

The current composition of your Select Committee is a microcosm of the complexity of achieving a lasting peace in Northern Ireland. At one end of the spectrum you have Gregory Campbell MP who states his "Britishness" is not up for negotiation and at the other end the Sinn Fein MPs who won't participate in "British" government, therefore are not on your committee. Mr Campbell has on a number of occasions on ROI media eloquently asserted his Britishness, firmly ending the questioning by saying, "you don't get it, I am not Northern Irish, I am British". Sinn Fein representatives state that they are Irish and not Northern Irish. There are politicians, perhaps on your committee, and many residents of Northern Ireland who would claim to be Northern Irish and British, British and Northern Irish, Northern Irish and Irish, Irish and Northern Irish. Whilst these issues of identity are not a unique to these islands, there is a simple truth which pervades everything in Northern Ireland and gives the issues urgency: The Border Poll.

Whether it happens soon or several years in the future it is incumbent on us all to ensure that, whatever the outcome of the poll, the Britishness and Irishness of people living in Northern Ireland will be respected. It is an enormous task but one which will never be achieved unless the Legacy issues are dealt with.

We attach our proposal to comprehensively deal with these issues. It is 22 years since the Belfast/Good Friday Agreement, 14 years since the St Andrews Agreement, 5 years since the Stormont House Agreement and 1 year since "Addressing the Legacy of Northern Ireland's Past" was launched. Respectfully we suggest that there has been little or no progress but the expectation of a resolution remains. All of these agreements and initiatives are of common purpose when it comes to "Legacy Issues". We quote from the executive summary of the summary of submissions to "Addressing the Legacy of Northern Ireland's Past", but could supply numerous, equally explicit, extracts.

"first, any way forward must seek to meet the needs of victims and survivors; second, it must promote reconciliation to enable the people of Northern Ireland to move forward and build a better future; third, the proposals must reflect broad political consensus and be balanced, fair, equitable, and crucially, proportionate; and, finally, the proposals must be consistent with the rule of law."

AND

"As the Secretary of State has made clear, new ways to address the legacy of the past will only succeed if the institutions can command broad support and trust from the community.. This includes victims, survivors, wider society and those former members of the security forces who served during some of the darkest days to ensure the future of Northern Ireland would only ever be determined by democracy and consent, and never by violence."

It is impossible to read these two extracts and to review the latest proposals from the Secretary of State for Northern Ireland in anyway other than negatively. The proposals do not meet the basic tenets set out by the United Kingdom in an International Treaty and subsequent Legislation etc as the way forward and would leave the vast majority of the people of Northern Ireland in a worse position.

We are a group of individuals, North and South, East and West, who believe that the Truth Recovery Process offers the best means of addressing the ongoing issues of harm, trauma, political intractability and social division left by the Troubles. This is particularly so for victims/survivors in

Northern Ireland, but it also seeks to address the needs of all those affected, who live elsewhere on these islands. We believe that reconciliation on, and acknowledgement of the facts is a necessary first step to genuine reconciliation between people and communities. The journalist and a leading academic in the field, Professor Jake Lynch, a member of our working group, contextualises our submission as follows:-

“Whenever an armed conflict moves into a nonviolent phase, there is always an overhang of unresolved justice issues on all sides. These cannot all have their day in court, but something must nonetheless happen to address them, to bring at least some relief and satisfaction to survivors. Hence, mechanisms of transitional justice are needed, with the South African Truth and Reconciliation Commission often held up as a successful example. This proposal draws on the lessons of the TRC to envision an equivalent process for all on the island of Ireland. I hope it will influence the thinking of those in positions of responsibility as a whole society moves on from the traumas of the past”.

We acknowledge the differing priorities of the various groups and sections involved but we also realise that without leadership from the UK and Irish Governments, and politicians in the middle ground, the legacy issue will remain intractable. Victims in places as diverse as Belfast, Dublin, Birmingham, London, Warrenpoint and Warrington deserve closure. We believe that there must be no hierarchy of victimhood and no fear of the truth in our efforts to assist them in achieving it.

## **Executive Summary**

### **1. Introduction:**

This proposal was generated by discussions between former combatants, victim/survivors and academics. It outlines a Truth Recovery and Reconciliation process designed to address ongoing issues of harm and trauma, political intractability, social division and civil unrest in Northern Ireland, that could provide a road map out of the minefield of Legacy politics.

Well over 3,500 people died during the Troubles and over 47,000 were injured. It has been estimated that a third of people in Northern Ireland were affected directly or indirectly by political violence, and many others suffered in Britain, the Republic of Ireland and Europe.

Despite concerted efforts by politicians, officials, lawyers, NGO organisations, and community leaders, the complex justice issues that arose from the conflict remain unresolved. In this situation the Good Friday Belfast Agreement (1998) has evolved into a Political Truce rather than a Peace Agreement.

The Truth Recovery Process proposes an extra-judicial approach to achieving reconciliation on the facts for victim/survivors and former combatants alike. We regard this as a necessary first step towards healing past harms on the basis that without agreement on the facts, there can be no basis for agreement on anything else.

Unfortunately, the judicial approach adopted to date is cumbersome, time consuming, expensive, and often retraumatises victims and survivors. Far from leading to honest debate of the issues, or a full disclosure of the facts, let alone reconciling the parties, a trial often has the opposite effect because of its adversarial nature. Its main objective is to determine guilt and innocence of a criminal offence. Every acquittal and every conviction is therefore viewed as a victory or defeat for one side or the other.

This proposal charts out a system of conditional amnesties for former combatants that encourages them to come forward and agree to enter into a process of meaningful engagement with victims and survivors. It will provide more information than a court case and hopefully a measure of atonement and even reconciliation.

Learning from other conflict situations – and indeed from the history of Ireland – it is clear that if horrific and unjust events from the past are not addressed, they will continue to ferment under the surface and erupt again in the future. (Pages 1-3)

## **2. The Current Context for a Proposed Truth Process**

The British-Irish Intergovernmental Conference established under the terms of the Good Friday Belfast Agreement, and the Advice on A Charter of Rights for the Island of Ireland adopted in 2011 were aspirational rather than offering a practical way forward.

This section shows how the Truth Recovery Process can be incorporated within the parameters of the Good Friday Belfast Agreement and provide information from former combatants to victims and survivors in a more comprehensive and satisfactory way than the courts, or the ‘filters’ proposed in the latest Stormont House discussions.

It explains the intrinsic flaws involved in the HET and HIU approach, and why police officers are not best suited to carry out the investigative process.

It also looks at how the War of Independence, and Civil War were dealt with and at some guiding principles that should apply regarding to the more recent Troubles. (Pages 3-11)

## **3. Framework for the Process: A Justice- and Victim-Sensitive Approach**

This section addresses issues affecting victims and survivors, which must be a central part of the reconciliation strategy and welcomes the initiative of the last Northern Ireland Secretary, Julian Smith, which broke the logjam over pensions for those seriously injured in the Troubles.

