difficult for HTR to evaluate its success, they have received some feedback. Many people were positive about the day. The most common method of reflection involved being in a 'private space' or having 'quiet time'. Others were involved in reflective discussion or the creation of books of reflection.

Some welcomed the opportunity of a specific day on which to reflect on the past, and in particular to remember loved ones. They viewed this as a positive contribution to healing within society.

Others felt that reflecting on the past did not necessarily bring about healing but rather constituted dwelling on negative events. Some considered that days of reflection or remembrance already existed, whether as a personal date or as a date for the whole community, for example 11th November or Easter Sunday. For others commemorative events, such as parades and marches, which already took place in local communities on days of remembrance, were sufficient. For many people these were events they felt most comfortable participating in rather than local events, centrally coordinated, and open to everyone.

Some felt it was inappropriate for them to be involved in a day of reflection if they had not been bereaved or affected by the conflict in a direct way.

However, others thought that, in moving towards a shared future, a shared day was a productive step. Some suggested that the HTR day of reflection should become a national holiday. Others proposed that a day of reflection could involve an event or ceremony in which the main protagonists of the conflict could reaffirm their commitment to peace.

28. In developing their recommendation for a day of reflection, HTR, in addition to conducting extensive research in the Northern Ireland context, took account of days of remembrance in other countries. Lessons learned from these initiatives incorporated the need for inclusiveness, the recognition that healing is a long-term process and the potential counter-productive effects

of a badly planned day. In 'The Report of the Healing Through Remembering Project' it was suggested that, whilst during the initial one to three years the event would be one of a private nature, after this time it could perhaps evolve to become more inclusive and to involve more collective forms of reflection such as organised local events.

| REFLECTIONS

The Group fully supports the idea of a shared day of reflection, open to all, and accepts 21st June as an appropriate day.

This would naturally operate on a purely voluntary basis, so that those who felt uncomfortable participating were under no pressure to do so. HTR should be credited with having made significant progress in establishing a day of private reflection. The Group broadly agrees that initially this could remain as a private day, organically evolving to include more public events when the demand for this within society exists.

An event involving public commitments to peace by key organisations and statutory bodies would be a positive addition to the day. It could pave the way for others within society to take responsibility for our shared future. The Commission detailed in Chapter 7 should take the lead in pursuing this goal.

The Group recommends that full support is given by government, the private and voluntary sector, including the churches, to the continuation of the annual Day of Reflection initiated by HTR, on 21st June each year.

The Group also recommends that, on or around this day each year, the First Minister and deputy First Minister should together make a keynote address to the Northern Ireland Assembly and invited guests. This address would provide an opportunity for the elected leaders to lead by example by directing society to reflect upon the past in a positive way and to confirm their commitment to lead us towards a shared and reconciled future.

An inclusive day of reflection should not replace the established or more localised events and days of remembrance, nor should people be criticised for participating in these. Rather, individuals should be able to reflect on the past at a time appropriate to them and in a forward looking manner.

In keeping with the vision of this Report consideration should be given to renaming the event, a Day of Reflection and Reconciliation.

The Legacy Commission should, through the proposed Reconciliation Forum, work with other relevant organisations to ensure days of reflection are meaningful and appropriate. This could include support for the distribution of guidance to groups who organise remembrance initiatives. This would suggest how events could be shaped to

help contribute to a shared and reconciled future, without taking away from the sense of community and symbolism that many quite rightly consider an important part of these events.

In reflecting on the past it is important that an element of responsible self-acknowledgement is included. Put simply, this means that, as well as reflecting on wrongs done to us, we should consider wrongs we have done to others, or perhaps things we could have done differently, with an ultimate focus on taking responsibility for the future. As suggested in Chapter 2, responsibility for the future lies not only with those who were directly involved in the conflict, but with every sector of society. A shared and reconciled future can only be achieved by active cooperation and participation by society as a whole, of which reflection is a necessary prerequisite.

Memorials: Physical Structures and Living Memorials

For a great many people, having a structure or space which remembers the conflict is of great importance. For some a memorial is simply a place to go to direct their grief and suffering, perhaps as an alternative to a grave, whilst others need a place to reflect upon the past and consider the future. Many people who engaged with the Group were positive about the healing quality of memorials; others considered the way in which memorialisation has taken place in Northern Ireland to be divisive, only serving to perpetuate sectarianism.

Northern Ireland, and indeed the Republic of Ireland, has numerous memorials to those who have died or been injured in the conflict over the last 40 years. However, most of these memorials serve only limited sections of society. They therefore tend to encourage remembering in a disparate way, which some argue is not conducive to achieving reconciliation. They therefore suggest there is a case to be made for Northern Ireland having a shared memorial. This perspective is challenged by those who argue that a shared memorial is only appropriate, and can only be effective, if a shared grief exists.

The issue of a shared memorial is clearly one that is extremely controversial. However, memorialising is itself a contested idea. As with Storytelling and the Day of Reflection, there remains a view that such initiatives in general are unhelpful, directing individuals within society to look backwards rather than forwards. Others believe that remembering is a natural instinct and at its best a means of turning towards the future with better understanding of ourselves, our strengths and weaknesses, the good that we all do, and the bad.

Physical Structures

Traditionally memorials in Northern Ireland have taken the form of physical structures, such as monuments, statues or wall-mounted plaques. The tangible and permanent element of these kinds of memorials has been cited as reason for their popularity, reassuring many people that neither their successes nor their loss or suffering will be ignored or forgotten. Examples cited include an unfinished sculpture to symbolise the ongoing process of reconciliation.

Another form of physical memorial commonly established in Northern Ireland is a garden of remembrance. This is perhaps the most popular form of physical remembrance in terms of proposals made during the consultation, with many people advocating the peaceful nature of gardens as highly conducive to personal reflection and remembrance. Where people had specific objections with regard to existing gardens of remembrance, this was usually as a result of the inclusion of a plaque, which brought with it all the related difficulties including with names and inscriptions. Many people suggested that, if Northern Ireland was to have a shared memorial, then a unified garden of remembrance would be their preferred form.

Living Memorials

There are several examples of living interactive memorials in and around Northern Ireland with many more being recommended by various groups. Many who favour a living memorial²⁹ suggest that a museum would be the most appropriate form, as it would combine education and remembering.

Some suggested that the conflict should be considered in the context of the wider history of Ireland, North and South, and advocated a dedicated 'Troubles' exhibition in an existing museum. As with many issues related to remembering, the idea of a memorial museum overlaps with the topic of storytelling, as personal stories may form an integral part of a 'Troubles' museum.

Other suggestions were that a living memorial could take the form of a hospital, a trauma centre, educational facility or possibly a centre for conflict transformation. Unlike physical monuments or sculptures, such memorials require active management and supervision. Who would be best placed to manage such a memorial could be another source of contention.

29. The suggestion of a living memorial museum is explored by HTR who, in 'The Report of the Healing Through Remembering Project' (2002), suggest it would have a number of purposes, namely to promote remembering and understanding of the conflict in Northern Ireland by providing a commemorative space combined with educational space.

| REFLECTIONS

The Group does not believe that a shared memorial can be agreed at this time. It remains a contentious issue for many and poses many challenging issues around which we could not see any consensus. Who should the memorial commemorate? Should it have names inscribed and if so, whose names? What should the form of wording be? What form should the memorial itself take? Is the cost feasible when there are so many other demands on the public purse? Who should have access to the shared memorial? Where should it be located?

It should, however, remain under consideration by the Reconciliation Forum detailed in Chapter 8. A number of criteria should be observed in working towards a shared memorial conducive to reconciliation.

Firstly, a memorial should direct people to the future and in particular a shared and reconciled future. If, therefore, the decision to establish a shared memorial was taken, this memorial should commemorate the impact of the conflict on all of society and need not be prescriptive by including names or categories of people who are to be remembered. Such a memorial should be created in a way that is respectful of the past and the sacrifices made by many in society, whilst also looking forward. In order to capture this, serious consideration should be given to any memorial being a living memorial.

Whilst a shared memorial should help in bringing people from all sides of the community towards a shared acknowledgement of one another's suffering, the difficulties that some groups of people may have in sharing physical space must also be acknowledged. Therefore, before a shared memorial can be created, the issue of sharing space must be given further thought in order that people are not immediately alienated from the memorial or adversely affected by it. Equally, those who wish to erect public memorials, which commemorate a particular group or community within society, should be encouraged, when considering its nature, to do so in a way which takes account of the perspectives of those likely to encounter the memorial.

Similarly, in establishing a shared memorial, an important element to be considered should be its voluntary and unimposing nature. As a general rule, it should be an uplifting structure that commemorates the past without glorifying it and one that demonstrates how our society has changed.

Remembering and Wider Society

How we, as a society, remember the past is highly significant as we move out of conflict. The Commission for Victims and Survivors for Northern Ireland (CVSNI) is developing its work programme and remembering comprises a core part of that strategy. While we welcome this, and believe they have a lead role to play, it is important that remembering encompasses all sectors of society and not just victims and survivors.

In taking the lead on how the conflict is remembered the CVSNI must go beyond the narrow field of victims and survivors and challenge wider society. Organisations such as governments, churches, businesses and others must not be allowed to neglect their role in remembering the past. Whilst of course victims and survivors should have a prominent role in remembering, to place the entire burden on them would be self-defeating.

The Group recommends that the Legacy Commission, proposed in chapter 7, should, through the Reconciliation Forum, support CVSNI in developing the existing ways in which the conflict and its impact are remembered. This should include developing educational projects; providing support and guidance for those facilitating remembering projects in line with the criteria set out in this Chapter; and promoting the value of remembering across society as a means of achieving reconciliation.

CHAPTER 6 | Landscape of Legal Processes

Overview of Existing Legal Processes

There are at present several legal processes which are examining historical cases. These include:

- police investigation, particularly the Historical Enquiries Team
- investigation by the Police Ombudsman for Northern Ireland
- public inquiries
- inquests
- reviews of convictions by the Criminal Cases Review Commission.

The Group has examined these processes, together with related issues concerning convicted offenders and suspected offenders, some of whom are sought outside Northern Ireland ('on the runs'). It has set out the arguments for change, and its recommendations, in Chapters 7 and 8. The present Chapter provides an analysis of where these processes now stand.

Historical Enquiries Team

The Historical Enquiries Team (HET) was established within the Police Service for Northern Ireland (PSNI) in September 2005 to review all deaths relating to the conflict between 1969 and 1998.³⁰ This amounts to 3,268 deaths attributable to the conflict arising from 2,546 separate incidents. Crime Operations Department Murder Investigation Teams of the PSNI investigate deaths after 1998, with the exception of a few cases related to historical cases, which have been referred by the Chief Constable to the HET.

30. The Report of the House of Commons Northern Ireland Affairs Committee, 'Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past', Third Report of Session 2007–2008, HMSO, HC 333, (referred to as the NIAC Report) notes at footnote 4, page 10: "The civil rights march in October

1968 is often used as the event to define the beginning of the troubles. In practice, very few cases within HET's remit date from 1968, and the vast majority relate to 1969 onwards."

The HET has three main objectives: firstly, to ask families what they would like to know about the death of their loved one and to try to answer their specific and personal questions; secondly, to conduct a professional re-examination of every case to establish if there are any evidential possibilities which can be taken forward; and thirdly, to conduct its work with the confidence of the whole community.

The Northern Ireland Office (NIO) made £34 million available to fund the project. This is ring-fenced funding that is separate from the main police grant and which was apportioned over a six year period until the financial year 2010/2011. Work on cases began in January 2006.

The HET is operationally independent from PSNI, with its Director reporting directly to the Chief Constable on reviews and investigations. Early consultation with families of victims and their representatives showed that a much broader approach than a focus on purely policing issues was required. HET has adopted a primary objective of seeking to address any concerns raised by families and for this purpose provides a structured written report on the circumstances of each case for the information of relatives, and answers to individual questions raised. The majority of families previously had no information at all about the death of their loved ones or about any investigation that followed.

The HET subjects each case to a review set against a number of core disciplines, designed to draw out any realistic evidential opportunities and to answer any questions posed by families. Cases are taken in chronological order, although exceptions will be made to address humanitarian concerns or linked cases. HET has also taken on a significant series of historical investigations that extend beyond the end date of its remit in 1998 because of the need for public confidence in policing concerns.

The HET's strength has varied between 80 and 180 staff over its three years of operations, and is currently being re-structured into seven review and investigation teams. Five of these teams will be staffed exclusively by personnel who have no previous connection with Northern Ireland policing. This is intended to provide independence in those cases where families or their representatives express a wish for their case to be reviewed by external staff. Family liaison is handled by a small group dedicated to that role.

In November 2008, the Secretariat of the Committee of Ministers of the Council of Europe noted in a memorandum:

“that the HET is confronted with the difficult task of examining thousands of incidents that have taken place over three decades. As acknowledged by the United Kingdom authorities, the HET process appears to be taking more time than it was originally anticipated.

“Despite these setbacks, the Secretariat is of the opinion that the HET can be considered as a useful model for bringing a ‘measure of resolution’ to those affected in long-lasting conflicts. Such institutions could be viewed as playing an important role in satisfying the State’s continuing obligation to conduct effective investigations in violations of Article 2 of the Convention.”³¹

The HET is now two thirds of the way through its originally proposed time span, and has re-opened 1370 cases, with 471 completed.³² The complex nature of some of the investigations and the individual circumstances attached to interaction with each family has extended the process. Because of the high number of victims in each of the early years of the conflict, for example, nearly 500 deaths in 1972 alone, the HET has reached only 1976 in its chronological approach.

The Group understands that few of the families who engage with the HET are interested in seeing prosecutions arise from the review process. In part, this is because of the length of time that has elapsed, and in part because of the provisions of the Agreement³³ which provide that those convicted of relevant offences would only be liable to serve a maximum of two years imprisonment. To date, as a result of the HET’s work, two persons have been charged with murder and one other case was sent to the Public Prosecution Service for Northern Ireland (PPSNI) for consideration. Other cases will follow but the percentage of the HET cases that result in court proceedings is likely to remain small.

31. Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL) (CM/Inf/DH(2008)2revised) Council of Ministers 19 November 2008.

32. Figures correct at time of going to print.

33. Known as the Belfast or Good Friday Agreement, 10 April 1998.

The Northern Ireland Affairs Committee (NIAC) of the House of Commons recently commented on the work of the HET. The Committee was impressed by the personal commitment, sensitivity and professionalism of the Chief Constable, the Director of the HET, and the other staff involved in the HET.³⁴ It expressed surprise that all cases were reviewed by the HET. It commented that in some cases scarce resources were being used to investigate historical cases where there was little likelihood of helping a family and limited opportunity of securing a conviction.³⁵

The Group is aware of criticisms made of the HET's organisational structure and the HET's response. While some families criticised the HET for lack of prosecutions or for early reports of uneven quality, the majority of families consulted by the Group considered the HET to be a good initiative and welcomed its emphasis on providing information. Some families have certainly found comfort in the information provided. Some of those consulted had problems with the location of the HET within the PSNI. Others were concerned that some of the staff were drawn from services outside Northern Ireland who, in their view, might not understand the Northern Ireland context. A small number of victims and community-based victims groups did not believe it was helpful to open old wounds while not providing the necessary support mechanisms to help people through the process.

Like the NIAC, the Group has been impressed by the HET. It considers the project to be innovative and valuable. The Group's recommendation for continued review and investigation of historical cases under a new Commission is drawn from the example of the work of the HET and the Office of the Police Ombudsman.

The Office of the Police Ombudsman for Northern Ireland

The Police Ombudsman was established by the Police (Northern Ireland) Act 1998 to provide an independent and impartial system of examining complaints against the police. The powers and duties of the Ombudsman are set out in the 1998 Act and subsequent Acts of 2000 and 2003. The RUC (Complaints) Regulations 2001 created a statutory obligation for the Ombudsman to investigate "grave or exceptional" cases where the incident occurred more than a year ago and involved allegations of police misconduct.

34. NIAC Report, paragraph 25, p. 17.

35. NIAC Report, paragraph 26, p. 17.

The Ombudsman's remit thus includes historical cases where these involve an allegation of police misconduct. Unlike the remit of the HET, that of the Police Ombudsman in respect of historical cases is not limited to incidents resulting in death.

Historical cases can be referred to the Ombudsman through various means but so far 55 out of 122 historical cases have been referred through the HET.³⁶ A special team has been established within the Ombudsman's Office to deal with these cases.

The extension of the Ombudsman's remit to include historical cases has undoubtedly placed a heavy burden on their resources. The Ombudsman commented in his Annual Report for 2007–8:

"In taking stock of the pressures in the Office, I came to realise quickly that our staff were coping with immense pressure in maintaining and focusing resources on the current and immediate work of the police complaints system while at the same time responding to the very complex complaints rooted in the conflict and atrocities from 'The Troubles'. Investigating such matters requires maximum resources and investigative skill and experience.

"I have come to the view that the Office cannot continue to cope with the strain of meeting these challenges without additional resources and service delivery and in the meantime the quality of work is beginning to suffer. I have stated publicly and advised Government that, absent any other societal resolution to issues surrounding the Past, I will need more resources to continue doing what I am required by law to do. Victims do need resolution. While I do not believe the Police Ombudsman can effectively provide resolution for the majority of people victimised by 'the Troubles', at present the Office is one of the few means available."³⁷

36. Figures correct at time of going to print.

37. Police Ombudsman for Northern Ireland, Annual Report and Accounts for Year Ended March 2008, HMSO, HC 648, at p. 8. See also the NIAC Report, pp. 17–24.

Public Inquiries

Bloody Sunday Inquiry

On 29th January 1998 the then British Prime Minister, Tony Blair, announced a public inquiry into the events of Sunday, 30 January 1972, in Derry/Londonderry, known as Bloody Sunday. The Inquiry was set up under the Tribunals of Inquiry (Evidence) Act 1921. It has been chaired by Lord Saville and is due to report in autumn 2009.

Other Public Inquiries

During the Weston Park negotiations in 2001, the British and Irish Governments agreed to appoint a judge of international standing to investigate allegations of collusion in particular cases. Justice Cory was appointed in May 2002 to investigate the cases of the deaths of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan, Patrick Finucane, Robert Hamill, Rosemary Nelson and Billy Wright.³⁸

On 1st April 2004, the Secretary of State for Northern Ireland published the reports of Justice Cory on the cases of Robert Hamill, Rosemary Nelson and Billy Wright and at the same time announced the establishment of public inquiries into these cases. The Secretary of State also undertook to set out the way ahead regarding the case of Patrick Finucane at the conclusion of prosecutions in that case.

On 8th July 2004, the Secretary of State published a Statement on Governing Principles in respect of the Inquiries into the deaths of Robert Hamill, Billy Wright and Rosemary Nelson. In a statement on 23rd September 2004, the then Secretary of State Paul Murphy said that the Government would take steps to enable the establishment of an inquiry into the case of Patrick Finucane, including the enactment of new legislation.³⁹

The Inquiries Act was enacted in 2005 and entered into force on 7th April 2005 but the British Government has not yet established an Inquiry into the death of Patrick Finucane.

38. Judge Cory also considered the cases of Lord Justice and Lady Gibson and stated that he could find no evidence of collusion upon which to recommend a public inquiry.

39. <http://www.nio.gov.uk/statement-by-secretary-of-state-paul-murphy-mp-on-finucane-inquiry/media-detail.htm?newsID=10299>

Inquiry into the death of Robert Hamill

The Inquiry into the death of Robert Hamill was established under section 44 of the Police (Northern Ireland) Act 1998. Following the entry into force in April 2005 of the Inquiries Act 2005, which repealed the Tribunals of Inquiry (Evidence) Act 1921, the Hamill Inquiry was converted into an inquiry under the 2005 Act. Oral hearings began on 13th January 2009, with the report expected by the end of August 2010.

Inquiry into the death of Rosemary Nelson

Like the Robert Hamill Inquiry, the Inquiry into the death of Rosemary Nelson was established under section 44 of the Police (Northern Ireland) Act 1998. But, unlike the Hamill Inquiry, the Nelson Inquiry has not been converted into an inquiry under the Inquiries Act 2005.

The oral hearings are expected to conclude by the end of February 2009, following which the final oral and written submissions will take place until June. The report is likely to be published by the end of 2009.

Inquiry into the death of Billy Wright

The Billy Wright Inquiry was established under the Prison Act (Northern Ireland) 1953. Like the Hamill Inquiry, the Wright Inquiry has been converted into an inquiry under the Inquiries Act 2005.

The Inquiry's oral hearings are due to conclude in March 2009, following which a period of final oral and written submissions will take place before the Inquiry goes into recess in summer 2009. The report is likely to be published by March 2010.

Inquiry into the deaths of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan

The Irish Government also established, in May 2005, a Tribunal of Inquiry under the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002. The Tribunal is to inquire into suggestions that members of An Garda Síochána or other employees of the State colluded in the fatal shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20th March, 1989. His Honour Judge Peter Smithwick was appointed Chairman and Sole Member of the Tribunal.

The Tribunal is in the process of a private investigation which precedes the holding of public hearings.

Inquiry into the Dublin and Monaghan Bombings

The Dublin and Monaghan bombings of 17th May 1974 were some of the worst atrocities of the conflict, killing 33 people and injuring 250. The Irish Government established an Inquiry under Judge Barron, who presented his Report in October 2003.⁴⁰ A Commission of Investigation was subsequently established in May 2005 with Mr Patrick MacEntee SC QC as its sole member. His final Report was presented in March 2007.⁴¹

Criticisms of Inquiries

The issue of costs of public inquiries has already been aired on many occasions. The costs to date of the Bloody Sunday Inquiry are £185 million⁴² and of the Hamill, Nelson and Wright Inquiries, £75 million. The total estimated costs are £191 million and £113 million respectively.

40. Report of the Independent Commission of Inquiry by former Supreme Court Judge Henry Barron into the Dublin Monaghan bombings on 17 May 1974

42. All costs are accurate as of end November 2008.

41. Final Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings, <http://www.dublinmonaghanbombings.org/dubmonfinal.pdf>

In light of the criticisms of the soaring costs, the Inquiries have operated robust cost control mechanisms, including caps on the hourly fees payable to lawyers and the number of hours they can work. But the work done by a public inquiry is, by its nature, costly and time-consuming. This can often be exacerbated by legal challenges. Some say that, if the Government engaged more openly and fully in the process, they would not need to make such challenges.

The need to protect data would arise in respect of any process investigating the past which handled sensitive information. State agencies have a duty to protect those who are or were within their employ. They also have a duty to protect those whom they have recruited as covert intelligence sources. In the worst case, failure to adequately protect data could lead to loss of life. In May 2008 the loss of a disc containing personal and protectively marked data prompted an independent security review in relation to the Hamill, Nelson, Wright and Bloody Sunday Inquiries.

Even if data is adequately protected from loss, there is a tension between the agencies' concern to provide protection of identity, where necessary, and the desire of the families to have as much information as possible. Some expressed concern that, if protection was inadequate, it would jeopardise the efforts of agencies to recruit informers to deal with current threats, in particular terrorism.

Some of those consulted raised questions about the level of human resources needed to service Inquiries as well as other legal processes. The provision of information, documents and witnesses places huge demands on the PSNI, the Prison Service and the security agencies. The process of redaction is particularly costly and time-consuming.

The NIAC noted:

“The disclosure of intelligence information to inquiries clearly present challenges for the police, and for other organisations which are required to provide sensitive information. The process of agreeing necessary redactions requires considerable input from key police staff who understand the implications of disclosing specific items of intelligence. This necessarily requires them to divert their attention from more current issues of concern, which include, most critically, monitoring the threat posed by dissident terrorists.”⁴³

The Group has heard other criticisms of Inquiries. Hopes and expectations are raised but rarely completely fulfilled. Some victims have found their own experience of giving evidence to an Inquiry, and being cross-examined, traumatic. There is also a perception that the Inquiries risk presenting an uneven approach to the conflict in placing the police and prison services under particular scrutiny when other aspects of the conflict are not treated in the same way.

Inquests

Northern Ireland has its own Coroners Service that is administered and funded by the Northern Ireland Court Service. Ultimate financial responsibility rests with the Ministry of Justice, which is also responsible for the law and policy governing Coroners.⁴⁴

The role and responsibilities of the Coroners in Northern Ireland are determined by the Coroners (Northern Ireland) Act 1959 and the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, as amended.

43. The NIAC Report, paragraph 63, p. 32.

44. The Coroners Service is headed by a High Court Judge, Mr Justice Weir. There is one Senior Coroner, Mr J L Leckey, and three other full-time Coroners, Miss Suzanne Anderson, Mr Brian Sherrard and Ms Joanne Donnelly. Northern

Ireland comprises a single Coroner's district and the Coroners each cover the whole of the district. Coroners in Northern Ireland can either be barristers or solicitors and are appointed by the Lord Chancellor. Coroners are independent judicial officers.

Coroners inquire into deaths reported to them that appear to be unexpected or unexplained; or which appear to be an accident; or which appear to have occurred as a result of violence, or negligence, or from any cause other than natural illness or disease, or in circumstances that require investigation.

A note on the legal background to Inquests in Northern Ireland is provided at Annex A to the NIAC Report.⁴⁵ A number of inquests into contentious deaths during the conflict have been the subject of significant judgements of the European Court of Human Rights (ECtHR), as result of which the Coroners Service in Northern Ireland has been substantially remodelled.

One important question considered by the UK courts has been the extent to which the Coroner must conduct, in historic cases, an inquiry which is fully compliant with Article 2 of the European Convention on Human Rights (ECHR), in particular the procedural obligation to conduct an effective investigation when individuals have been killed through use of force.

In the case of *R (on the application of Middleton) v West Somerset Coroner*⁴⁶ Lord Bingham stated that the Coroners Rules (in that case, in England and Wales) should be interpreted in a manner consistent with the international obligations of the United Kingdom under the Convention. With respect to the duty to find ‘how’ a person came to his death, this should be interpreted in the broader sense as meaning not simply ‘by what means’ but ‘by what means and in what circumstances’.⁴⁷ In the case of *In re McKerr*⁴⁸, however, the House of Lords held that the Human Rights Act 1998 should not be applied retrospectively with the effect that in the case of deaths which took place prior to the Act’s entry into force on 2nd October 2000, the obligation to hold a wider investigation cannot be enforced as a matter of domestic law.⁴⁹

45. The NIAC Report, Annex A, pp. 39–41.

46. (2004) UKHL 10.

47. See paragraphs 33–35 of the judgement.

48. (2004) UKHL 12.

49. The Annex to the NIAC Report, written by Jane Gordon, the Committee’s Specialist Adviser, explains the issue.

A number of inquests into contentious deaths were adjourned pending resolution of the cases of *Jordan v UK*, *Kelly and Others v UK*, *McKerr v UK* and *Shanaghan v UK*.⁵⁰ 39 such cases are therefore now pending.⁵¹ Since some of these cases may take between six weeks and three months to hear, they add a considerable burden to the Coroners' workload and could take some years before all are completed.

In addition, the Attorney General has a power under section 14 of the 1959 Act to direct the Coroner to conduct an inquest, including in circumstances where an inquest has already been held. The Group understands that applications have been made to the Attorney General requesting her to exercise this power in relation to certain cases relating to the conflict.

The Criminal Cases Review Commission

The Criminal Cases Review Commission (CCRC) is an independent body established under the Criminal Appeal Act 1995 to review possible miscarriages of justice in the criminal courts of England, Wales and Northern Ireland and refer appropriate cases to the appeal courts. The Commission is based in Birmingham and has just under 90 staff, including a core of about 45 case reviewers, supported by administrative staff. There are 11 Commissioners.

The Commission started work in 1997 and currently receives between 900 and 1000 applications each year. By the end of November 2008, 11,287 cases had been opened, including 175 cases from Northern Ireland, and 10,673 cases had been closed, including 141 from Northern Ireland. For Northern Ireland, 24 cases are currently under review; 10 are awaiting review and 27 have been referred to the Court of Appeal; 24 cases have been heard by the Court of Appeal, which has upheld the conviction in 2 cases, and either quashed the conviction or reduced the sentence in 22 cases.

50. *Jordan v UK* (2001, ECHR 24746/94), *Kelly and Others v UK* (2001, ECHR 30054/96), *McKerr v UK* (2001, ECHR 28883/95) and *Shanaghan v UK* (2001, ECHR 37715/97).

51. Figures correct at time of going to print.

In recent years the CCRC has been called upon to investigate a growing number of convictions dating from 1968 to 1998 and associated with the conflict in Northern Ireland. These convictions have sometimes been brought to its attention by the convicted individuals themselves and sometimes by bodies such as the Office of the Police Ombudsman for Northern Ireland (OPONI) or the PSNI. The Commission may also be prompted to investigate a case as a result of findings in an associated case.

The convictions which have been brought to the CCRC's attention have related to a wide range of matters and have, for example, raised issues concerning the interrogation of suspects, the handling of informants or the alleged non-disclosure of relevant material. The CCRC's inquiries into those convictions have sometimes overlapped with criminal or disciplinary investigations being conducted by OPONI, or inquiries being conducted by a Coroner or by the HET.

The Commission has established good cooperation with the PSNI, OPONI and the Public Prosecution Service of Northern Ireland (PPSNI). The same need to protect data and identity apply in cases of review as in other inquiries into historical cases.

Recent press reports indicate that as many as a further 300 cases relating to the conflict may be referred to the CCRC for review. As with other inquiries, the demands which historical cases make on the CCRC's limited resources, financial and human, are considerable. This burden is increased by the need to investigate whether information which casts doubt on the safety of a conviction in one case has implications for the safety of a conviction in another.

Convicted Offenders: the Sentence Review Commission

The work of the Sentence Review Commission has its origins in the Agreement,⁵² which committed both the British and Irish Governments to provide for an accelerated programme for the release of prisoners convicted of scheduled offences in Northern Ireland or similar offences elsewhere.⁵³ Prisoners affiliated to organisations that had not established, or were not maintaining, complete and unequivocal ceasefires were to be excluded from benefiting from the arrangements.⁵⁴

The British Government gave effect to this commitment through the provisions of the Northern Ireland (Sentences) Act 1998, supplemented by Rules made by subordinate legislation. The Rules set out in detail the procedures under which prisoners can apply for early release and the Commissioners consider their applications.