It addresses the concerns that those in the nationalist and Unionist communities, and in the security forces, might have over an extra-legal way forward. It describes how a conditional amnesty process would work and the sequencing steps involved in ensuring it is justice sensitive. It is not an easy ‘get out of jail’ option. Rather, it poses challenges for all concerned. But, as mentioned in the introduction, it provides a means of obtaining fuller disclosure of information, and the possibility of some degree of reconciliation and atonement. Former soldiers, police officers and paramilitary combatants will be freer to come forward with information about legacy cases because we know that at least some of them want to do that before it is too late. That space will not open up without lifting the fear of prosecution, including protection from prosecution under the Official Secrets Acts.

The report supports the proposal that mid-summer day [21st June] be dedicated to the theme of “Healing Through Remembering”, and that it be marked by public events not alone on the island of Ireland but in Britain as well.

(Pages 11-14)

## **4. Moving Forward: A Reconciliation Commission; Reconfiguring the HIU, ICIR and IRG units**

We propose that the British and Irish governments agree structures that facilitate an extra-legal truth recovery and justice process as envisaged in Section 3.a.1.

This would involve the establishment, in the first instance, of a Reconciliation Commission with two subsidiary bodies dedicated to implementing the Truth Recovery Process. It would be headed by a mutually agreed international Chair, or two senior members of the British and Irish judiciaries, to which the Commission would be answerable.

The two operational components of the Commission would be:

1. A Truth Recovery Unit (In a Northern Ireland context this would replace the HIU).
2. A Justice Facilitation Unit. (In a Northern Ireland context this would replace the proposal for the ICIR).

It explains how the existing proposals could be reconfigured, who could participate in them and how a Truth Recovery Process based on a mediation and conciliation model, rather than a judicial/investigative approach, would work. While separate arrangements might have to be made to extend the process to Britain and the Republic, it recommends that the experience and expertise of the Victims Commission could be made available to all the parties concerned.

While the process would be confidential, where successful, participants would be encouraged and facilitated in becoming advocates for this model as an alternative to the courts.

Finally, it looks at how best to address the causes of the conflict in ways that would help communities in the North avoid a recrudescence of political violence. (Pages 14-20)

## **1. Introduction**

This discussion document is generated from discussions with former combatants, victim/survivors and academics. It outlines a Truth Recovery and Reconciliation process designed to address ongoing issues of harm and trauma, political intractability, social divisions and civil unrest in Northern Ireland. This proposed process maps onto existing policy and legal structures already in place in Northern Ireland.

Figures vary for the number of people who died as a result of the armed conflict in Northern Ireland, but it has affected almost every family in the region. The Eames & Bradley CGP Report (2009), which provided probably the most definitive of many, gave a figure of 3,532, broken down in the following way:

- 2,055 deaths [58%] by republican paramilitary groups
- 1,020 deaths [29%] by loyalist groups
- 368 deaths [10%] by security forces
- 80 persons killed by unknown agents [2%]

In the 2007 edition of *Lost Lives* by David McKittrick (et al), a figure of 3,720 deaths is given but this is for a slightly longer period from 1968-2006. In addition, there were 16,209 bombings, 36,923 shootings and 47,541 people were injured. Further deaths and injuries occurred in Britain, in the Republic of Ireland and on the Continent.

There is immense human suffering behind these statistics. The Methodist Church in its submission to the NIO consultation on the proposed legacy structure estimates that one in three people of all ages in Northern Ireland have been directly or indirectly affected and one third of survivors have spoken of serious suicidal thoughts. The political failure to agree a post-conflict reconciliation process means that much trauma remains unaddressed to this day, both at an individual level for victims/survivors, for former combatants and at a collective societal level.

There have been concerted efforts by politicians, officials, lawyers, NGO organisations, and community leaders over the years to arrive at some overall political agreement to provide for a process to address the unresolved justice issues of the conflict. The fact that no substantive agreement has been possible apart from the Stormont House proposals (2014: paragraphs 21-55) highlights the complexity and sensitivities involved. However, it is imperative and urgent over twenty years after the signing of the Good Friday Belfast Agreement (1998) that both political and civil society leaders come together to set up a legacy architecture to address harms caused by the political violence of the armed conflict.

While there has been an understandable emphasis on the needs of victims/survivors in the conflict, the approach pursued to date leads individuals and communities to embrace victimhood and apportion blame to members of the 'other' community, be it denominational, political, the security forces, or individual paramilitary organisations. Far from reconciling people to the past, it constantly reinforces existing prejudices and nurtures a continuing sense of grievance.

Even disregarding the dubious practicality of pursuing each and every case through the courts, by its very nature such a judicial process cannot lead to honest debate, let alone reconciliation. Each court case is a battle in which legal teams will do whatever it takes to win, and every acquittal or conviction will be viewed as a victory or defeat for one side or the other.

Nor will judicial inquiries heal the harms of the armed conflict in Northern Ireland or, in many cases, deal with miscarriages of justice. They are by nature costly, time consuming, and inevitably have to be selective in the use of scarce resources by focusing on the most 'important' cases. These forms of legal combat cast a long shadow that precludes the sort of dialogue needed if there is to be some form of closure to the conflict, not only for individuals but for society as a whole.

Regarding miscarriages of justice, many paramilitaries were convicted of crimes they did not commit, because the only way in which they could clear themselves was by identifying who did do it, effectively becoming an informer. Even people not involved in any way in the events investigated, other than as eye witnesses or recipients of often unwanted information, risked being charged themselves or held in contempt of the judicial process if they refused to divulge all of the information in their possession.

This proposal charts a system of conditional amnesties for former combatants that encourages them to come forward and agree to enter into a process of meaningful engagement with victims/survivors which can help transform the harms experienced for all concerned, including the wider communities affected. These communities include families and individuals affected not only in Northern Ireland but also in Dublin, Monaghan, Dundalk, Manchester, Birmingham, London, and elsewhere on these islands.

Learning from other conflict situations – and indeed from the history of Ireland – it is clear that if horrific or unjust events are not clarified and dealt with by wider society, especially the people impacted directly by them, then they continue to ferment under the surface and erupt

in the future. Rather than bequeath a burden of mutually unresolved grievances and memories of injustice to future generations and trap communities in future cycles of bitterness, these grievances and memories must be addressed to transform our relationship to the past and create a space that allows for engagement by all parties in developing a more collaborative future. Indeed, this Proposal serves as a logical and necessary extension of the Good Friday Belfast Agreement (1998), and seeks to help bring about the more peaceful future envisioned in the Agreement more than twenty years ago.

## **2. The Current Contexts for a Proposed Truth Process**

### **2a. A Logical and Necessary Extension of the Good Friday Belfast Agreement**

The opening ‘Declaration of Support’ to the Good Friday Agreement is unequivocal in its commitment to helping victim/survivors of the conflict. Point 2 of the Declaration states that, ‘We must never forget those who have died or been injured, and their families’, adding that ‘we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all’.

Point 5 acknowledges ‘the substantial differences between our continuing, and equally legitimate, political aspirations’, but goes on to commit the parties to striving ‘in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed arrangements’.