The Act provides that any prisoners given release dates after the second anniversary of the Act's commencement would be released by the Secretary of State on that day, or when they had served two years in prison, whichever is the later.

Each prisoner released early under the legislation is subject to the licence conditions:

- that he or she does not support a specified organisation;
- that he or she does not become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland; and
- in the case of a life prisoner, that he or she does not become a danger to the public.

The Secretary of State may suspend a licence if he believes the person concerned has broken or is likely to break a licence condition.

52. Known as the Belfast or Good Friday Agreement, 10 April 1998.

53. As noted in footnote 7, scheduled offences include murder, manslaughter, kidnapping, serious assaults and armed robbery, and a wide range of firearms and explosives offences.

54. For details see Sentence Review Commissioners, 'Annual Report 2008', Stationery Office, HC 702.

'On the Runs'

In the Weston Park negotiations in 2001, the two Governments agreed to introduce legislation in respect of those individuals who were suspected of paramilitary offences but who had not been tried or convicted by virtue of the fact that they were 'on the run'.⁵⁵

The British Government subsequently introduced the Northern Ireland Offences Bill in November 2005.⁵⁶ The Bill provided for a scheme which would operate in relation to offences that were committed before 10th April 1998 in connection with terrorism and the affairs of Northern Ireland, irrespective of whether committed for terrorist purposes or not. Offences committed in the course of efforts to combat terrorism were thus included, opening the scope of the Bill not just to paramilitaries but to members of the security forces.

Under the Bill, persons who were eligible for the scheme might be given a certificate. Persons who had not yet been convicted of offences in relation to which they had been given a certificate would be exempt from arrest. They could, however, still be prosecuted for offences in relation to which they had been given a certificate but only before a Special Tribunal. If they were convicted, and sentenced to imprisonment, then, provided they satisfied certain conditions, they would be released on licence and would be in a similar position to persons released under the Early Release Scheme provided for by the Northern Ireland (Sentences) Act 1998.⁵⁷

55. "Both Governments also recognise that there is an issue to be addressed, with the completion of the early release scheme, about supporters of organisations now on cease-fire against whom there are outstanding prosecutions, and in some cases extradition proceedings, for offences committed before 10 April 1998. Such people would, if convicted, stand to benefit from the early release scheme. The Governments accept that it would be a natural development of the scheme for such prosecutions not

to be pursued and will as soon as possible, and in any event before the end of the year, take such steps as are necessary in their jurisdictions to resolve this difficulty so that those concerned are no longer pursued." Weston Park Proposals: paragraph 20, available at http://www.nio.gov.uk/weston_park_document.pdf

56. The text of the Bill is available at http://www.nio.gov.uk/weston_park_

The Bill attracted strong criticism on various points. Some considered that the Bill should not have opened the scheme to security forces. Others criticised the exemption from arrest, the creation of a Special Tribunal, the fact that a person who received a certificate might not have to appear in person before the Tribunal, the failure to involve relatives or impose an obligation to provide information to relatives, the granting of potential anonymity for offenders applying for certification, and the wide powers given to the Executive.⁵⁸

The Group acknowledges that it is difficult to be precise about the exact number of ‘on the run’ cases but understands that the circumstances of around 200 individuals has been considered by the PSNI and the PPSNI in order that their status can be assessed. While the majority of these individuals are not wanted for arrest or prosecution, almost a quarter of the cases are still under review. A number of individuals have been assessed as wanted by the PSNI. Additionally three cases are proceeding through the courts and nine individuals are wanted for return to prison.⁵⁹

The Independent Commission for the Location of Victims’ Remains

The Independent Commission for the Location of Victims’ Remains (ICLVR) was established by an agreement between the British and Irish Governments of 27th April 1999.⁶⁰ The objective of the ICLVR is to facilitate the location of the remains of victims of violence, defined as persons killed before 10th April 1998 as the result of acts committed on behalf of, or in connection with, an unlawful organisation.

document.pdf The explanatory notes are available at <http://www.publications.parliament.uk/pa/cm200506/cmbills/081/en/06081x--.htm>

57. Explanatory Notes to the Bill, paragraph 4.

58. See *Making Peace with the Past: Options for truth recovery regarding the conflict in and about Northern Ireland, Healing Through Remembering*, written by Professor Kieran McEvoy, October 2006, pp. 58–59.

59. Figures correct at time of going to print.

60. ‘Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing the Independent Commission for the Location of Victims’ Remains’, signed at Dublin, 27 April 1999, Treaty Series No. 70 (1999) Cm 4473. The Agreement entered into force on 28 May 1999.

The Agreement was given effect in the United Kingdom by the Northern Ireland (Location of Victims' Remains) Act 1999. Section 3 of that Act provided that any relevant information provided to the ICLVR, and any evidence obtained, directly or indirectly, as a result of such information being so provided, would not be admissible in evidence in any criminal proceedings.

The full list of victims whom the IRA admitted to having killed and buried in unknown locations comprises Seamus Wright, Kevin McKee, Jean McConville, Columba McVeigh, Brendan Megraw, John McClory, Brian McKinney, Danny McIlhone and Eamon Molloy. Other cases examined include those of Charles Armstrong and Gerard Evans, who disappeared from Co. Armagh but for whom no-one has claimed responsibility; Robert Nairac who also disappeared from Co. Armagh; and Seamus Ruddy, who disappeared in France. Responsibility for Seamus Ruddy's disappearance has been attributed to the INLA.⁶¹

To date the remains of Eamon Molloy, John McClory, Brian McKinney, Jean McConville and Danny McIlhone have been recovered.

61. Press release by the Northern Ireland Office, 3 August 2006, available at <http://www.nio.gov.uk/media-detail.htm?newsID=13428>

CHAPTER 7 | Legal Processes: The Arguments for Change

The Case for Change

On the basis of its consultation, the Group does not believe that the present legal processes are fully meeting society's needs. There is a tendency to re-fight the conflict through the courts; to pursue truth through litigation; to deal with the past without a perspective for the future.

Public inquiries have proved protracted and expensive with a narrow focus on a very few cases. The issue of the promised Inquiry into the death of Patrick Finucane remains unresolved.

The Police Service of Northern Ireland (PSNI) has found it increasingly difficult to service the demands of historical inquiries. While both the Historical Enquiries Team (HET) and the Police Ombudsman's Unit are dealing with historical cases, such investigation has become an increasing burden on both the PSNI and the Police Ombudsman respectively. Neither the PSNI nor the Police Ombudsman can build for the future if they are burdened by the past.

The mandate of the HET to resolve unanswered questions, which the Group has termed 'information recovery', does not sit easily with the primary task of a police unit to pursue criminal justice.

The number of civil cases related to the material of the Stevens Inquiry is increasing. Over 150 are being pursued at present. It is possible that other historical cases could lead to new civil proceedings.

The issue of alleged collusion has not been properly dealt with. Other themes arising from the conflict remain of public concern.

The scope and length of Inquests into historical cases have expanded. The number of reviews of criminal convictions arising from the conflict may also increase.

There remains pressure to resolve the issue of ‘on the runs’.

Many affected by the conflict retain an understandable desire for truth, either in respect of their loved one’s death or in respect of underlying themes of what went on. These unresolved points of concern prevent Northern Ireland moving fully to the future.

The Group’s Recommendations

The Group therefore recommends that a better framework should be established for resolving these issues, centred on a new Commission, the Legacy Commission.

The following is a summary of the main concepts:

- (1) A new independent Unit dealing with historical cases would be created within the new Commission, which would continue to review and investigate historical cases, backed by police powers.
- (2) This new Review and Investigation Unit would take over the work of the HET and the Police Ombudsman’s Unit dealing with the historical cases. The need for these would fall away when the new Unit is established.⁶² The new Unit would build on the work they have done to date but the PSNI and the Police Ombudsman would be freed from the burden of investigating historical cases so as to focus on the future.
- (3) The process of recovering information of importance to relatives would be separated from the investigation procedure and be subject to a distinct process within the Commission under a separate Commissioner.
- (4) The Commission would examine themes arising from the conflict which remain of public concern, such as specific areas of paramilitary activity, or alleged collusion. This thematic examination would take place without public hearings. This would facilitate more open and frank disclosure and avoid the constant publicity of present inquiry proceedings.

62. The Police Ombudsman would retain responsibility for investigating allegations of police misconduct in historical cases which resulted in injury rather than death, unless these were linked to historical cases under examination by the Legacy Commission.

- (5) There would be no new public inquiries. The question whether to proceed with the promised Finucane Inquiry is a matter for the British Government but the issues raised by this case could be dealt with by the new Commission.
- (6) The outstanding Inquests would remain with the Coroners Service. Criminal case reviews would continue to be pursued through the Criminal Cases Review Commission (CCRC).
- (7) The Commission would have a mandate in respect of certain society issues, on which it would liaise closely with the Commission for Victims and Survivors for Northern Ireland (CVSNI), through a Reconciliation Forum, thus ensuring a holistic approach to the past.
- (8) The Commission would have a fixed five-year mandate. At the end of its mandate the Commission would make recommendations on how a line might be drawn so that Northern Ireland may best move to a shared future. This might embrace a procedure whereby historical cases, including those against ‘on the runs’, would no longer be actively pursued.

During its consultation the Group received detailed suggestions for a Commission and for the principles on which it should be based. While the Group’s proposal does not conform exactly to any of these, the Group believes that its recommendations reflect many of the ideas which have been suggested and represent the best and most workable result.

The detail of the new Commission and its procedures is set out in Chapter 8. The rest of this Chapter explains more fully some of the considerations underlying the Group’s proposals.

Justice

Many families to whom the Group spoke still have an understandable desire to see someone prosecuted for causing or contributing to their relative's death. The Group understands this desire for penal justice and wishes to keep this avenue open. It therefore proposes that the process of reviewing and investigating historical cases should continue.

However, the conduct of investigation needs to take full account of the increasing difficulties facing investigators and the question of where best to allocate scarce resources. With the lapse of time, it may be increasingly difficult to find new evidence or substantiate old evidence. Potential witnesses are more difficult to discover and may be regarded as less reliable.

The Group welcomes the way in which the HET, the PSNI and the Police Ombudsman's Office inform relatives about the progress and prospects of an investigation. This is a sensitive and difficult matter. But there is a case for even greater realism on whether an investigation might yield results, both in reviewing whether there should be further investigation and in discussing the issue with the families.

Information Recovery

Since prosecution might be possible only in a very few of the historical cases under review, the Group believes that now is the time to open new avenues for information recovery, to resolve if possible unanswered questions, and to examine themes from the conflict.

As stated in Chapter 2, complete truth might be unattainable but it might still be possible to recover information of importance to families and to society. An examination of themes of the conflict, dealing with issues which are still of public concern, would promote greater understanding. Time is now short if this is ever to be done effectively, drawing on the testimony of those who had a role in the conflict.

Bringing investigation, information recovery and thematic examination under one umbrella, with a new Commission, would promote an approach which is more coherent and more focused on the needs of victims and society. This coherence and focus would be encouraged further by linking the new Commission with other work in meeting society needs and with the work of the CVSNI.

The Group doubts whether the present legal processes are, taken as a whole, the best means for recovering information and thematic examination. There is a potential tension between the remit of the HET to pursue a normal police investigation while combining this with a process of information recovery.

The Group considers that, at this stage of Northern Ireland's emergence from conflict, there should be a clearer mechanism for recovering information founded on procedures which are most likely to yield this. The Group, therefore, proposes that information recovery, and the related examination of themes from the conflict, should be subject to distinct procedures and should take place in private and without formal parties to proceedings. These would allow a more frank exchange of information and acknowledgement of past wrongs, which would both facilitate the emergence of truth and promote the process of reconciliation.

One risk of current inquiries and legal processes is that people seek to re-fight the conflict through tribunals. Public adversarial hearings would risk re-opening scars from the conflict, which the last ten years have helped to heal. The Group sees risks in a stream of public disclosures. As the Co-Chairs warned in their speech on 29th May 2008, "full disclosure has its repercussions and no community would be left unscathed".⁶³

Powers and Rights

In making a new process work, there is a delicate balance to be struck. Informality and privacy need to be balanced by powers of compulsion. In both information recovery and thematic examination, the Group proposes that the Commission would have the power to compel production of documents. In thematic cases it would have both the power to compel the production of documents and the power to compel witnesses from Northern Ireland and Great Britain. Any enforcement of these powers would rest with the High Court.

These witnesses could be questioned by the Commission, and their evidence would need to be tested. There would be no examination or cross-examination by others. The Commission would avoid wide circulation of documents, although witnesses would be entitled to see documents relevant to them. This would avoid the lengthy process of redaction of documents, which imposes a heavy burden on public inquiries and those who service them. It would help the Commission to protect the lives of those who are mentioned in documents or appear before it. It would also make the new process more resource efficient.

63. Speech given by Lord Robin Eames and Denis Bradley in the Titanic Quarter, Belfast on 29 May 2008, reproduced at Appendix 5.

Those coming before the Commission would need to have the opportunity of legal representation and to have other rights safeguarded. Individuals and groups would be able to defend themselves before any conclusions were drawn.

But the Group does not see the outcome of the information recovery process or thematic examination as blaming or naming individuals. In the process of information recovery, the aim is to resolve unanswered questions. In thematic examination, the purpose is to look at overall accountability, not individual accountability; to identify areas where things went wrong and why they went wrong; to gain greater understanding; to encourage apology where appropriate; and to build a shared and reconciled future.

The Group has not proposed any change to the processes of the Coroners Service or the Criminal Cases Review Commission (CCRC) in respect of current cases. These processes touch on sensitive human rights issues which have been much contested. But the Group proposes that the Commission should monitor the burden of historical cases on these institutions and if necessary make recommendations to Government.

Encouraging Information and Truth

If these processes of information recovery and thematic examination are to succeed, it is essential that persons giving information are able to do so without fear of that information being used in criminal or civil proceedings against them. The Attorney General's undertaking in respect of criminal proceedings, given in the context of some public inquiries, and the provisions concerning information about the location of victims' remains, afford a precedent in this direction.

As stated in Chapter 8, this would not amount either to amnesty or general immunity from prosecution. It does not provide a means for people to escape justice. The concept is to give protection to the statement, not general immunity to the person.

The Group proposes that certain safeguards should ensure that the procedure does not prevent a case coming to court for which otherwise there might be evidence.

Firstly, before a case is subject to this procedure, it would have to be reviewed or investigated to see if there was a case for prosecution. That process of review and investigation would have been completed before any person could provide information under the rules of information recovery.

Second, if evidence emerged outside of the process that a person had committed a crime, that could still be brought before a court. A person could not go from the process of information recovery and give the same information to the press or elsewhere with impunity.

Thirdly, the Group proposes that oral evidence under thematic examination should not be taken until two years after the Commission's establishment.

Building for the Future

At present, conducting and servicing investigations into historical cases place huge demands upon the police and other services. Representatives of those services, whom the Group has consulted, say that the diversion of their resources into the past makes it difficult to deal with current needs, such as present-day murders and the current security threat. It prevents those organisations becoming forward-looking organisations, capable of building their mission and morale around the future. The creation of the new Commission would allow the PSNI and the Police Ombudsman to be free of direct responsibility for the past.

A new mechanism would also eliminate duplication and improve coordination. At present, the work of the HET and the Police Ombudsman can sometimes lead to duplication of investigative methods, for example in taking statements or conducting forensic examination. But it is vitally important that the new Review and Investigation Unit is, and is seen to be, fully independent. Former police officers should not investigate cases which concerned the activities of their previous force.

Costs

The Group believes that overall the Commission offers the most cost effective way to give proper consideration to outstanding historical issues.

The Group anticipates that the cost of setting up the Commission will be in the region of £3 million and that annually it will cost just over £33.5 million.

The total cost of the Commission over the five year life span will therefore be in the region of £170 million. The cost of paying for historical investigation through the existing HET and Police Ombudsman alone would be, over the next five years, in the region of £100 million.

The Commission would be able to look at wider themes and more cases than a single public inquiry. A single public inquiry into one set of linked cases could cost between £60 million and £140 million. For that same money, the Group believes that the Commission could examine wider perspectives of the past.

The Group has recommended that the bursary, to be administered by the Legacy Commission, for society issues should be £100 million.

The Group anticipates that the cost of the recognition payments would be in the region of £40 million.

The Group considers that the Irish Government should join the British Government in implementing the initiative and should make an appropriate contribution towards the costs.

The Question of Amnesty

The difficulties presented by the legal processes, and the need to create a new mechanism, have led the Group to give serious consideration to the question of amnesty.

An amnesty now would have the advantage of removing some of the anomalies and inconsistencies in the handling of historical cases. It would avoid some of the expense of a new mechanism. It would allow greater focus on information recovery. It would take account of the fact that the chances of successful prosecutions in historical cases are fast receding. It would avoid problems arising from criminal case reviews. It might be one way of encouraging society to move on.

An amnesty may not necessarily contravene rights under the European Convention of Human Rights (ECHR) if there are exceptional circumstances surrounding the peaceful resolution of a conflict.⁶⁴ But the current jurisprudence of the European Court of Human Rights (ECtHR) and the developing practice of international law points strongly against amnesties.

The Group has concluded that a general amnesty would not be appropriate in the present situation.⁶⁵ Many families may need to adjust their expectations of criminal justice. But there was a strong view expressed by both politicians and victims in the Group's consultation that the route of investigation and prosecution should be kept open.

The Group accepts this argument but recommends that the proposed Commission should make recommendations on how a line might be drawn at the end of its five-year mandate so that Northern Ireland may best move to a shared future.

64. See *Dujardin v France*, (1992) 72 DR 236.

65. An amnesty was granted in Northern Ireland in May 1969. This was declared in the context of growing civil unrest and was designed to de-escalate the conflict. The Northern Irish Prime Minister, Chichester Clarke, decided with the support of the Attorney General and his cabinet at Stormont to

introduce a general amnesty for "events associated with, or arising out of, political protests, utterances, marches, meetings, demonstrations occurring between 5 October 1968 and 6 May 1969": Northern Ireland Information Service Press Release, 6 May 1969.

A Balanced Approach

The Group's proposal for a Commission adopts a balanced approach between justice, truth and reconciliation. The Group recommends a Northern Ireland specific solution.

The Group recognises the considerable achievements of the last ten years, starting with the Agreement⁶⁶ and leading to devolved government. But these achievements must be consolidated, the institutions of the future must build for the future, and the past dealt with in a safe, but time-limited, framework.

The framework proposed by the Group is ambitious and will require determination to implement. Its success will depend not only on the members of the Commission but also on the support of society and full engagement of all those who played a role in the conflict. Both paramilitaries and state actors must engage.

But, if these challenges are met, the establishment of such a Commission would allow Northern Ireland society to deal more effectively with its past and move to a shared and reconciled future. It is difficult to see how justice, truth and reconciliation can be pursued in a proper and balanced way, without the creation of this new Commission.

66. Known as the Belfast or Good Friday Agreement, 10 April 1998.

CHAPTER 8 | The Legacy Commission

The Mandate of the Commission

Chapter 7 sets out the case for change and the Group's proposal for a new Commission, the Legacy Commission. This Chapter explains in more detail the mandate, membership and procedures of the Commission.

An independent Legacy Commission would be established to deal with the legacy of the past by combining processes of reconciliation, justice and information recovery. It would have the overarching objective of promoting peace and stability in Northern Ireland, and its activities and decisions would be guided by that perspective. Its mandate would consist of four strands of work to:

- help society towards a shared and reconciled future, through a process of engagement with community issues arising from the conflict;
- review and investigate historical cases;
- conduct a process of information recovery; and
- examine linked or thematic cases emerging from the conflict.

In the first strand of the Commission's work, it would identify areas of activity to address society issues arising from the conflict, for example, sectarianism. It would administer funds made available for these specific community needs, which are not being met by other programmes. For this purpose, the Commission, acting through the Chair of the Commission, would work with the Commission for Victims and Survivors for Northern Ireland (CVSNI) through a Reconciliation Forum. This would ensure coordination with the work undertaken by the CVSNI and others in addressing the society issues identified.

In the second strand of Review and Investigation, the Commission would review and investigate historical cases, which resulted in death. It would establish whether there was a realistic chance of prosecution, taking into account the receding possibilities. It would create a new independent Unit which would build on the work already undertaken by the Historical Enquiries Team (HET) and the Police Ombudsman.

In the third strand of Information Recovery, the Commission would seek, after completion of the Review and Investigation, and with the agreement of the family, to provide answers to unresolved questions of importance to victims' families in individual historical cases.

In the fourth strand of Thematic Examination, the Commission would examine themes emerging from historical cases and the conflict as a whole, for example, a particular area of paramilitary activity, or allegations of collusion. No oral evidence would be taken in the thematic strand until the process of Review and Investigation had been completed in the relevant cases.

A historical case would thus follow a particular sequence through the Commission:

- as a first step, the case would be treated under Review and Investigation. If a prosecution resulted, the case would proceed to trial in the normal way.
- If the review and/or investigation resulted in no prosecution and the investigation was treated as complete, the case would either:
 - (a) pass into the process of Information Recovery, provided it was an individual case not covered by thematic examination, and provided the family agreed; or
 - (b) be treated under Thematic Examination, if it related to an important theme or a series of linked cases requiring special examination.

The Commission's mandate would be for a fixed period of five years.

Structure of the Commission

The Commission would be headed by an International Commissioner who should act as Chair, with overall responsibility for strategic direction and for supervising the work of the whole Commission. The International Commissioner would also have specific responsibility for addressing society issues in the first strand of the Commission's work.

Two further Commissioners would have responsibility respectively for Review and Investigation, and for Information Recovery and Thematic Cases, subject to the Chair's overall responsibility. In the event of disagreement between members of the Commission, the Chair's decision would prevail.

The Commissioner responsible for Review and Investigation would be someone with experience of police or criminal justice processes and thus capable of leading a unit with the equivalent of police powers.

The Commissioner for Information Recovery and Thematic Cases would be someone capable of obtaining the confidence of all participants in the process, including victims and survivors, non-governmental organisations, former members of paramilitary organisations and the security services; and producing independent analysis which promotes both greater understanding of the conflict and reconciliation.

All Commissioners will need to be impartial, capable of handling highly sensitive information, and able to make difficult judgements about the release of information into the public domain.

The Commission would be supported by a Secretariat.

Independence of the Commission and Appointment of Commissioners

The new Commission should be independent and this should be set out in statute.

The Chair of the Commission should be an International Commissioner. The other Commissioners should be appointed in light of the special qualifications required for their tasks, as outlined above. Much will depend on the quality of the Commissioners.

The Group recommends that the Commissioners should be appointed by the British and Irish Governments. The approval of the Office of the First Minister and deputy First Minister (OFMDFM) should also be sought.

Role of British and Irish Governments and OFMDFM

The OFMDFM would join the British and Irish Governments in implementing this initiative. The proposals would need primary legislation, enacted in Westminster, which would take account of the process of devolution of policing and justice. To be fully effective, the Irish Government would also need to adopt reciprocal but more limited legislation, as explained later in this Chapter.

The two Governments might also consider whether an inter-governmental agreement is necessary or desirable. The British Government would provide funding. The Group considers that, in light of the Irish Government's special interest in Northern Ireland and of the fact that the legacy of the past in Northern Ireland is of mutual concern to the Irish Government, that they should make an appropriate contribution towards costs.

Annual reports should be submitted to the two Governments, the OFMDFM, the Northern Ireland Assembly, the British-Irish Council, and to key stakeholders in the work of the Commission. Such reports should contain an overview of the Commission's work and should not contain sensitive or intelligence information.

Period of the Mandate

The Group's proposal for a five year mandate presents a demanding schedule, particularly for the process of dealing with historical cases. Families and victims should have the opportunity for their needs to be treated with care, dignity and respect; and for their aspirations for truth and justice to be fulfilled so far as possible. The Commission will need to prioritise resources to ensure that cases are completed in the fixed period and that the past does not become a preoccupation without limit.

After a period of five years, the need for special institutions to deal with the past will have much reduced. In fact, the Group sees the Commission as a way of bringing resolution to many aspects of the conflict which remain of concern.

The end of the five year period should mark a significant transition from the past to the future. The Commission should submit its final report and be dissolved. It should consider whether further measures should be taken at that stage to draw a line under the past to enable Northern Ireland to move to a shared future.

The Reconciliation Forum, involving the International Commissioner and the CVSNI, should also take the lead in implementing an initiative, at the end of the five year mandate, whereby Northern Ireland, with the support of the two Governments and the Northern Ireland Assembly, should conduct a ceremony remembering the past and all those who suffered during the conflict.

Dealing with Society Issues

As mentioned in the Introduction to this Chapter, the Commission would, in the first strand of its work, identify areas of activity to address society issues arising from the conflict. Acting through its Chair it would work with other partners, particularly the CVSNI, to ensure proper coordination of activities.

The Chair would thus play an active role in promoting cross-sectoral activity to tackle the legacy of the conflict in society. This would include:

- addressing sectarianism;
 - promoting remembering activities (including storytelling, memorialising and a day of reflection) at both an individual and community level;
 - working with young people so that they are provided with the skills necessary to ensure there is no repeat of the past, including through education programmes, to inform young people, in a balanced way, about the nature and impact of the conflict;
 - providing improved services to meet healthcare needs attributable to the conflict, including dealing with trauma, suicide and addiction issues;
 - ensuring that the economic benefits experienced across post-conflict Northern Ireland are equally experienced in deprived areas; and
 - ensuring that any of those exiled from Northern Ireland during the conflict can return, if it is their desire to do so, including through the development of a repatriation programme.
-

Relationship with Other Bodies

The Chair of the Commission would not assume operational responsibility for tackling these society issues but rather would have an oversight role. There are many departments, statutory agencies and non-Governmental organisations which have a part to play. The Commission should have a statutory duty to work closely with these bodies including the OFMDFM, the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, the CVSNI and the Community Relations Council for Northern Ireland (CRC).

From discussions with the CVSNI, it is clear that they intend to develop their work programme in a way which will enable many of these issues to be taken forward, not just from the perspective of victims and survivors but also from a society wide perspective. The Group welcomes this broad interpretation of their role. The CVSNI are well placed to take the lead on many of the issues and to assist in respect of the other issues that they have an interest in. The Chair of the Commission should seek to ensure that the CVSNI are empowered to take on this wider interpretation of their role.

The Reconciliation Forum

The Group recommends that the CVSNI take responsibility for convening a Reconciliation Forum of which the Chair of the Legacy Commission should be a key member. As well as the CVSNI and the Chair of the Commission, the CRC should be invited to sit on the Forum. Consideration should also be given to inviting other bodies or groups to specific meetings of the Forum, as merited by the issues under consideration.

The Forum should develop terms of reference taking account of the respective statutory duties of the members, but its function should, in respect of the issues detailed in this Chapter, be to:

- analyse the activity that is undertaken to address the issues;
 - consider the need for further activity, including the need to address any gaps, and, drawing on the expertise within the membership of the Forum, to assess what would make the most impact;
 - give advice on policy to Government and other policy makers;
-

- advise on strategies to enable the focused targeting of needs and the promotion of best practice, drawing on local, national and international experience;
- advise on the development and delivery of services;
- decide on priority areas of activity and assist in influencing others to take those priority areas into account in the development of their policies and allocation of their resources. The members of the Forum should also work to ensure that their respective organisations take account of these priority areas.

The Forum would not have a role in influencing the work of the bodies represented on the Forum outside of the issues detailed earlier in this Chapter.

If it proves impossible for the CVSNI to convene this Forum, the Chair of the Legacy Commission should do so until such time as they are able to take over the role of convenor.

Overview of Role of Chair of Commission

Taking account of the requirement to work on these society issues with other members of the Reconciliation Forum, the Chair of the Commission should act as a ‘champion’ for the issues; promoting debate; setting the direction for and highlighting where sectors of the community can do more to tackle the issues; and monitoring the progress being made by society in tackling the societal legacy of the conflict in a way which leads to a shared and reconciled future.

The Chair should give a renewed emphasis to these issues, assuming a strategic, rather than an operational role. The Chair will need to be focused and persistent, challenging society to make clear steps towards a shared and reconciled future. In the longer term the Chair should promote the integration of societal legacy issues into mainstream departmental agendas and budgets.

As explained in Chapter 5, the CVSNI has set out in their work programme how they intend to take forward work around remembering. The Chair of the Commission should support the work of the CVSNI in this regard and, through the proposed Reconciliation Forum, should:

- ensure that ongoing dialogue and engagement continues with many sectors of society including the churches, education sector, media and the business community in order to ensure that the full spectrum of perspectives on the conflict are brought together with individual and community stories;
- encourage the collation of stories, taking account of issues such as location, security and the most appropriate way for members of the public to engage with the stories, and consider the need for stories to be listened to in an authoritative manner;
- encourage organisations to adhere to the criteria for storytelling as laid out in Chapter 5. The Chair should seek to influence the criteria for receiving funding in order to ensure that storytelling initiatives have reconciliation at their heart;
- promote the memorial projects in and around Northern Ireland, offering support and mediation services where appropriate; explore and develop ideas for a shared living memorial for Northern Ireland within the five year life span of the Commission; and, taking account of advice from the Reconciliation Forum, make recommendations to Government.

Specific Role of Chair of Commission

In addition to, and to complement, the role which the Chair of the Commission can play on the Reconciliation Forum, the Chair should have a specific role in:

■ *Tackling Sectarianism*

Tough decisions are needed about the fundamental structures of our society regarding the extent and impact of sectarianism. The cost of doubling up of services and the visible evidence of separation, including through the so called ‘peace’ walls, should be challenged with a view to moving towards shared, safe spaces and services. Many statutory and non-statutory groups are already working to combat sectarianism. The Chair of the Commission will provide a challenge function to these, and other groups not yet engaged, in taking effective steps towards the promotion of non-sectarianism. The Chair will lead the debate on sectarianism, and set the direction for how society can move towards non-sectarianism and how respect of difference can be achieved.