The British-Irish Intergovernmental Conference established under the terms of the Agreement commits both governments to establish Human Rights Commissions within their respective jurisdictions to promote bilateral co-operation in this area, an initiative in which the British Government has been more active than the Republic of Ireland. The Northern Ireland Human Rights Commission and Irish Human Rights and Equality Commission did produce an Advice on A Charter of Rights for the Island of Ireland in June 2011, but the 40 page document is an aspirational statement rather than offering a practical way forward.<sup>1</sup>

Under the ‘Reconciliation and Victims of Violence’ section that follows, all the contracting parties recognise ‘that it is essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation’. They further recognise ‘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.

‘The participants recognise that young people from areas affected by the troubles face particular difficulties’ and they commit to the ‘provision of services that are supportive and sensitive to the needs of victims’ as ‘a critical element’ to the success of the Agreement. Such ‘support will need to be channelled through both statutory and community-based voluntary organisations facilitating locally-based self-help and support networks’.

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<sup>1</sup> There are only two references to the Rights of Victims. The first of these is in a table on page 35, which lists the United Nations Declaration of Basic Principles of Justice of Victims of Crime and Abuse of Power 1985, the Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure 1985 and the Council Framework Decision on the Standing of Victims in Criminal Proceedings 2001, as international treaties under which their rights can be vindicated. The second is a reference on page 40, under the heading of the ‘(Good Friday) Agreement 1998’, which also omits to explain how victims may exercise these rights. All of these references envisage that such rights can only be met through the formal legal system at a time when other forms of conflict resolution through extra-legal mediation processes are being developed in other walks of life.

These groups already include organisations established by former combatants, some of whom have served long prison sentences. The value of their work in developing 'reconciliation and mutual understanding and respect between and within communities and traditions, in Northern Ireland and between North and South' is recognised as playing 'a vital role in consolidating peace and political agreement'. The parties 'pledge their continuing support to such organisations and will positively examine the case for enhanced financial assistance for the work of reconciliation'. The parties to the Agreement recognise this work as, 'An essential aspect of the reconciliation process' promoting 'a culture of tolerance at every level of society'.

What is not acknowledged explicitly is that as well as involving former combatants who have served terms of imprisonment arising from their involvement in the conflict, these organisations also include participants who were involved, sometimes heavily involved in the conflict, but were never convicted of any offence. This does not prevent them from participating in these very positive educational and reconciliatory activities, but it does inhibit that activity and the degree to which they can make a contribution to the Truth Process and the opportunity of communicating their knowledge and experience to the wider community and, through it to the peace process.

This argument applies with equal relevance to the next section of the Good Friday Agreement on Economic, Social and Cultural Issues, particularly section 2 (i) 'tackling the problems of a divided society and social cohesion in urban, rural and border areas'.

The Good Friday Agreement also contains objectives outlined under its concluding heading on 'Policing and Justice', which lay emphasis on encouraging the role of 'community involvement where appropriate' in achieving its objectives, including the delivery of justice 'efficiently and effectively'.

Paragraph 5 of the 'Policing and Justice' part of the Agreement states that there will be a 'wide-ranging review of criminal justice (other than policing and those aspects of the system relating to the emergency legislation) to be carried out by the British Government through a mechanism with an independent element, in consultation with the political parties and others. The review will commence as soon as possible, will include wide consultation, and a report will be made to the Secretary of State no later than Autumn 1999.'

The lack of progress achieved does not invalidate this objective or the objectives contained in the accompanying Appendix (B). These include:

- measures to improve the responsiveness and accountability of, and any lay participation in the criminal justice system;
- mechanisms for addressing law reform;
- the scope for structured co-operation between the criminal justice agencies on both parts of the island;

These issues were also addressed in the Stormont House Agreement in the paragraphs dealing with 'The Past', or Legacy issues.

Implicit in the terms of the Stormont House Agreement is the failure of the traditional 'Policing and justice' system for reasons which are outlined in 2.c below to assist in consolidating the Peace Process. Rather, the failure to address the vexed question of amnesties in the Good Friday Agreement has resulted in the pursuit of Legacy cases in the courts. These are widely perceived as a way of continuing the conflict by other means.

Under the Stormont House Agreement the participants agreed to address a number of contentious social, economic and cultural issues where progress had stalled. Some of the cultural issues such as Flags and Parades reflected the continuing problem of a contested past, as did lack of progress on criminal justice issues.

Under 'the Past' heading, Paragraph 21 states that, 'As part of the transition to long-term peace and stability the participants agree that an approach to dealing with the past is necessary which respects the following principles:

- o promoting reconciliation;
- o upholding the rule of law;
- o acknowledging and addressing the suffering of victims and survivors;
- o facilitating the pursuit of justice and information recovery;
- o is human rights compliant; and
- o is balanced, proportionate, transparent, fair and equitable.

Although the question of amnesties is not mentioned, the issue is implicit in the proposal for an Oral History project which proposes in Paragraph 23 that in collecting shared experiences 'consideration will be given to protecting contributors, and the body itself, from defamation claims.'

The issue is addressed more explicitly in Paragraphs 45 to 49 dealing with the Independent Commission on Information Retrieval (ICIR).

Paragraph 45 states that, 'The ICIR's remit will cover both jurisdictions and will have the same functions in each. It will be entirely separate from the justice system.'

Paragraph 46 states that the ICIR 'will not disclose information provided to it to law enforcement or intelligence agencies and this information will be inadmissible in criminal and civil proceedings. These facts will be made clear to those seeking to access information through the body'.

Paragraph 47 states that, 'The ICIR will be given the immunities and privileges of an international body and would not be subject to judicial review, Freedom of Information, Data Protection and National Archives legislation, in either jurisdiction'.

Paragraph 48 provides that, 'Legislation will be taken forward by the UK Government, the Irish Government and the Assembly to implement the above decision on inadmissibility.'

Paragraph 49 states that, 'The ICIR will not disclose the identities of people who provide information. No individual who provides information to the body will be immune from prosecution for any crime committed should the required evidential test be satisfied by other means.'

The ICIR has been the most successful initiative undertaken under the auspices of the Stormont House Agreement and, if it is compliant with the terms of the Good Friday Agreement it is hard to see why a Conditional Amnesty scheme designed to recover the Truth about 1,700 unsolved murders and thousands of other serious incidents that led to life changing injuries for many people, and suffering for them and their families is not. This is especially so, given the enormous obstacles that face any attempt to make significant progress through the traditional justice system, as set out in 2.c. below on the Inability of Court and Police Systems to Address legacy Justice Issues relating to the Conflict.

For all of these reasons we believe that the Truth Process outlined in this document is both a Logical and Necessary Extension to the Good Friday Belfast Agreement if we are to secure the Peace Process and ensure it becomes embedded in the political culture of these islands rather than being simply a means of securing a temporary truce between traditional enemies.