■ *Promoting Reconciliation*

The Chair should work with Healing Through Remembering (HTR) to promote the existing Day of Private Reflection. In keeping with the vision of this report consideration should be given to renaming the event a Day of Reflection and Reconciliation. The criteria set out in Chapter 5 should be used to help shape the day and any events flowing from it. Over the Commission's five year lifespan the Chair would work towards developing the Day of Reflection and Reconciliation into an official day for all of society.

The Chair would encourage the First Minister and deputy First Minister to make a speech to the Assembly on the Day of Reflection and Reconciliation. The Chair would, through the Reconciliation Forum, encourage the development and distribution of guidance for groups planning events to be held on the Day of Reflection and Reconciliation and would seek to influence the content of that material to ensure that planned activities help individuals and communities move towards a shared and reconciled future.

The Chair would liaise across civic society, with the business, media, health and education sectors to encourage them to make an annual statement on this day confirming their commitment to peace and reconciliation. In particular, the Chair would work with the churches to ensure that they call upon their congregations to reflect on the level of reconciliation that has already been achieved and how we can all build on this together.

The Chair should actively consider, and report regularly on, these issues and challenge the various sectors in society to play their part in tackling them in a concerted manner.

At the end of the five year term of the Commission, the Chair should report on the progress society has made towards the goal of becoming a community at peace. The Chair would make recommendations on new steps to be taken as society matures, and how a line might be drawn so that Northern Ireland may best move to a shared future.

As recommended in Chapter 2, the Commission should also, at the end of its work, challenge the people of Northern Ireland, including political parties and whatever remnant or manifestation of paramilitary groups remain, to sign a declaration to the effect that they will never again kill or injure others on political grounds.

■ *Administration of Bursary*

The Commission should be given a significant bursary in order to make a positive impact on the society needs detailed in this Chapter and Chapter 3. To achieve this, the Group believes the bursary should be in the region of £100 million. The Chair of the Commission, taking advice from the Reconciliation Forum, should administer this bursary. The Group believes particular priorities are the healthcare legacy of the conflict, tackling sectarianism, and the role played by young people in our society. More detailed criteria should be developed but the money would fund only strategic projects which would further reconciliation. These criteria should also encourage, across these priority areas, cross-sectoral activity between Government and non-Governmental organisations.

Establishment of Review and Investigation Unit

The second, third and fourth strands of the new Commission would be to:

- review and investigate historical cases;
- conduct a process of information recovery; and
- examine linked or thematic cases emerging from the conflict.

For the second strand, the Group therefore proposes the establishment of a new, independent Review and Investigation Unit in the Commission, working under the Commissioner for Review and Investigation. As stated previously, it would build on work already undertaken by the existing HET and the Police Ombudsman's Unit dealing with historical cases, which would cease to exist. There should be clarity about which cases are the responsibility of the Commission.

The Commission would directly recruit its own staff for this Unit, which would need to combine both police and administrative expertise.

Although a single Review and Investigation Unit in place of the existing HET and Police Ombudsman's Unit would avoid duplication in areas such as forensic tests, it would be important to maintain the necessary independence when dealing with historical cases where police misconduct was alleged. Former police officers should not be engaged in investigating activities of their previous force.

Complex issues of staff terms, logistics, equipment, service contracts, premises, storage, security, documents and archives would have to be considered. While the aim would be to draw as far as possible on the existing experience and systems of both the HET and Police Ombudsman's Unit, the new Units of the Commission should be fully independent.

It will require considerable time and care to prepare for the establishment of the Commission, which the Group hopes would be fully up and running by late 2010. Transitional arrangements would need to be carefully worked out.

Process of Review

The Review and Investigation Unit would review historical cases to establish whether there was a reasonable prospect of obtaining sufficient evidence to warrant prosecution; and, if necessary, to conduct that further investigation.

It should be able to deal swiftly with the vast majority of cases already dealt with by the HET and the Police Ombudsman's Unit, although the Commission would retain discretion on whether to re-open such a case.

The Review and Investigation Unit should review each historical case. This does not mean that each case should be investigated afresh.

Families and victims would be engaged from the start of the process of review.

Order of Cases in the Review and Investigation Unit

In reviewing cases, the Review and Investigation Unit should continue to follow the methodology of taking cases in chronological order from the earliest cases onwards, unless cases have been previously opened, or there are humanitarian reasons otherwise, or if later cases are linked to an earlier case, or if there is other good reason. These criteria should be operated flexibly.

Decisions in respect of Reviews, Investigations and Prosecutions

The Commissioner for Review and Investigation, acting on advice from the Review and Investigation Unit, should take the decision whether to complete a review without further substantive investigation or to pursue further channels of investigation.

If, in a case where further investigation was pursued, the Commission considered that there was sufficient evidence for the Director of Public Prosecutions of Northern Ireland (DPPNI) to decide whether prosecution was warranted, it would refer the case to him. This decision should be taken by the International Commissioner on advice from the Commissioner for Review and Investigation, supported by relevant expertise.

The fact that a case was referred to the DPPNI for a decision would not mean that the evidence would be such as to warrant prosecution. It would be important for families to understand the procedure and for their expectations to be managed in this regard.

If the Commission referred a case to the DPPNI, the DPPNI would assess the evidence and, having weighed the public interest in accordance with the criteria published in the Code for Prosecutors, take the decision whether to proceed to trial. When the Commission forwards a case to the DPPNI to consider prosecution, it should include a recommendation as to whether a prosecution would be in the public interest as defined in the established criteria. But the decision whether to proceed with a prosecution would be for the DPPNI alone.

Procedure and Powers of the Review and Investigation Unit

The Review and Investigation Unit would conduct the process of review and investigation in a form equivalent to that conducted by the police and with equivalent powers.

The Review and Investigation Unit would strictly prioritise resources and only pursue further investigation where there was a clear case for doing so. Criteria governing the completion and conduct of reviews would be fixed by the Commissioners and published. The procedure for ‘completing’ the investigation should be a clear stage in the process, on which the family would be kept fully informed and consulted.

The processes of review and investigation on the one hand, and the subsequent process of information recovery on the other, would be distinct processes, operating under different rules and guidelines.

It would be clear that the investigation had been treated as ‘completed’ before it was subject to the special procedures of information recovery or thematic examination. A more definitive procedure would be to regard the investigation as ‘closed’ but the Group favours regarding the review and investigation as ‘completed’. This would keep open the possibility of reviving an investigation if new and compelling admissible evidence emerged.

Basic Purpose of Information Recovery

The Commissioner for Information Recovery and Thematic Cases would conduct a process of information recovery, using both formal and informal means, to establish answers to unresolved questions of importance to victims’ families concerning the circumstances which resulted in death. Like the work of the HET, this process would aim to assist in bringing a measure of resolution to families of victims affected by deaths in historical cases. The Commissioner’s tasks would be supported by two Units: an Information Recovery Unit to deal with individual cases in the third strand of the Commission’s work, and a Thematic Examination Unit to deal with linked or thematic cases in the fourth strand.

The Thematic Examination Unit

Some cases have raised particular concern; or are linked by the circumstances of death, or by the possible identity of the culprits; or touch on a theme, such as an area of paramilitary activity or alleged collusion. The Commission should examine these linked or thematic cases in the fourth strand of its work. A new Unit, the Thematic Examination Unit, would be established within the Commission for this purpose.

As stated above, this Unit would not take oral evidence in a thematic case before the Review and Investigation Unit had completed its work in that case, although it may undertake preparatory work and examine relevant documents before then. The Group also proposes that the Commission should not take oral evidence in the thematic strand until two years after the commencement of its work.

Before taking oral evidence in thematic examination, the Commission would publish a list of the cases with which it proposed to deal under this procedure. All concerned would need to be clear which cases were being dealt with under information recovery and which under thematic examination.

Procedure and Powers of the Information Recovery and Thematic Examination Units including Protected Statements

The Commission would conduct the information recovery process, with regard to a range of factors, including the resources available, the likely benefit of pursuing a particular line of inquiry, the need to provide information to families, and the public interest.

The procedures of the Information Recovery Unit and the Thematic Examination Unit would be flexible and might include contacts with suspected offenders, or paramilitaries, or government agencies, as the case may be. There would be no public hearings or formal parties to proceedings. As there would be no formal parties, there would be no general circulation of all documents, although those appearing before the Commission would be able to see documents relevant to their participation.

The Group proposes that Statements could be made to the Information Recovery Unit and the Thematic Examination Unit which would not be admissible in criminal or civil proceedings against the person making them. This would apply to both primary and secondary evidence: in other words, information provided in the Statement itself, or any information or evidence which could be obtained or deduced as a consequence of that Statement, would not be admissible in criminal or civil proceedings. Statements covered by this procedure are referred to as ‘Protected Statements’. Their aim is to encourage free and frank disclosure of information relevant to a particular case.

No Protected Statement would be allowed under this procedure which might prejudice an investigation which has not yet been reviewed or completed by the Review and Investigation Unit.

The Information Recovery Unit and the Thematic Examination Unit would have the power to compel the production of documents. Separate arrangements would need to be made for the Republic of Ireland. The Commission would agree protocols with government agencies for the production of documents and other arrangements following, for example, the practice of the Police Ombudsman.

The Thematic Examination Unit would have, in addition, the power to compel witnesses from Northern Ireland and Great Britain. But, as there would be no formal parties to proceedings and no public hearings, there would be no examination of witnesses except by the Commission. The Commission would have both the power and indeed the duty to test information given to it. It would ensure that participants had the chance to see documents of relevance to them and had an appropriate opportunity to explain themselves before any conclusions were drawn.

Participants in these processes would need to have access to independent legal advice and would have the right to legal representation. They might be required to give evidence on oath. The privilege against self-incrimination would remain intact. Any enforcement of the Commission’s powers would rest with the High Court.

Relationship between Processes of Investigation and Information Recovery

The special procedures of the Information Recovery and Thematic Examination Units would not be applied to a case being handled in one of these processes until a review of that case had been completed by the Review and Investigation Unit.

As stated before, it would be possible for people to make Protected Statements during the information recovery or thematic examination process without risk of them being used in criminal or civil proceedings against them.

It is the Statement not the person who is protected. It would still be possible to prosecute someone who made a Protected Statement on the basis of evidence obtained independently, outside the processes of the Commission.

A process of information recovery would be halted and a case reconsidered by the Review and Investigation Unit if new and compelling evidence became available which was not based on a Protected Statement.

Information Recovery: a Voluntary or Automatic Process

The Group recognises the concerns which some families might have about a case passing into information recovery against their wishes. Some might feel that, even if the chances of a prosecution were low, they would want the case to rest on that basis without allowing someone to make non-admissible statements. In an extreme case, a person could, for example, during this process admit to a murder and it would not be possible to use that statement against him or her.

The Group has therefore considered under what conditions a case should pass into a process of information recovery or thematic examination. There are both issues of practical difficulty and issues of principle in balancing the interests of families with the interests of society.

First, families are diverse units and it might not be easy to obtain an agreed view from all members. Second, in respect of linked cases, it might be hard to treat one case within information recovery and another case outside. Similarly, if a person made a statement about cases which were linked, it might be difficult to separate parts of that statement into admissible or non-admissible, or to say that the statement was admissible for the purposes of one case but not for the purposes of another. Third, the Group considers that there is a strong public interest in the Commission examining linked and thematic cases. This would be impracticable if the agreement of the family had to be obtained for every case which might come under the scope of this examination.

The Group therefore proposes the adoption of a middle course. Before an individual case, which was not linked to a theme being examined by the Commission, passed into the process of information recovery, the Commission would need to obtain the agreement of the next-of-kin and would take into account the views of other members of the family. If the agreement of the next-of-kin was not obtained, an individual case would not be treated in the process of information recovery.

However, where the Commission at its discretion, wished to examine linked or thematic cases through a process of information recovery, it would take the views of families into account but would not need to obtain their express agreement. Before taking a decision, it would weigh the views of the families and the interests of broader society.

As stated earlier, before taking oral evidence in thematic examination, the Commission would publish a list of the cases which it proposed to deal with under this procedure. All concerned would need to be clear which cases were being dealt with under information recovery and which under thematic examination.

Protection of Life and Disclosure of Information

Those interviewed by the Commission would need to be clear on what basis they were being interviewed. Those who passed on information would need to know what protection was to be afforded to that information and whether the statement was to be treated as admissible or non-admissible in any future proceedings.

In all its work the Commission would pay special consideration to the need to protect sensitive information, in particular where there might be a risk to a person's security or life. This will present a very demanding duty on the Commission. Unless those who pass sensitive documents or information to the Commission have the highest confidence in its integrity and security, they will not do so.

The Commission should have the discretion to decide how much information would be made available to the family or put in the public domain, bearing in mind its obligations in respect of protection of information and data, its duty to protect life, the interests of national security, and the objective of promoting reconciliation. Subject to these obligations, the Commission would as far as possible keep the families informed of progress in their case and answer their questions.

In cases where government agencies considered that information supplied by them should not be put in the public domain for reasons of national security or risk to life, the Group expect that disagreements between the Commission and the agencies would be rare. In the event of disagreement, the Commission would seek to resolve the matter, according to agreed criteria, with the relevant agencies or, if necessary, the responsible Minister. However the final decision would rest with the Commission, bearing in mind the obligation to protect life under Article 2 of the European Convention of Human Rights (ECHR).

Provision for this in respect of information held by British authorities would need to be given a statutory basis under UK legislation. Separate protections would be necessary in respect of information obtained from the Irish authorities.

Conclusions of the Commission through Information Recovery and Thematic Examination

The intention of the information recovery process and thematic examination is to resolve unanswered questions. In examining thematic cases in particular, the purpose is not to name or blame individuals but to obtain a greater understanding of the conflict, of what went wrong and why it went wrong. The Commission would be able to recommend an apology or other measures designed to promote reconciliation.

Reports on Historical Cases

The Commission would produce a report to families who engage in the processes of review, information recovery or thematic examination. It would also publish regular reports summarising the cases with which it has dealt. Details concerning particular cases would not appear in public reports without the agreement of the family.

The Commission would also publish reports on completion of its thematic examinations. The Commission would take full account of issues of privacy, protection of sensitive information and data, protection of life and related issues, as previously outlined, before publishing any report.

A report would be circulated in draft, before publication, to any group or individual participant who might wish to challenge the conclusions, to allow opportunity for comment.

Mediation, Advice and Support for Families

The Commission would have the capacity to mediate to help resolve difficult issues outside its remit in respect of historical cases. It might, for example, help the families of those who suffered as result of the Omagh bombing.

The Commission would ensure that the level of support and guidance to families should be improved and available to all.

Documents

In the process of information recovery and thematic examination, the Commission would focus on particular aspects of a case. The Commission would not need to circulate large numbers of documents to interested persons since there would be no adversarial procedure. This should ease the sort of problems which arise for existing public inquiries in respect of redaction of documents and protection of identity of covert sources, and for the various agencies in servicing those inquiries. It should also help to encourage the full involvement and cooperation of all those involved in a particular case.

The Commission should be able to draw on the documents of the Stalker/Sampson Reports and the Stevens' Enquiries. Lord Stevens conducted three Enquiries into allegations of collusion between the security forces and Loyalist paramilitaries in Northern Ireland. These began in 1989 and culminated in the publication of the Stevens 3 Report in April 2003.