## **2.b. Inability of Court and Police Systems to Address Legacy Justice Issues relating to the Conflict**

In making this submission, the working group has concluded that the delivery of justice for legacy cases has become nearly impossible. There are many practical difficulties and obstacles that legacy cases are up against. Below is a list of 18 factors that operate at present and will affect the HIU if created:

- a) Files and records have disappeared and evidence degraded
- b) Witnesses have died
- c) Memories of all parties have deteriorated as years goes by
- d) Miscarriages of justice involving people convicted of crimes they did not commit can rarely be revisited, especially those involved in paramilitary organisations, because the only way they can do so is by incriminating others, which, for many of them, would mean turning informer. The same dilemma faces eyewitnesses and recipients of, often unsolicited and unwanted information. This is also an injustice to victims and survivors who think they received justice and that the relevant individual(s) and organisation(s) were brought to account.
- e) Access to evidence and documents is frequently denied on grounds of state security
- f) The possibility of non-cooperation from retired police officers in the investigation of crimes, on the basis that investigatory power does not stretch into the retirement years
- g) Fears among former combatants of being prosecuted if they voluntarily give information through the ICIR about the events they know about
- h) No forensic examination is possible on IRA guns decommissioned because the evidence was destroyed in 2005
- i) The sheer number of cases amounting to some 1,700 killings (out of 3,532) that are unsolved and need to be re-investigated.
- j) Each investigation will cost in the region of £1 million.
- k) Budgetary constraints of the UK government will limit the number of cases.
- l) Police resources and capacity are simply not there to carry out all of these investigations, which will severely impede the number that can go all the way to court for prosecution. There are approximately 800 murders a year in the United Kingdom, most of them 'relatively' simple cases and yet there is a chronic shortage of experienced investigators to deal with them. Solving often more complex crimes will put a huge strain on the HIU. The former PSNI Chief Constable, George Hamilton, has expressed serious concern at the impact unsolved Legacy investigations are having on the organisation's ability to meet its current obligations, which is undermining public confidence in the policing service, and retired RUC Assistant Chief Constable Alan McQuillan has estimated that, even if all the resources

promised to the PSNI were delivered it might lead to the successful conclusion of some 70 outstanding Legacy cases.

- m) Nor does this figure begin to address the even more numerous cases where victims/survivors suffered serious and often life changing injuries.
- n) The HIU will be further hampered by political pressure to ‘balance’ investigations between different groups of former combatants, leading to delays and the questionable use of scarce resources, which is not in the interests of victims and survivors or the community at large.
- o) If police officers are brought in from England for the investigations, they may not be familiar with the unique circumstances of the armed conflict in Northern Ireland.
- p) Anyone convicted of a conflict-related offence, including multiple murders that occurred between 1973 and 1998 will only serve two years in prison under the terms of the Good Friday Agreement, creating serious anomalies in sentencing policy that may be open to legal challenge. See 3.a. below.
- q) Very few historical prosecutions have succeeded in the courts and it was former Justice Minister David Ford’s assessment in October 2015 that the HIU “might at best produce one or two prosecutions”.
- r) Uncovering the truth will only grow more difficult with time, unless more effective, and positive alternatives are found to the traditional criminal justice process.

## **2c. Historical Background**

Amnesties have been used to help end violent political conflict in Ireland for centuries. They facilitated a return to normal life and mitigated against the most toxic legacies of past violence. The eighteenth century provided an important watershed in this context, dividing wars of contested dynastic and religious allegiances from those defined in more modern ideological terms. Unlike the Jacobite cause, which ended with the death of the Young Pretender in 1788, these new movements were not contingent on the fate of a dynasty or individual but were inspired by the ideals of the American and French revolutions. Because they were fuelled by a sense of injustice over unmet grievances, they were recurring and proved impervious to defeat.

The first and bloodiest contest of the modern era in Ireland was the Rising of 1798. Initially, it was the brutality with which the democratic reformist movement of the United Irishmen was suppressed that led to its most radical elements adopting the objective of an Irish Republic and the use of armed force to achieve it. But even in this exceptionally violent era, the government included amnesties in its political armoury. These methods of combating disaffection would recur, and their most consistent characteristic was political pragmatism.

Amnesties were often confined to leading opponents of the status quo and, or the release of prisoners on licence. However, once the Treaty was ratified by Dail Eireann on January 7<sup>th</sup>, 1922, the British government applied ‘a general amnesty in respect of offences committed in Ireland for political motives prior to the operation of the Truce of 11<sup>th</sup>, July last’. A general release of prisoners followed and King George V expressed his ‘confident hope that this act of oblivion will aid powerfully in establishing relations of friendship and goodwill between the peoples of Great Britain and Ireland’.

On November 7th, 1924, Dáil Éireann passed a similar resolution in relation to the Civil War, which had ended to all intents in military terms by May 1923. There had been earlier attempts to secure an end to the conflict by leaders of both sides, as well as by the Labour Party, Farmers Party and former members of the Cumann na nGaedheal government, but it was not until the military outcome was clear and the Free State government felt confident enough to release over 11,000 prisoners of war, including 500 women, that it took this long-awaited step.

The resolution declared that,

‘The Executive Council, being aware that large numbers of persons have been or are likely to be apprehended in respect of crimes committed or alleged to have been committed by them during the period hereinafter mentioned and having considered the reports of police and other officers responsible for the maintenance of law and order, is of opinion that no useful purpose would be served by the institution or continuance of prosecutions in respect of criminal acts committed or alleged to have been committed between the 6th day of December, 1921, and the 12th day of May, 1923, in any case in which it appears that the act was committed or purported to be committed in connection, directly or indirectly, with the state of rebellion and public disturbances created by the recent attempt to overthrow by force the lawfully established Government of Saorstát Eireann (including the Provisional Government), whether such connection arises from the act having been or purporting to have been committed in the course of the said rebellion and public disturbances or in aid or furtherance of the same or in the course or in aid or furtherance of the suppression of the said rebellion and public disturbances, and the Executive Council hereby declare and puts on record its considered opinion that the highest interests of the State and the promotion of the reign of law and order now happily restored would best be served by the responsible officers of the State discontinuing or refraining from instituting criminal proceedings in any such case as aforesaid, and, so far as it lawfully may so do, the Executive Council directs all officers of the State concerned in the administration of the law to act in accordance with the views hereinbefore expressed.’

There are a number of factors that led to this decision.

1. While the Government of Saorstát Eireann was the lawfully established Government under the terms of the Anglo-Irish Treaty of 1921, that Treaty only came into force on December 6th, 1922. Before that all of its actions, including the formation of the National Army and the attack on the Four Courts on June 28th, 1922, which marked the formal start of the Civil War were not covered by the Treaty.
2. Therefore, the leaders of the Free State were protecting themselves and their agents from prosecution, as well as their opponents.
3. It was a coming to terms with the fact that the new state could no longer afford the political, social or economic costs of the Civil War, including funding a large standing army and maintaining thousands of prisoners in The Curragh and other detention centres.

Finally, it represented an albeit reluctant recognition of the political legitimacy of the government’s opponents, and their right to engage in the political process.

Many opponents of the Treaty still considered the Irish Republic to be the de jure government of Ireland, North and South. Nevertheless, the 1924 amnesty helped normalise politics within the new state and create a climate in which democracy could re-emerge,

eventually relegating the political legacy of the Civil War to the pub, Dail chamber and election hustings. The Free State was not unique in enacting an amnesty during this period. Most European states emerging from the First World War enacted amnesties to help normalise often fraught political situations. The principal exception was the USSR.

The Good Friday Agreement of 1998, which marked the end of the recent 30 year conflict in Northern Ireland, did not include an amnesty. Nor did the Stormont House and Fresh Start agreements of 2014-15, or the New Decade, New Approach document of 2020. But the ceasefire declared by the IRA at the end of the 1956-1962 Border campaign was followed by the release of all the prisoners under Royal prerogative, which might be a precedent for dealing with the issue again in Northern Ireland in the context of an overall settlement.

Paradoxically, this was because there was no unequivocal victor to the latest conflict. When previous IRA campaigns ended in defeat there were de facto amnesties as both the Irish and Northern Irish governments released internees. This was sometimes followed by the early release of convicted prisoners.

The Good Friday Agreement was therefore a truce, rather than a conclusion to the conflict. It created a breathing space within which a permanent peace could be constructed, while recognising that Northern Ireland remained a deeply divided society where political legacies from the past - and objectives for the future - remain contested.

<b>Civil War 1922-24</b>	<b>Troubles 1968-1998</b>
Clear cut military outcome	Unresolved military result
Shared Political Legacy	Contested Political Legacies
State and Civil Society vs Public Band (IRA)	State vs several Paramilitary Bodies Paramilitaries vs Paramilitaries
Personal and Group Animosity between two nationalist communities	Personal and Group Animosity between nationalist and Unionist communities and within nationalist and Unionist communities
There was no legal basis for the actions of the Free State government before December 6th, 1922, when the Treaty came into effect	Legal clarity exists on the powers of the British and Irish states

The uncertain politico-military outcome of the struggle in Northern Ireland and the decision of the parties not to include an amnesty, either conditional or unconditional, as part of the peace process left a major Legacy issue for the victims and survivors of the conflict, during which over 3,500 people were killed and over 47,500 were injured, many of whom suffered life changing injuries.

This ‘unfinished business’ continues to inflict suffering on a scale that is not only unacceptable in humanitarian terms, but has the capacity to undermine the peace process and sow the seeds of future conflict. Reliance on the half-way houses of information retrieval and the courts to deal with outstanding crimes committed by participants on all sides perpetuates rather than resolves the issues that led to the conflict in the first place.

## **2.d Section on comparative approaches informing this document.**

The legal systems of the United Kingdom and the Republic of Ireland are not designed to deal with the exceptional circumstances that led to a major armed conflict erupting in Northern Ireland; one that spilled over into the Republic and Britain, and even reached Europe on occasion. Both governments need to recognise this and be prepared to look at how other states, and how indeed they have dealt with such conflicts in the past.

The absence of a statute of limitation on murder, similar to that which exists in many other states which are fully compliant with the European Convention on Human Rights, could also be examined with a view to applying it where former combatants make themselves amendable to a Truth Recovery Process.

## **2.e Further motivations for proposal and benefits of bringing about a Truth Process**

Twenty-two years distant from the 1998 Agreement there could be new mature openings for victims/survivors and combatants to tell their stories, if safe opportunities are provided for them to be heard and acknowledged – something that people were not ready to do in the past.

Section 3 below advocates a need to switch from a prosecution-based justice system for legacy cases, and move beyond case-by-case criminal prosecutions. These rehearse the hurt and pain of victims/survivors as each case hits the headlines and deepens community divisions. Twenty-two years on, might it not be time to introduce a justice-sensitive, mediation approach towards healing the hurt before it is too late for those who have lived through the armed conflict?

A significant part of this different approach will be to switch over primarily to mediated processes to support victims/survivors in discovering the truth at their own pace through a reconfigured set of SHA units more fitted to reconciliation - a societal goal that could be facilitated by churches, community relations professionals and civil society groups. The working group would like to see a sustained effort over the next two years, using the fund to be provided by the British and Irish governments, to bring about inter-communal healing and reconciliation. This means diverting funds earmarked for court prosecutions and legal costs to a facilitated relational justice initiative.

This proposal recommends that the Reconciliation Commission could work within this refashioned legacy process alongside other agencies at local level. The new understandings that arise from this approach will sustain renewed efforts to reach out and hear the pain of other communities. By being released from the past, people will be better able to move forward together to build a reconciled and just society.

## **2.f Some guiding principles for a new approach**

- Each victim/survivor has their own unique point of departure for their inner journey of working through what has taken place, the process of trauma recovery, the telling of their own truth and the discovery of as much objective truth as possible about what happened.
- Recovering the truth can lay the foundations for reconciliation. Truth is likely to be a precondition for embracing inter-communal reconciliation. The past can be held in healthy balance with the future.

- For healing to take place, the needs of victims/survivors can be met by sharing with former combatants the impact of the violence on their own lives and families. A safe process facilitated by a team of trained Mediation officers can lead to acknowledgement of the harm done by or on behalf of the perpetrator, genuine expressions of sorrow and remorse, and the seeking of forgiveness.
- Justice is critical for ensuring accountability and a renewed respect for human rights and the rule of law. However, justice must not be confused with 'revenge' or 'retribution', which are capable of reigniting individual and sectarian conflict.
- A reconciliation process offers the opportunity to share in the presence of the other, in a safe place, the horrible things that one has experienced without fear of prosecution by the state, reprisal or retaliatory violence by those standing behind them.
- Victims/survivors struggle with forgiveness, particularly when others ask them to forgive; yet it can benefit the person who does the forgiving more than the person being forgiven. It frees victims/survivors to live their life without carrying the perpetrator on their back any longer and allows them to regain their human dignity. Repentance is a matter for the transgressor. Only they can seek it, or experience the relief from the sense of guilt that may result. Knowing that they are forgiven for their actions by those who have suffered from them can undoubtedly encourage them to atone for their actions.
- The scheme is voluntary and on a pilot basis. Former combatants who enter the pilot scheme and meet the conditions set out below would receive amnesties, even if the scheme was discontinued subsequently.

### **3. Framework for the Process: A Justice- and Victim-Sensitive Approach**

#### **3.a. Meeting the concerns of victims/survivors through a justice-sensitive approach**

The starting point is to create a means by which the pain and loss of victims/survivors can be more suitably addressed because no effective legal remedy exists at present to do this. Their need is to obtain as much truth as possible about what happened and, most importantly, why it happened, as soon as possible. This is paramount because it is through truth recovery that healing can perhaps begin to occur. Second, victims/survivors need to achieve a sense of justice even at this late stage many years after the event, particularly in situations where there have been no prosecutions and are unlikely to be in the near future. Third, we know deeper issues remain that legal remedies will not repair. We have to look to inter-communal reconciliation initiatives such as when the stories of victims/survivors' experiences are heard, understood, and acknowledged by the other community. It is through such truth recovery processes that a sense of justice, as well as an acknowledgement of each other's identity can be regained. For those who say this is not real justice, we must emphasise that this should not be seen as a soft option. It is a more positive, painful, cathartic and emotionally healing experience than a court hearing; and capable of producing more information and greater insights for all involved than any court proceedings. Northern Ireland has many skilled facilitators who can assist victim/survivor groups through a province-wide initiative.