He noted that in the course of the three Enquiries:

*"...9,256 statements have been taken, 10,391 documents recorded (totalling over 1 million pages) and 16,194 exhibits seized."*⁶⁷

67. Stevens 3, paragraph 4.1.

This collection is still preserved intact and would constitute a valuable resource for the new Commission, to which it should have full access. Adequate security measures would need to be put in place to safeguard the material and to ensure compliance with human rights obligations. Expertise would be required to make an accurate analysis of the material and to advise on the implications of any disclosure.

Public Inquiries

The Group intends that the new process for information recovery and thematic examination would avoid the need for further public inquiries. It believes, for reasons which have been set out elsewhere, that public inquiries are no longer the most appropriate way to deal with the legacy of the past and to bring resolution to families in historical cases.

The Group would have liked, if it could, to bring the existing public inquiries (apart from the Bloody Sunday Inquiry) into the new process. If, by the time the new Commission has been established (potentially by late 2010), these existing inquiries are likely to be completed, it will be better for them to complete their work and submit their Reports. But the Group recommends that the British Government should review their progress.

The British Government should also make its position clear on its commitment to establish a public inquiry into the death of Patrick Finucane. That is a decision for the British Government to take, in conjunction with the Finucane family. The Group believes, however, that the new Commission offers a new and better way of dealing with historical cases.

The Group would therefore ask that the recommendations made in this Report are considered seriously in this context. Although the process of information recovery and thematic examination are different to that of a public inquiry, the Group believes that the processes within the new Commission would be capable of delivering an independent internationally-led investigation into the death of Patrick Finucane, as well as an examination of allegations of collusion as a theme in a broader context.

This argument would fall away if the Commission was not established and the case for a public inquiry, compliant with the recommendations of Judge Cory, would then receive the Group's full support.

The Omagh families

The bomb attack in Omagh on 15th August 1998 was the worst single loss of life related to the conflict, although it occurred after the signature of the Agreement ⁶⁸ in April 1998.

During its consultations the Group met with some representatives of some of the Omagh families and, as with other victims and survivors of the conflict, were moved by their suffering and their efforts to secure justice. The families the Group met did not want the Group to bring the Omagh case within its process and the Group respects this. The Group has taken the Agreement ⁶⁹ as the end limit for its definition of a historical case, although that would not prevent cases falling after that date, which are closely linked to historical cases, being dealt with by the new Commission.

Without, however, bringing the Omagh case formally within its processes, the Group believes that the Commission could play a role in engaging with the Omagh families to help find a way to bring resolution to their concerns and unresolved questions.

68 & 69. Known as the Belfast or Good Friday Agreement, 10 April 1998.

Coroners Service

The Group is concerned by the burden imposed on the Coroners Service by the outstanding inquests into historical cases. The length and scope of these have expanded. The Group recognises, however, that the outstanding inquests raise important questions and that some families have fought for many years through the courts to establish their rights in these proceedings.

The Group had hoped to make a clear recommendation whereby the burden on the Coroners Service could be reduced while recognising the families' desire to resolve questions concerning the deaths of their relatives. This has proved difficult to achieve. As noted in Chapter 7, inquests touch on sensitive human rights issues which have been much contested.

However, the new Commission would make available new processes for resolving unanswered questions and promoting reconciliation. The Group hopes that these might be used, where possible, as an opportunity to reduce the burden which historical cases place upon the Northern Ireland Coroners Service. Since, in addition to the outstanding inquests, there is pressure to review other inquests, the Group proposes also that the Commission should monitor the burden of historical cases on the Coroners Service and, if necessary, make recommendations to Government.

Criminal Case Reviews

The Group has adopted a similar approach in the case of criminal case reviews. It does not propose any change to the existing procedures of the Criminal Cases Review Commission (CCRC), since these also touch on sensitive human rights issues. But it recognises that the number of cases referred to the CCRC, to review convictions imposed during the conflict, may increase.

The Group itself cannot assess the likely scale of this. But it proposes, as with the Coroners Service, that the new Commission should monitor the burden of historical cases on the CCRC and, if necessary, make recommendations to Government.

On the Runs'

Chapter 6 of this Report recounts the reasons why the previous attempt to resolve the issue of 'on the runs' failed. This is a sensitive issue on which the Group has sought to find a way forward. But it is difficult to devise a scheme which both preserves the spirit of the previous solution and avoids the criticisms levelled against the Northern Ireland Offences Bill. If a privileged procedure is accorded to one group of people accused of crimes relating to the conflict, it would be difficult to deny that procedure to others accused of conflict-related crimes.

The case for a special solution is also weakened by the fact that *prima facie* evidence of criminality exists in respect of relatively few people classified as 'on the run'. In the case of 'on the runs', the Group therefore proposes that, if there was sufficient evidence, a case should be referred to the DPPNI on whether to proceed to trial in the normal way.

However, the Group envisages, as outlined in Chapter 7, that the proposed new Commission should make recommendations on how a line might be drawn at the end of its five-year mandate; and that this might embrace a procedure for dealing with historical cases in respect of 'on the runs'.

Cooperation with the Irish Government

To be fully effective, the Commission will need cooperation from the Irish Government in implementing its tasks.

In respect of historical cases, this assistance will need to cover issues such as the production and protection of documents, and the protection afforded to witnesses in making statements to the Commission. If such statements are not to be admissible in criminal or civil proceedings, this privilege would need also to apply in the Republic. The Group also recommends that, where the Commission considers, in the course of examining a historical case in the north, that a historical case in the south would benefit from further investigation or an information recovery process, it would invite the Irish Government to cooperate with its processes.

The Commission, with the cooperation of the British and Irish Governments, should also seek to examine the questions which remain of concern to the families of those who died in the Dublin and Monaghan bombings, in particular the release of relevant files that would help their search for truth.

Consistent with its recommendations on other public inquiries, the Group also considers that the Irish Government should review the Inquiry into the deaths of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan.

CHAPTER 9 | Conclusions and the Way Ahead

The Group acknowledges that its recommendations represent significant challenges for many within society. This Report will generate further debate on how the past should be dealt with and this will be an important part of taking forward the recommendations.

The Group expects that, at the end of a period of debate, the British Government would give its formal response. The Group would invite the Irish Government and the OFMDFM to do likewise. The Group urges the British Government, in the intervening period, not to lose time in preparation of the necessary legislation and in taking other steps towards implementation, including the establishment of an Implementation Group. The momentum built up during the Group's work should be maintained and the prospects which the Legacy Commission can deliver should be realised as quickly as possible.

The Report represents a sizeable body of work for those who will have the task of implementing its recommendations. It will take time to do this in a way which is true to the Group's intention, which is sensitive to the needs of victims and survivors, and which takes account of the present landscape of processes. It will be important to ensure a smooth transition from those to the new Commission.

The Commission involves complex procedures. Primary legislation will need time and care to prepare. But the Group believes that the Commission could be established by late 2010.

The selection of Commissioners for the Legacy Commission and in particular the International Chair of the Commission will be critical to its success. Work should begin as early as possible in seeking out potential candidates and every effort should be made to appoint the Commissioners as soon as possible after the requisite legislation is approved.

Other recommendations within the Report should also be developed further by the Implementation Group in an efficient manner. In particular, the Group would urge that recognition payments should be made as soon as practicable to the nearest relative of those who died as a result of the conflict.

APPENDIX 1 |

Pen pictures of the Co Chairs, the Group members, and the International Advisers

Robin Eames has for many years been involved in community life in Northern Ireland, and has been a prominent advocate for peace and understanding.

He was born in 1937, the son of a Methodist minister and his early years were spent in Larne, with the family later moving to Belfast. Educated at the city's Belfast Royal Academy and Methodist College he then went on to study at the Queen's University of Belfast, graduating LLB in 1960, and earning a Ph.D. in Ecclesiastical Law and History in 1963.

In May 1975 he was appointed Bishop of the cross-border diocese of Derry and Raphoe and in 1980 he was elected the Bishop of Down and Dromore. In 1986 he became the 103rd Archbishop of Armagh and Primate of All Ireland, holding this position until 2006. He was created Life Peer in August 1995 and on June 13, 2007 he received the Order of Merit from the Queen.

Denis Bradley is a former vice-chairman of the Northern Ireland Policing Board. Born in Buncrana, Co. Donegal, he was educated in St. Columb's College, Derry and the Lateran University in Rome. He served as a priest in the Bogside during the early days of the Troubles.

He is a co-founder of Northlands Centre, Northern Ireland's largest independent treatment facility for alcohol and drug problems. He still works, on a part-time basis, as a clinical and management consultant.

Denis received the Honorary Degree of Doctor of Laws (LLD) for his contribution to policing and community issues in Northern Ireland.

Jarlath Burns played Gaelic football for Armagh from 1986–1999 and was captain when the team won the Ulster championship for the first time in 17 years.

He is vice principal of one of the largest post-primary schools in Northern Ireland and is a fluent Irish speaker, spending three weeks every summer as headmaster of an Irish language residential course for young people in Donegal.

He is also an analyst for the BBC on its Gaelic games and writes a weekly column in the paper 'Gaelic Life'. He has held high office in the GAA, most notably as the first Players' Representative and latterly as Chairman of the Irish Language and Cultural Committee. He is currently chairman of the GAA's 125th Anniversary committee and is Irish Language

officer in the Armagh County Board of the GAA. He comes from a Republican background and lives in Mullaghbán in south Armagh.

Lesley Carroll was born and grew up in Coalisland, Co Tyrone. She has worked in North Belfast for twenty years and is minister at Fortwilliam & Macrory Presbyterian Church, Belfast.

She co-convenes the Presbyterian Church in Ireland's Church & Society committee and is a member of the General Board. She is a regular broadcaster and has been involved in community projects, including work in schools.

James Mackey is a retired Lecturer of Philosophy and a Professor of Theology. Born in Waterford, he holds a doctorate in philosophy from Queens University and has taught various courses including ethics, human rights and philosophy of religion.

In 1979 he was appointed Thomas Chalmers Professor of Theology at the University of Edinburgh and held this chair for 20 years. In 1992 James organised and directed an international conference on the cultural diversity and unity of the European Community, as part of Derry's IMPACT 92 PROGRAMME. From this conference he introduced and edited a volume of papers entitled *The Cultures of Europe: the Irish Contribution* which was published in 1994. His other works include *Morals, Law and Authority; Power and Christian Ethics* and *Religion and Politics in Ireland*.

Between 1985 and 1987 James also scripted and presented two television series on world religions for Channel 4: *The Hall of Mirrors* and *The Gods of War*; as well as two series for BBC Northern Ireland on Northern Ireland's divided society: *Perspectives* and *Perspectives II*.

In 2005 he served on the Independent Assessment Panel for the assessment of the Northern Ireland Policing Board and took special responsibility for the matter of Human Rights implementation.

Willie John McBride MBE is a former rugby union player who played for Ireland and the British Lions. He played 63 Tests for Ireland including eleven as captain, and toured with the Lions five times – a record that gave him 17 Lions Test caps. He also captained the most successful ever Lions side which toured South Africa in 1974 and won the Test series.

After retiring from playing the game, Willie John coached the Irish team and in 1997 he was an inaugural inductee into the International Rugby Hall of Fame. In 2004 he was named in Rugby World magazine as 'Heineken Rugby Personality of the Century.' He is also a past President of Ballymena RFC.

Willie John worked in the banking industry from 1959 to 1994. He is currently the Vice President of Riding for the Disabled Association Northern Ireland and is President of the Wooden Spoon Society, Ulster region.

He has received many honours including being made a freeman of Newtownabbey Borough Council and being conferred with a Doctorate of Law by University College Dublin in 2004. He was awarded an MBE for services to Rugby football in 1971.

Elaine Moore is an addiction counsellor with Northlands Drugs and Alcohol Project based in HMP Magilligan. Born in Derry/Londonderry, Elaine started her career as a detached youth worker in Liverpool and subsequently worked in a rehabilitation unit in Belize before working for the Northern Board on the ‘tackling drugs together’ initiative. Her work has mainly been in the voluntary sector focusing on community development and working with drug and alcohol users in a number of different settings.

David Porter is Canon Director for Reconciliation Ministry at Coventry Cathedral, England. He has over twenty years experience in faith based peace building and reconciliation work in Northern Ireland as co-founder and Director of Evangelical Contribution on Northern Ireland (ECONI), which in 2005 became the Centre for Contemporary Christianity in Ireland.

A graduate of the London School of Theology with a Masters in Peace Studies from the University of Ulster, in 2006 he was Visiting Practitioner Fellow at the Centre for Reconciliation, Duke University Divinity School, North Carolina. In 2000 he was appointed a member of the Civic Forum and is currently a member of the Community Relations Council.

Martti Ahtisaari is the former President of Finland and the current Nobel Peace Prize Laureate. Since leaving office, he has accepted positions in various international organisations. In 2000, the British Government appointed him to the team overseeing the inspections of IRA weapons decommissioning in Northern Ireland. He also founded Crisis Management Initiative (CMI), an independent, non-governmental organisation with a goal in developing and sustaining peace in troubled areas.

On 1 December 2000, he was awarded the J. William Fulbright Prize for International Understanding by the Fulbright Association in recognition of his work as peacemaker in some of the world’s most troubled areas.

In 2005, Martti successfully led peace negotiations between the Free Aceh Movement and the Indonesian government through his non-governmental organization CMI.

Brian Currin is qualified as an attorney in South Africa and works in mediation and institutional transformation. In 1994 he was appointed by President Mandela to chair a Prison Audit Committee and was subsequently involved in the creation of the Truth and Reconciliation Commission.

In 1987 he founded the National Directorate of Lawyers for Human Rights which he headed for eight years. He has worked in Sri Lanka, Rwanda and the Middle East on political transformation.

APPENDIX 2 |

Organisations and Individuals who met with and/or made a submission to the Group

The following list is not wholly inclusive of all those who engaged with the Group during the course of their work. The Group met with and received correspondence from a great many people and in some cases confidentiality was specifically requested.

Alastair Carmichael MP	Committee for the Office of the First Minister and deputy First Minister
Alliance Party	Committee on the Administration of Justice
An Fhirinne	Community Foundation for Northern Ireland
An Garda Siochana	Community Relations Council
An Taoiseach	Compensation Agency for Northern Ireland
Ardoyne Commemoration Project	Coroners Service for Northern Ireland
Attorney General	Corrymeela Community
Ballymena Borough Council	County Armagh Phoenix Group
Bill of Rights Forum	Creggan Enterprises
Border Action	Criminal Cases Review Commission
British Irish Parliamentary Association	Criminal Justice Inspection Northern Ireland
British Irish Rights Watch	Democratic Unionist Party
Carrickfergus Borough Council	Deputy First Minister
Causeway Dialogue Group	Derry & Raphoe Action
Chief Constable of the Police Service of Northern Ireland	Director of Public Prosecutions for Northern Ireland
Church of Ireland	Disabled Police Officers Association of Northern Ireland
Cloonty Group	Dr Brandon Hamber
Coiste na n-Iarchimi	Dr Marie Breen Smyth
Columba Community	Ely Centre
Commission for Victims and Survivors for Northern Ireland	

Ex Prisoners Interpretative Centre	National Museums Northern Ireland
Falls Community Council	New Lodge Six: Time for Truth Committee
Families Acting for Innocent Relatives	Northern Ireland Affairs Committee
Families of the Ballymurphy Eleven	Northern Ireland Catholic Council on Social Affairs
Families of the Disappeared	Northern Ireland Children's Enterprise
Family and Representatives of Patrick Finucane	Northern Ireland Commissioner for Children and Young People
Fear (Fermanagh) Ltd	Northern Ireland Council for Integrated Education
Federation of Small Businesses	Northern Ireland Council for Voluntary Action
Fermanagh Churches Forum Committee	Northern Ireland Human Rights Commission
Firinne	Northern Ireland Memorial Fund
First Minister	Northern Ireland Police Fund
Glencree Centre for Peace and Reconciliation	Northern Ireland Prison Officers Central Benevolent Fund
Grand Orange Lodge of Ireland	Northern Ireland Prison Officers Widows Association
Green Party	Northern Ireland Prison Service
Healing Through Remembering	Northern Ireland Retired Police Officers Association
Historical Enquiries Team	Omagh Support & Self Help Group
Independent Monitoring Commission	One Small Step
Irish American Unity Conference	Owen Paterson MP
Irish Congress of Trade Unions: Northern Ireland Committee	Pat Finucane Centre
Irish Football Association	Police Federation for Northern Ireland
Judiciary	Police Ombudsman for Northern Ireland
Justice for the Forgotten	Police Service of Northern Ireland
Lord Stevens and his Investigation Team	Presbyterian Church in Ireland
Maranatha Community	Prime Minister
Methodist Church in Ireland	Prison Governors Association
Minister for Foreign Affairs	Prison Officers Association
Mr Barry Gilligan, Vice Chairman Northern Ireland Policing Board *	Professor Christine Bell
Mr Kit Chivers, former Chief Inspector of the Criminal Justice System	

Professor Sir Desmond Rea, Chairman
Northern Ireland Policing Board *

Progressive Unionist Party

Pushkin Trust

Quaker House Belfast Project

Relatives for Justice

Relatives for Justice South Derry

Relatives for Justice Tyrone

Rosemary Nelson Inquiry

Royal College of Nursing

Royal Ulster Constabulary George
Cross Foundation

Royal Ulster Constabulary George
Cross Parents Association

Royal Ulster Constabulary George
Cross Widows Association

Rt Hon John Reid MP

Rt Hon Lord Brooke of Sutton Mandeville

Rt Hon Lord Hurd of Westwell

Rt Hon Lord King of Bridgwater

Rt Hon Lord Mayhew of Twysden

Rt Hon Paul Murphy MP

Rt Hon Peter Hain MP

Rural Community Network

SAVER/NAVER

Secretary of State for Defence

Secretary of State for Northern Ireland

Security Service MI5

Sinn Fein

Sir Hugh Annesley

Sir Kenneth Bloomfield

Sir Ronnie Flanagan

Smithwick Tribunal

Social Democratic & Labour Party

South Down Action for Healing Wounds

South East Fermanagh Foundation

Superintendents Association
of Northern Ireland

Tim Parry & Jonathan Ball Foundation

Together Encouraging And Remembering
Towards Understanding & Healing

Trauma Advisory Panels

Trauma Recovery Network

Trustees and Director of the Northern
Ireland Centre for Trauma & Transformation

Tyrone East Phoenix Group

Ulster Defence Regiment & Royal Irish
Aftercare Service

Ulster Defence Regiment Association

Ulster Defence Regiment Benevolent Fund

Ulster People's College

Ulster Pubs

Ulster Special Constabulary Association

Ulster Unionist Party

United Campaign Against Plastic Bullets

US Consulate General

Victims Unit, Office of the First Minister
and deputy First Minister

WAVE Trauma Centre

West Tyrone Voice

** Gave evidence from a personal perspective with the permission,
but not on behalf of, the Northern Ireland Policing Board.*

APPENDIX 3 |

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APPENDIX 4 | High Profile Investigations into Alleged Collusion

Stalker/Sampson

In the mid 1980s the Deputy Chief Constable of Greater Manchester Police, John Stalker, and subsequently Colin Sampson, the West Yorkshire Chief Constable, were appointed by the then Chief Constable of the RUC⁷⁰ to investigate three specific cases⁷¹ where it was alleged that a specially trained undercover RUC team known as the “Divisional Mobile Support Unit” had carried out a “shoot to kill” policy. The report of this investigation was not published but was delivered to the Director of Public Prosecutions (DPP) in Northern Ireland, who concluded that the evidence did not warrant any further prosecutions⁷² in respect of the shootings. The DPP did consider that there had been evidence of the commission of offences of perverting or attempting or conspiring to pervert the course of justice, or of obstructing a constable in the execution of his duty, and that this evidence was sufficient to require consideration of whether prosecutions were required in the public interest. Following consultation with the Attorney General of the day, Sir Patrick Mayhew, the decision was taken not to pursue these prosecutions.⁷³

Stevens I

In September 1989 the Chief Constable of the RUC commissioned Sir John Stevens to undertake an investigation into linkages between members of the security forces and Loyalist paramilitaries. In May 1990 a summary of the Stevens I report was published, the main finding of which was that there had been evidence of collusion between members of the security forces and Loyalist paramilitaries. However, it was the view of the inquiry that any collusion was “restricted to a small number of members of the security forces and is neither widespread nor institutionalised”. A full report also went to the DPP which led to a large number of criminal investigations.

Stevens II

The Chief Constable then asked Sir John Stevens to look again into Stevens I matters when fresh information came to light as a result of a Panorama programme and allegations raised by British Irish Rights Watch. No report was published as the inquiry undertaken during Stevens II was to address specific questions asked by the DPP.

70. On 11 April 1984, the DPP requested the Chief Constable of the RUC to conduct further investigations into the allegations of shoot to kill. John Stalker and Colin Sampson carried out the investigation.

71. 1. Killing of three unarmed IRA members (Eugene Toman, James Gervaise McKerr and John Frederick Burns) at an RUC checkpoint in Craigavon,

Co. Armagh on 11 November 1982. 2. Killing of Michael Tighe at an IRA arms cache on a farm near Lurgan, Co. Armagh on 24 November 1982. 3. Killing at an RUC check point in Mullacreevie, Co. Armagh of two INLA members, Seamus Grew and Roddy Carroll on 12 December 1982. In October 2007 Senior Coroner, John Leckey, reopened the inquests into all six deaths.

Stevens III

In May 1999, following a letter from the DPP in Northern Ireland to the then Chief Constable of the RUC, Sir Ronnie Flanagan, the latter asked Sir John Stevens to re-investigate the murders of Patrick Finucane and a young student Brian Adam Lambert and to examine certain issues surrounding the handling of agents. A public report of Stevens III was presented by Sir John Stevens in April 2003 and a file went to the DPP, leading to 98 convictions and further recommendations.

Stevens' third report upheld the claim and explicitly said that collusion leading to the murder of nationalists (and some unionists wrongly thought to be Catholic or nationalist) had taken place. The report "highlighted collusion, the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, and the extreme of agents being involved in murder. These serious acts and omissions have meant that people have been killed or seriously injured".

Cory Inquiries

In April 2004 Judge Cory reported on the findings of his investigation into allegations of collusion by members of the security forces in the contexts of the deaths of Patrick Finucane, Robert Hamill, Rosemary Nelson, Billy Wright, RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan

and Lord Justice and Lady Gibson.⁷⁴ In his reports, Judge Cory said that members of the public must have confidence in the actions of Governmental agencies, particularly those of the army and police force. He said there could not be public confidence in Government agencies guilty of collusion or connivance in serious crimes. He concluded that, because of the necessity for public confidence, the definition of collusion must be reasonably broad when applied to the actions of these agencies.

Judge Cory's task was to assess whether there is a case to be answered as to possible collusion, in a wide sense, by members of the security forces in these deaths such as to warrant further and more detailed inquiry. He therefore stated that his findings were preliminary only and should not be taken as final determinations of any matters. He concluded that there were matters of concern in all six cases.

Police Ombudsman for Northern Ireland

In January 2007, the then Police Ombudsman for Northern Ireland, Mrs Nuala O'Loan, released the findings of her investigation into a series of complaints about police conduct in relation to the murder of Raymond McCord Junior in November 1997. The Police Ombudsman upheld a complaint from his father, Raymond McCord, that over a number of years police acted in such a way as

72. 3 RUC officers had been prosecuted in relation to the shooting of Eugene Toman on 11 November 1982, were subsequently tried and then acquitted; 1 RUC officer was prosecuted for the shooting of Seamus Grew on 12 December 1982, tried and acquitted.

73. Taken from statement by Attorney General, Sir Patrick Mayhew, to House of Commons on 25 January 1988.

74. Details of the progress of the Cory Inquiries are set out in Chapter 6.

to protect informants from being fully accountable to the law. In considering the issue of whether there were collusive acts evidenced in this case, the Police Ombudsman drew on the definitions of collusion determined by Judge Cory and the description of collusion drawn by Lord Stevens in the Stevens III Inquiry report. She concluded that her investigation had established collusion between certain officers within Special Branch and a UVF unit in North Belfast and Newtownabbey. She went on to say that “It would be easy to blame the junior officers’ conduct in dealing with various informants and indeed they are not blameless. However, they could not have operated as they did without the knowledge and support at the highest levels of the RUC and the PSNI.”

In late 2007 the Police Ombudsman was asked by the UK Government to examine the Stalker/Sampson files in response to concerns raised by the Council of Europe in relation to the killing of three men in 1982.⁷⁵ The Police Ombudsman is currently scoping the relevant material in order to conduct this examination.

ECHR Cases

The European Court of Human Rights has considered a number of cases alleging ineffective investigations or collusive activities, in which it found that human rights had been violated because of the failure of the state authorities to conduct a proper investigation into the circumstances of the deaths. The Court was not prepared to conduct, on the basis largely of statistical information and selective evidence, an analysis of incidents over the past thirty years with a view to establishing whether they disclosed a practice by security forces of using disproportionate force.⁷⁶

75. Gervaise McKerr, Sean Burns and Eugene Toman.

76. ECHR May 2001, Judgments in the cases of Hugh Jordan v the United Kingdom, McKerr v the United Kingdom, Kelly and Others v the United Kingdom and Shanaghan v the United Kingdom.

APPENDIX 5 |

Keynote address delivered by the Co-Chairs of Consultative Group on the Past, Lord Robin Eames and Denis Bradley, on 29 May 2008 in the Titanic Quarter, Belfast

Anyone who knows the history of Ireland will have been greatly encouraged by the developments we have seen in Northern Ireland over the last number of years. What has happened has given hope to many places throughout the world that are in a seemingly endless cycle of violence. It has also given our communities a sense of purpose and new direction – a direction that points to a better and shared future where religious and political differences can be accommodated and respected.

The relationships that are being built upon on a daily basis have given rise to hope where there had once been despair and it is important that we acknowledge that today.

Despite the appearance of moving forward the reality is that we live in a society that is still divided. However it is important that we look forward with renewed hope. There are issues from the past that must be dealt with if we are to truly ensure that we do not repeat the mistakes of the past. Dealing with our past will secure our future. That is why this Group was established.

Finding ways to deal with the legacy of the past is not easy – it is one of the greatest challenges facing all of us today. It is an issue that has affected thousands of people from every walk of life.

When I was asked to co-chair this Group I was under no illusions about the enormity of the task ahead of us. And that has proven to be the case.

When we were established our remit was to seek a consensus on the way forward. There is a consensus that we must do things differently.

In September we embarked on an extensive public consultation. During the subsequent five months we listened to stories of human tragedy where the level of pain and hurt cannot be underestimated. That pain and hurt cuts right across this society and we all must never forget the sacrifices many of our people made during the conflict and the scars which can never heal.

We have to find ways to ensure that future generations do not experience such suffering. Listening to the hurt expressed during our public consultation encouraged us to resolve that – ‘this must never happen again’.

Our consultation ended in January and we have received many thoughtful and considered submissions. We have discussed and debated the suggestions made in these submissions. We said from the outset that we were not the process for dealing with the past but inevitably we became part of it. We were overwhelmed by the openness and honesty of the people we met who wanted to tell us their story.

Since January we have been reflecting on all the differing experiences people have endured over the past 40 years and beyond and on their thoughts on what needs to be done to help them deal with the legacy they carry.

That reflection has been difficult for us all – each member of the Group has had to engage on a personal pilgrimage of heart searching. As you can imagine, we have received a great range of differing views on what should be done. We have listened carefully to them all. What we now hope to do is to build on the good work that has been undertaken by many organisations to create a measure of consensus on the way forward.

Over the last few months we recognize there has been much discussion on how to deal with the past and much speculation on what this Group would recommend. It seems that hardly a day

goes by without something from the past being reported in the news.

On one level such reporting is understandable but we consider that the debate needs to be more fundamental. We need to question whether current attitudes and approaches are truly appropriate to the needs of our society in which the past has left such a painful and contested legacy.

Although we have still to finalize our report and recommendations we felt we needed to contribute these thoughts to the public debate. We hope that in doing so we can help continue what is a necessary and important discussion.

Now that we have had time to reflect we want to set out what we believe are the critical issues that Northern Ireland society needs to deal with – issues that need to be confronted if we are to have a better future that is not overshadowed by the past.

We will consider these issues further in our report to be published later this year when we will make our recommendations. Today we want to share some of the areas we have identified as crucial to that task.

During our consultation we were made only too aware of the needs of victims and survivors. Although we heard from many of them we are equally conscious of the silent thousands, we did not meet, who carry their grief in private. The dignity and honesty of the victims and survivors we met, and who shared their experiences with us, has been humbling. We are conscious that they, and their needs, are not always acknowledged.

They came from all parts of our community – the hurt they experienced was caused by Republicans, Loyalists and the State – yet their grief was the same.

We talked to members of the security forces and listened to horrendous stories where husbands were shot in front of their families while off duty – and of part-time members being driven from their land through harassment and intimidation. They were those who saw themselves as holding the line in the cause of law and order.

We were deeply moved by stories of people being shot on the streets by the Army; of harassment during times of immense grief and trauma. We heard from those who believe collusion was the policy of the State, a fact of life, not a myth or a few rogue elements operating outside the guidelines.

We heard from those who were targeted by Loyalists simply because of their religion where often relatives' grief was compounded by spurious claims that their loved one was involved in an opposing paramilitary group.

We also met families who suffered at the hands of paramilitaries from within their own communities and listened intently to their sense of helplessness and in some cases, hopelessness.

We have become aware of so many people working endless hours, often on a voluntary basis, to help those who have suffered the most over the last 40 years. It is important that they are recognized for their commitment and dedication.

We also met many groups that were formed because of a lack of direction and co-ordination by the Government at the time. Many of them are working in isolation from others who are going through exactly the same difficulties and experiences.

These groups are doing their best to meet the needs of victims and survivors – but they cannot be expected to right all the wrongs or deliver all the services required. Victims and survivors have many health and welfare issues – we are not convinced all these are being met. Indeed as victims and survivors are getting older their needs are becoming more and more acute and this also needs addressed.

After listening to those directly affected by the conflict and the organisations who support them, we have many thoughts on what needs to be done to improve services and support mechanisms for victims and survivors. We will address these in our report and will liaise closely with the Commissioners for Victims and Survivors as they develop their work programme, to ensure these welfare needs are met.