The early release provisions of the Good Friday Agreement are a particular issue for the Unionist community in the event of prosecutions going ahead against the security forces arising out of the investigations. This is because anyone convicted of murder in the earliest and bloodiest years of the conflict, that is prior to 1973, is liable to serve a full term, whereas

even those convicted of multiple murders subsequently will serve no more than two years. Paradoxically, 1971 and 1972 were the bloodiest years of the Troubles and most of the fatal shootings involving the security forces also occurred pre-1973. This working group believes that the principle of a two years sentence established in the Good Friday Belfast Agreement [see 2.b.(n) above] should be applied across the board to everyone and welcomes the changes that are proposed in this regard.

When all of these factors are taken into account, it becomes unclear how the need for truth and justice for victims/survivors can be met. As one survivor has argued: “We cannot forget the past. While I don’t really see Justice as possible, it is a real injustice not being able to access the truth. I want to hear the truth around what happened and get to the bottom of things. That means documents being released or doors opened by the paramilitary gatekeepers so that victims like me can meet the perpetrator face to face to answer my questions and reveal the truth.” This must also happen where state agencies are involved.<sup>2</sup>

### **3.a.1. Recommendation for an extra-judicial way forward**

Providing conditional amnesties to former combatants who are willing to engage in mediation processes might allow us to make access to the truth more immediately available in an efficient and timely manner:

- With victims/survivors no longer having to consider all the implications of legal proceedings, they can more freely access the truth through an official fact finding commission that can get answers to their questions (which have burdened many of them for decades).
- When victim/survivors’ families request reports from police investigations into legacy cases, it could happen more speedily and in a spirit of full disclosure to achieve healing. The process by which the family report comes into the hands of victims/survivors can be provided through a family support team and not just be a clinical legal document. It can be done in a way that respects the humanity of people through a verbal interactive process.
- Former soldiers, police officers, paramilitary combatants and public servants will be freer to come forward with information about legacy cases because we know that at least some of them want to do that before it is too late. That space will not open up without lifting the fear of prosecution, including protection from prosecution under the Official Secrets Acts in the Republic of Ireland and the United Kingdom.

What is needed at this stage of the post-Agreement peace process is relational inter-communal justice; in other words, facilitate communities in restoring positive social relationships and living with their neighbours, without fear and the perpetuation of hatred it can foster. This can be achieved by facilitating a truth recovery process and acknowledging that, through multiple steps, it is possible to enable the victim/survivors to sit together with the former combatant(s) in a facilitated safe place. By recovering the truth of what happened together, expressing their mutual sorrow and regret, we can strengthen the resolve on all sides to ensure that political violence will never be used again to achieve identity aspirations. When this kind of justice is experienced, it restores respect for the rule of law and deters similar acts in the future.

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<sup>2</sup> Submission by the Council on Social Responsibility of the Methodist Church in Ireland to the NIO consultation on the proposed legacy structure Page 6

### **3.b. Sequencing steps for introducing a Justice-sensitive approach**

The first step is to appoint a Reconciliation Commission along the lines set out in Section 4(C) below to create the public environment for introducing both a victim-sensitive and a justice-sensitive approach. It would be difficult to introduce the legislation for conditional amnesties for former combatants without first initiating a process in the back channels to facilitate a series of acknowledgement statements coming from former republican and loyalist activists as well as from the two governments. The formula is already there in the October 1994 CLMC ceasefire statement that helped facilitate talks then. A new series of sequenced acknowledgement statements is required from all parties involved in the conflict, updated and expanded to speak to the current situation. Elements in the wording need to connect the past suffering with renewed remorse, together with a recommitment by all parties to respect differing aspirations and pledge to never again return to using political violence.

In the original SHA proposals 2014, it was proposed (53) that the UK and Irish governments would consider making statements of acknowledgement at the end of the five year process through the Implementation and Reconciliation Group. We believe this sequence should be reversed. Acknowledgments would front load and kick off a process of sequenced meaningful steps so as to create the environment for legislation.

### **3.c. A victim-sensitive approach**

There are six practical things that can be done for victims/survivors.

#### **3.c.1 A pension for seriously injured victims/survivors.**

There have been understandable sensitivities around the issue of providing compensation to victims/survivors of the conflict, and particularly those who have suffered life changing injuries, which have seriously impacted on their families as well. This has, in large part, been because of the difficulty in arriving at an agreed definition of 'victim'. Hopefully, this problem can be addressed expeditiously through the measures signed into law by the former Northern Ireland Secretary Julian Smith in February 2020. However, the stipulation that it will only apply to people who suffered 'through no fault of their own', with a judge led board to assess eligibility, will cause concern, especially where a victim/survivor may have suffered as the result of the actions of another family member on whom they were a dependent, or for whom they may have become a carer. This is an issue which needs to be addressed either by the new Northern Ireland Secretary, Brandon Lewis, using his discretionary powers under section 6.4 of the regulations or, ideally, by redrafting the Regulation.

**3.c.2** Nor should we disregard the views of David Bolton, arising from his years of field experience working with the victims/survivors of the Enniskillen and Omagh bombings. He has emphasised the need to hear expressions of loss and grief from victims/survivors, particularly from those whose voices have not yet been heard. This includes providing the possibility in a safe space "to think and talk about outrage, grievance, guilt, shame, injustice, forgiveness and mercy." He calls for continued substantial public investment in Mental Health and Trauma Services that can be delivered at community level to address the traumatic stressors for individuals and families.

**3.c.3** A central part of a victim-sensitive approach should be the establishment of the proposed independent PRONI Oral History Archive for families from all backgrounds to share voluntarily their experiences, their personal stories, and communal narratives related to the armed conflict in Northern Ireland. Families should be encouraged to share their lived

experience in different formats, such as written statements, oral stories recorded in audio and in video archives. Already, some victim organisations have done valuable work in making video recordings because people felt safe and had communal support to make such statements to camera. Consideration needs to be given to how this archive material can be made available for peace education on an inter-communal basis for adults and young people. It is important for each community to hear the other's stories. A facility should also be provided to include people affected by the conflict who live in Britain and the Republic.

**3.c.4** The authors of *Lost Lives* (2001) have performed an invaluable task in producing a vital and easily accessible factual record of all those who have died as a result of the Troubles in Northern Ireland, Britain and the Republic. The authors should have been given continuing support to update the record as new information became available. Unfortunately, that opportunity was missed, and with the death of Seamus Kelters in 2017, his colleagues decided that they would not return to the project.