The recent political fall-out surrounding legislation to empower the Commissioners has been, to say the least, unfortunate. Thankfully this has now been resolved. Whatever recommendations we make in our report, it is important that, in the Commissioners for Victims and Survivors, we now have a clear process to deliver for those in need.

It is apparent to us however that there are other challenging issues to be addressed by those working in the sector. Sometimes it seems as if the conflict is now being fought through victims and survivors. Many of the arguments and disagreements, especially the definition of a victim or hierarchy of victims, are hurting the very people we should all be striving to help. Even the debate around the Commissioners could be seen as symptomatic of this wider use of victims to score political points. In some cases the politicization of victims appears to be perpetuating the pain rather than healing it.

Victims and survivors are the people who paid the highest price for the political stalemate and division. As we all build the new political landscape we must not cause further hurt to them – they deserve better.

But we would be less than honest if we didn't say that in some cases we have witnessed victims and survivors themselves using their pain to continue division. This will need to be addressed – we all need to help people deal with their trauma in a way which can create a better future and gives hope to the victims and survivors.

It is our intention to address these complex and emotive issues in an honest and compassionate way in our final recommendations.

Unionist communities are hurting. This real and palpable hurt continues as a consequence of the Republican violence they experienced. In all our consultations it is unclear if Republicans truly appreciate the depth of hurt that exists in the Unionist community.

Republicans claimed they were targeting State forces in the guise of RUC/UDR members. Unionist communities, particularly in rural border areas, saw such tactics as deliberately killing fathers and eldest, or only, sons to drive Protestants from their homes and land. We have heard many stories from these communities who describe their experiences in this way – as at best raw sectarianism and at worst ethnic cleansing.

They believe Republicans have not come to fully understand the hurt that still exists and they need to acknowledge and appreciate the damage they did to the prospect of reconciliation between our two communities.

Indeed if the aim of the Republican struggle was to unite Catholic, Protestant and Dissenter, the brutal logic of their violence undermined this aim. The reality of the depth of division that has been caused between neighbours – who now need to share the future, needs to be acknowledged. Regardless of the uniform, the cause, countrymen killed fellow countrymen. While we realise Republicans have embarked on a process to address some of these issues we believe more needs to be done – apologising to non-combatants just isn't good enough.

An incident that captured what I am saying today was when I asked someone, what can we do for you? The answer was blunt – nothing, you can do nothing. I said there must be something. Finally he said the only thing we could give him was to get Republicans to tell his community that they will never kill them again. That was such a raw and emotive response and all of us need to hear it – and in particular Nationalists and Republicans need to hear it. We believe they will have to work tremendously hard to convince their fellow countrymen of this – only in their actions can this be done.

Republicans need to convince their neighbours that they will not take up arms again to advance their political cause. They have to say ‘it must never happen again’.

Nationalists and Republicans are also hurting. For them the conflict did not just happen. What happened in the late 60’s reflected a broad disillusionment and alienation from the State. The roots of this go back hundreds of years – from being driven from their land, of finding themselves in an alien state and feelings of being treated as second class citizens. Republican and Nationalists believe that Unionists have not come to terms with the reasons for this disillusionment and subsequent actions.

The re-emergence of the IRA did not just happen – the conditions had to be there for this to take place.

The experiences of many young Nationalists at the hands of the police and army, particularly after events

such as Bloody Sunday, internment, the Ballymurphy killings and other events, led them to join the ranks of the IRA. During our consultation we met with Republican ex-prisoners and families who believed they were under attack from the State and felt left with little alternative, as they saw it, but to meet violence with violence. Once that happened, a cycle of violence emerged that was not only difficult to escape from but established its own brutal logic.

Calls that Ulster was under attack also gave rise to primal sectarian violence by Loyalist paramilitaries who mostly targeted Catholics simply because of their religion. Loyalists sought to defend the Union but they killed those they wished to convince had a future within the Union. The flawed logic of their violence only served to undermine their goal.

In 1994 the Loyalist paramilitaries announced their ceasefires and offered their innocent victims abject and true remorse. During our consultation we heard from those victims – but Loyalists need to follow this through and match those words with action, including on decommissioning.

As we look forward surely it is time for Loyalists to ask themselves how they can make a further positive contribution to that future. Some Loyalist paramilitaries are further down that road than others but we need them all to show leadership to help bring their own communities, and society as a whole, into a new and better place.

They need to make it clear to their neighbours that they will not begin their violence again. We also want to hear from them that 'it must never happen again'.

Some of the most challenging meetings we held were with the families, and former members, of the security forces. These are the people who saw themselves as putting on a uniform to defend law and order in a time of great unrest and uncertainty. Today many feel they have been let down by the very Government they served – that the sacrifices they made are not appreciated.

We were powerfully struck during those meetings at the obvious anger they felt at being attacked and killed as they performed their duty, which as they saw it was defending society from falling into anarchy. They perceived Republican violence, the IRA campaign, and indeed Loyalist violence, as sectarian.

Their desire was that such people should be dealt with through the criminal justice system and they are dismayed at the prospect that no-one will be prosecuted for the death of their loved ones. The same was said of rogue members of the security forces who tarnished the good name of the RUC, UDR or RIR – they also should be subject to the full rigors of the law.

These views mostly came from within the Unionist Community. While they willingly expressed resentment at being let down by the Government and the Justice system, what they have great difficulty coming to terms with is that the State not only sought to be an honest broker during the conflict but also played

a combative role and, in this context, sometimes went beyond their own rules of engagement.

This is one of the critical issues facing us as a Group, difficult as it may be for some in our society to hear. That elements of the State, on some occasions, acted outside the law and through handling of intelligence it could even be said innocent people were allowed to die. We cannot ignore that, in fact, the State sometimes acted illegally.

We do not believe Unionists have anything to fear from listening to and trying to understand how the State conducted itself in these circumstances. Discovering or admitting wrong things were done, could be a liberating experience. One person put it this way; he said he believed that, deep in their hearts, Unionists knew that some accusations of collusion were not unfounded.

If we are to move out of the past in a healthy way then the State itself needs to acknowledge its full and complex role in the last 40 years. This is an area where we will be making some suggestions on how that can be done.

Having to confront the State about acknowledging its wrongdoing must not take away from the majority of men and women in the RUC and UDR/RIR who did their duty and suffered appallingly and unjustly as a result.

I have walked beside too many coffins and comforted too many families, to allow those stories of dedication to go untold.

We believe a space should be created for those who wish to tell their story; of how their lives changed profoundly as a result of the loss of a loved one, or of the trauma experienced and endured in the course of doing their jobs.

Throughout our consultation people's perceptions of how informers or state agents operated was raised on many occasions. Indeed we will all be aware of the seemingly endless newspaper stories, purporting to reveal information about the scale of the use of informers or to reveal their identities.

Various other published reports have documented the relationship between intelligence gathering and Loyalist paramilitaries. These have focused on particular localities and incidents but they do give cause for wider concern. There is less focus on the scale of the use of informers within Republican paramilitaries.

Looking at the broad picture, it was almost inevitable that the gathering of intelligence in this way would become part of the modus operandi of the Security Services. We have enough experience to know this and that their use undoubtedly saved lives and prevented further atrocities.

However Northern Ireland is a small place with close knit communities. The scale of the use of informers throughout the conflict corroded the fabric of our communities and the constant pressure now exerted for information about informers to be revealed only serves to further

undermine the well being of communities to a degree that could be poisonous. We all need to reflect on this matter.

There are some who told us during our consultation that all this information and knowledge must be made public. These people generally came from within the Nationalist/Republican community and they felt that the story of how the State used informers simply had to be told. Others were more circumspect. Full disclosure has its repercussions and no community would be left unscathed.

Would the Republican community like to have to tell an aging mother that her martyred son was actually an informer? That is what full disclosure could mean. This is something we will reflect upon further in our report.

The most frequent words we heard during our consultation were Truth and Justice. Many people have put their faith in the criminal justice system delivering for them. Even while knowing people would only serve a maximum of two years under the early release scheme, it was important for them that justice was seen to be done. We sympathize with this desire for justice.

However it is difficult for us not to listen to those experts who are telling us that the reality is that as each day passes securing justice becomes less and less likely. The public needs to understand the limitations in securing convictions.

In many historic cases witnesses have died, exhibits are no longer credible or have disintegrated over time. The evidence collected in the 1970's, and indeed in more recent times, is highly unlikely to meet modern forensic standards. This is the reality of the situation. If this is the reality then we believe we have a duty to begin to tell people that and not perpetuate false hope.

Others believe the criminal justice system cannot deliver what they want – truth. Not only do some tell us that they have no confidence in a system that, in their view, conspired against their community but the very mechanics of the system, at its best, fails to deliver the truth they seek.

An open and democratic criminal justice system is vital to a civilized society but the judicial process is a crude instrument to use when dealing with a conflict such as we have experienced. It often doesn't deliver what people seek or bring about the healing that they long for.

We understand how the piecemeal approach to the past has emerged and that those who crave the truth will explore any available avenue to get it. However there are other ways of seeking truth that do not include long drawn out judicial processes. What we need is our solution to our problem. This will form an important part of our report and recommendations.

Truth and Justice are not mutually exclusive but neither are they always attainable. How we, in our report and as a society, address this critical issue is one of the major challenges arising from the

legacy of our past. We must be honest with ourselves about the realities of what any court or inquiry can deliver.

Much of the focus on dealing with the past has fallen on the British Government but we would also encourage the Irish Government to play its role in looking towards the future. It should be aware of some of the issues which were brought home to us during our consultation.

One of the resonating themes we heard from some within Unionist communities was the belief that the Irish State turned a blind eye when Republicans carried out attacks in border areas and fled back into the south. There are also accusations that Republican leaders were able to live openly in the South even though they were wanted North of the border. Some Unionists also believe that the Irish Government in fact helped organise and arm the IRA in the early 1970's. By listening to those views then you begin to understand the depth of mistrust that still remains in some communities.

The Irish Government takes the view that this was not the case and that the Garda arrested and imprisoned many IRA members. They also argue that legislation on Extradition and Section 31 were evidence of their pro-active attitude in ensuring law and order was upheld along the border and subversives were not tolerated. Certainly today relations between the two Governments, and between North and South, are better than they have ever been.

Over the past decade the Irish Government has worked hard to rebuild relationships with Unionists and to mend broken fences – the recent pictures of Bertie Ahern and Ian Paisley are proof of that good work. But the belief remains in those communities who lived with that fear of attack. People in the South may be surprised about the hurt and suspicions that remain within some Unionist communities. We believe this is something that needs to be acknowledged.

We also met with victims and survivors from the South. In particular we had a very moving evening with the relatives of the Dublin/Monaghan and other bombings. Despite recent efforts many of the families still feel isolated and ignored in their search for truth.

We believe both Governments can contribute to a process that will facilitate the sharing of information between the two Governments that will allow these families to get as much truth as possible about those dreadful events. This is an area we hope to address in our report.

Perhaps the most important people when looking to the future and considering our violent past are our local politicians in the Devolved Administration. They have taken huge strides over the last number of years to make our society a better place for everyone. But it is now time for them to lead on this issue.

Many of them are still novice parliamentarians and we all need to support and encourage them as they

deal with the difficult issues – but importantly we need to hold them to account to make sure they deliver for us all.

How to deal with the past was the biggest omission from the political agreements that have brought the real prospect of stability. Our past was a result of a political problem which our politicians too often failed to address and resolve – this prolonged the stalemate and division. If we are to have a future not overshadowed by the past we will require political leadership from the Assembly. Many of them lived through the violence and are only too aware what it would mean were we to return to those dark days. They now have the power to make sure that it does not happen again.

If we are to become a truly mature and democratic society then the tribalism that is still too often prevalent must come to an end. They have many important issues to face in the months and years ahead but if we are all to share in a brighter future then leadership from them, on this issue, is vital. Sectarianism, the most poisonous legacy of our past, will only be banished from our communities if the political will exists.

In a TV programme recently on sectarianism a community worker at an interface commented that local politicians may throw words at each other across the Assembly floor but on the interfaces it is stones and petrol bombs, not words, that are thrown.

Our local politicians have a choice – they continue to act in this antagonistic way and use the past for selfish political aims and allow themselves to be guided only by the hurt on either side. Or they can become statesmanlike around this most difficult issue – that would be the greatest contribution they could make.

In the long run this would do victims and survivors, and indeed all our society, a much greater service.

We are also very mindful of the competing priorities the Executive will face in the years ahead. We believe that it should not be our fledgling political institutions that carry the financial burden to deal with the past – their job is to tackle the bread and butter issues that affect the daily lives of everyone across Northern Ireland. What we are urging them to do is take ownership of the future – the shared future we all long for.

In facing all of this we must keep in mind the goal of building our shared future – a shared future in which a measure of honesty and reconciliation can begin to take root in our relationships.

Honesty also requires us to say that one of our greatest disappointments in this process has been the lack of engagement by significant sectors of civic society. Many appear indifferent to this issue and indeed some have even refused our specific request to submit ideas.

This approach seems counter to the contribution of civic society to bringing about the conditions for peace. Many not only ensured that the essential fabric of our society was kept going during the darkest days, but now themselves face the ongoing legacy of the past at a policy level and in the daily practical outworking of their responsibilities.

To opt out of addressing the legacy of the past is to infer that the past has nothing to do with you. Yet the troubles were not simply bad people doing bad things. The prolonged violence and political stalemate points to a deeper malaise for which every institution and sector in our society must share some responsibility. Our report will address this wider societal context.

As we live in a society where Christianity is the religious practice of many people, then the Churches must play a leading role in building and sustaining a better future – their leadership is vital if we are to take on the scourge of sectarianism.

If we are to constructively address and co-operate with a process to deal with the legacy of the past, then we cannot avoid our shared responsibility. Such responsibility brings a moral imperative to create and nurture a generosity in our relationships with each other that will avoid the past being a weapon we continually use to keep alive and feed our mutual grievances and hurts.

As a group we are committed to addressing the legacy of the past in a way that will promote a greater goal of reconciliation within and between our people. We recognize that reconciliation remains an elusive and contested concept. However we believe, and will address this in our final report, that we must recover a positive and dynamic understanding of what reconciliation means, and will look like, if we are to have a better and shared future that is not overshadowed by the past.

For some of us this will mean being reconciled to the fact that our future is together, that we do share the land and its resources and a common sense of belonging to this place. For all of us it will mean bringing a new measure of common purpose reflected in greater cohesion, sharing and integration in our communities. We have no choice – there is no better future that is not a shared future and there is no shared future without reconciliation.

To accomplish this will require us to dig deep into our spiritual and moral values that inform us all – and which for many are found in faith. These give us a heritage where acknowledgement of wrong doing – saying sorry – and the giving and receiving of forgiveness are not signs of weakness but of great strength and courage.

The deepest, most difficult and profound legacy of our past is our antagonism and division. Only with a measure of reconciliation in our generation can we ensure that this legacy is not passed on to the coming generations, to the victims who are not yet born – their future is in our hands. Our report will unashamedly set this as the standard against which we judge how effectively we are dealing with the past. It is a test none of us can afford to fail. It must never happen again.



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