**3.c.5** The Irish Government has made some progress in compensating victims/survivors within its jurisdiction during the Troubles. A Remembrance Commission was established in the Republic of Ireland in October 2003 to acknowledge and assist bereaved families and survivors of the conflict who lost relatives, or were injured within the State. An acknowledgement payment of €15,000 was awarded to bereaved families, while awards of up to a maximum of €40,000 were made to survivors, depending on the severity of their injuries.

Unfortunately, not all of those eligible to apply to the scheme were aware of its existence due to a rather weak advertising campaign. It was wound up in 2008 because the Government felt that all those who were eligible and wished to apply, had done so. Justice for the Forgotten (JFF), the main victims/support group involved, did its utmost to contact people who would not have known about the scheme otherwise and, on one occasion, received the assistance of the Gardaí in doing so.

However, after the scheme was wound up, JFF became aware of other eligible individuals who lost out because they were unaware of the scheme while it was operational. JFF believes that the scheme should have remained open indefinitely so that any eligible person who came forward could benefit. The Remembrance Commission was not pro-active in seeking out eligible families but relied on them to apply.

It remains unclear how Irish citizens who have been injured in the United Kingdom will be compensated, unless they also hold British citizenship. Compensation for people who were victims and survivors of Troubles related incidents in Europe has also to be addressed.

**3.c.6** Mid-summer day [21st June] has been promoted by “Healing Through Remembering” and others as a day of personal reflection and acknowledgement, as well as a day to remember all those who have died in the conflict. This event deserves more widespread recognition and needs to have state support as a national day of reflection and remembrance in both parts of Ireland and Britain.

#### **4. Moving Forward: A Reconciliation Commission; Reconfiguring the HIU, ICIR and IRG units**

We propose that the British and Irish governments establish structures that facilitate an extra-legal truth recovery and justice process as envisaged in 3.a.1.

This Proposal sees the establishment in the first instance of a Reconciliation Commission which would oversee the creation of dedicated units within the new extra-legal context. The Commission would be headed by a mutually agreed international Chair, or two senior members of the British and Irish judiciaries. The Chief Executive of the Commission and its operational wings would be answerable to its Chair(s)

There would be two operational components to the Commission.

1. A Truth Recovery Unit (In a Northern Ireland context this would replace the HIU)
2. A Justice Facilitation Unit (In a Northern Ireland context this would replace the proposal for the ICIR)

### **A. Truth Recovery Unit (TRU)**

The Truth Recovery Unit (TRU) needs to be seen as independent by all communities, as envisaged in the Stormont House Agreement (par 38) for the HIU. It should be staffed by professional civilian investigators instead of members of the PSNI, An Garda Síochána or any British police force. This is because the purpose of the unit is to verify information received by the Reconciliation Commission, not assemble evidence for a prosecution, and it will on occasion have to investigate the activities of police officers and members of state security agencies, North and South, and in Britain.

The TRU will have to operate in all jurisdictions covered by the agreement and there will be an obligation on the British and Irish governments to introduce the enabling legislation giving investigators the powers they need to perform their duties. It will be the responsibility of the Commission to ensure investigators comply with their obligations, optimise the use of resources and verify the accuracy of the information retrieved. It must ensure consistency in how investigations are handled across jurisdictions.

**A.1** Getting access to the truth. The controversy surrounding the question of whether state agencies colluded with paramilitaries regarding the death and injury of victims has increased public speculation and many cases, and the added suffering it causes them and their families. Victims and survivors need to know the truth and each investigation must seek to achieve this in the speediest way possible. Investigators will need to be as forthcoming as possible with victim/survivors and their families, without compromising the Reconciliation Process. In doing so, the investigators can help them come to terms with this new information. While there may be many complexities involved, every effort must be made to resolve investigations thoroughly and expeditiously.

### **B. Justice Facilitation Unit (JFU)**

The original process offered by the Independent Commission on Information Retrieval (ICIR) was felt to be too clinical by many victims/survivors and former combatants. They felt it offered little dignity or humanity. There was little respect for victims/survivors when they received a family report. It was for many a dehumanising and re-traumatising experience. It was not sufficiently interactive and it was unsuited to a truth recovery process. It frequently failed to ensure factual and emotional closure as intended because only the victim/survivor can know the questions to which they need answers.

Specialised and highly sensitive victim/survivor emotional support will be needed for both the investigative stages of the process and the interactive phase. Truth recovery is about more than simply retrieving information and details about an individual who was injured or killed. The healing power of the truth recovery process is for the victims/survivors to make meaning out of the suffering caused by a violent event that often still remains fresh in the memory. Close cooperation will be needed between the Unit's family support workers and non-political/non-partisan support groups such as Wave.

Whom do we see participating in the safe mediation Process? Without being prescriptive, the following are among the groups affected:

- Protestant/unionist and Catholic/nationalist victims/survivors of the IRA
- Mainly Catholic nationalist victims/survivors of the Loyalist paramilitaries (UVF, RHC, UDA)
- Mainly Catholic nationalist victims/survivors of the British Army and Northern Ireland security forces particularly in the early years of the conflict 1969-1976
- Victims/Survivors of intra-paramilitary feuds within Protestant and Catholic communities
- People in Britain and the Republic who lost family members in Troubles related incidents
- Members and families of Security Force members killed or seriously injured

Will the victims/survivors and families participate? Initiatives of this kind have been convened in cooperation with victim/survivors organisations previously and found to be very healing for the victims/survivors involved.

Will former combatants have the confidence to come forward to give information and participate? At least some former combatants, whether members of paramilitary organisations or the security forces, may be willing to engage with victim/survivors, once it removes the possibility of prosecution.

The protocols drawn up by the JFU will be critical and broad guidelines will require input by representatives of both victim/survivor and former combatants' organisations. At the same time, it must be recognised that many former combatants will not avail of a conditional amnesty, especially one that involves engagement with their victims/survivors, nor will all those who suffered from their actions wish to engage. But at least both groups would be provided with a choice that does not exist at present.

For the former combatants, it not only removes the threat of prosecution and provide them with an opportunity to explain what happened from their perspective to victim/survivors, but it allows them to participate more fully in society. At the same time, it removes the protective shell of their own self-congratulatory tribes and forces them to confront the consequences of their actions.

For victim/survivors, the process also contains risks. Confronting perpetrators could be traumatic and would have to be a gradual process mediated by trained professionals. But even if the victims/survivors decided not to pursue the process to its completion, they would almost certainly obtain more information and a greater understanding of what happened than through any legal process.

**B.1.** The justice facilitation process will be a discrete mediation process co-designed with victims/survivors' families and/or former combatants, with the organisational support group in attendance on each side if needed. It will be held in a safe, confidential space under similar rules as Chatham House and convened by the JFU facilitation team after careful preparation and bilateral meetings with each side.

**B.1.1** There is a need for victims/survivors to tell their story about what happened and to have their pain and hurt understood and acknowledged by former combatants. After that, two key questions are important for them: Who did it? Why did they injure me, or kill my parent/husband/wife/sibling/child? They may also want to work on the deeper question: "What was it all for?"

**B.1.2.** For the former combatant, there is a need to clarify what happened and why. Arising from this interaction, there may remain unsolved issues or new questions on the part of the victims/survivors. In turn, there exists a need for former combatants to accept responsibility for what they have done and demonstrate credible remorse.

**B.1.3.** The justice facilitation Process should function as follows, providing the possibility of face-to-face access to the truth:

1. The former combatant approaches the JFU with an offer of disclosure.
2. The JFU has a Questionnaire the former combatant is required to fill out.
3. The former combatant must state what happened. When, Where, Why, How and to Whom? (If they know the identities of the victims/survivors, which in some cases they may not.)
4. They must make it clear if they are making an application on behalf of themselves or a group. If the latter they must provide proof of this through some accompanying documentation that can be independently verified showing the consent of the other parties. (While group applications may be less likely to occur, they would remove certain limitations on the disclosure process that arise where individuals are acting on their own behalf.)
5. The contents of the application cannot be disclosed to any law enforcement agency, or other third party.
6. Nothing disclosed by the applicant(s) either intentionally, or inadvertently can be used to investigate or prosecute another individual or group.
7. Nothing disclosed by the applicant(s) either intentionally, or inadvertently can be used as the basis for a civil action for reparations or other damages or loss by victims/survivors. (Any compensation for loss of life, injuries, or other losses would be paid by the state, or states, concerned.)
8. The identity of the applicant(s) will remain confidential in the initial phase of the process and may remain so where its disclosure might have repercussions for their own family members. This might be a particular problem where injuries and deaths arose within communities as a result of intra-paramilitary conflicts.
9. Penalties only arise in the case of false statements. Such penalties should be significant enough to discourage cranks, attention seekers and malicious declarations.
10. It will be a criminal offence to disclose any information submitted by an applicant without their prior knowledge and consent. This applies to victim/survivors and their families as well as other parties to the Process.

11. Having received an application, the JFU will ask the TRU to appoint an investigator.
12. Having satisfied itself as to the applicant's bona fides, and the basic facts with the assistance of the TRU investigator, the JFU will then appoint a Mediation Officer to approach victim/survivors to notify them of the nature of the information received and ask them if they wish to engage with the former combatant. If so, on what basis? The Mediation Officer would also be able to call on the services of the TRU investigator as required. This would include interaction by the investigator with victim/survivors as well as former combatants.
13. Where the victims/survivors, or some of them in the case of groups, wish to engage, they would meet with the Mediation Officer initially to discuss the basis of the engagement. The first phase of the engagement would be through the Mediation Officer who would decide if, and when it would be appropriate for the parties to meet face to face.
14. The Mediation Officer will design protocols based on the discussions with the former combatants and victims/survivors which both sides would be required to sign off on to enable the Process to move to the next stage. In the early phases of the programme this would be, inevitably, on a trial and error basis but drawing on best practice elsewhere.
15. The Mediation Officer would also have to consider the most appropriate conditions under which both sides would meet. Factors could include the state of health of the parties and whether both parties lived in the same jurisdiction. If the number of victims/survivors is large they might need to meet separately with former combatant(s), or in small groups. Factors such as mobility/disability/age/mental capacity might arise for some victims/survivors and indeed some former combatants.
16. Transportation, accommodation and other expenses should be available from an agreed fund.
17. The Mediation Officer would have discretion on whether to recommend counselling and other supports for victims/survivors or former combatants. Like travel expenses this would be paid for by the government(s) on the basis of an agreed fund.
18. To give some sort of finality to the process there would be a requirement for both sides to respond within specified time frames to each phase. Perhaps it could be three months for victims/survivors to respond to the initial contact from the Mediation Officer and nine months for the engagement process. Should the victims/survivors wish to withdraw from or suspend the engagement with the former combatant(s) they should be granted a three months period of reflection. However, the overall process would not take more than 15 months, except by the mutual agreement of the former combatant(s) and victim/survivors.

## **B.2. Joint Statements of Reconciliation and Statements of Acknowledgement**

Where the process is concluded, there would be an agreed Joint Statement of Reconciliation, or at least a shared understanding of what happened. Whether the parties engage face to face or not, the aim of the process is to agree to a Joint Statement of Reconciliation whenever possible. The primary goal of the Joint Statements of Reconciliation would be to secure reconciliation on the truth and accuracy of the relevant information. Hopefully, the Joint Statements would also entail interpersonal reconciliation between victims/survivors and former combatants, although it would be wise to recognise that this would not be possible in many cases.

In the Joint Statements, both sides would undertake to provide an account of the incident(s) and to having their account checked against other sources such as newspapers, eyewitnesses and other participants in the process. The Mediation Officer and TRU investigator would be given full access to official documents, including army and police records, to ensure the account is as full and accurate as possible. In particularly sensitive instances, this task might be undertaken by the Judges appointed to oversee the Process.

If the process is not completed, it would be open to each party to make a statement providing their own understanding of what has transpired, which would be made available to the other side. In such a case, the parties' records would be placed in a secure archive that could not be opened until all the participants had died, or they subsequently consented to publication.

If a joint statement is achieved, the finding should first be made available to the involved parties, and then should be made public after a short period of time (no more than three months). In this case, the parties would be encouraged to engage with the wider community, schools, conflict resolution groups, researchers, and other relevant audiences in order to promote greater understanding of the nature of the conflict; inspire others to participate; and counter the longstanding problem of the transgenerational transfer of conflict that bedevils societies such as Northern Ireland.

Perpetrators who do not avail of the conditional amnesty remain at risk of facing the full rigour of the law should their offences subsequently come to light. This is an important condition that differentiates conditional amnesties from a general amnesty. This initiative could be accompanied by additional resources being made available for the investigation of outstanding offences. In doing so it also provides an incentive for other former combatants to come forward if they see the pilot scheme is working.

Dealing with the past is a sensitive issue and is viewed very differently by the political leadership of the two main communities because they want to talk about different things arising from their different perspectives of what happened in the armed conflict in Northern Ireland. It will be an important challenge to find a way over the next two years to facilitate dialogue that produces statements of acknowledgement and reconciliation on the past and the legacy of violence rather than constant reiteration of legacy issues.

The greater political challenge is how civil society might encourage political leaders to go beyond their own political narratives by acknowledging the concerns, collective hurts and fears of the other side. There are currently two communal narratives that go back into history and make it difficult for each side to accept the legitimacy of the other's narrative. Given all that has happened, not only in recent decades but recent centuries, the need for a fresh approach is self-evident and urgent. In our view – and in our experience – people can be reconciled in spite of their irreconcilable narratives.

### **B.3. As outlined above, the Reconciliation Commission will be subject to oversight by the British and Irish governments.**

As far as possible, it should utilise existing structures in each jurisdiction. In Northern Ireland, the main site of the conflict, it could be housed within the Victims Commission, with the Victims Commissioner serving as a member of the Reconciliation Commission oversight body. It could draw on the existing professional networks of the Community Relations Council that extend all the way down to the district Good Relations units across the province. This could help reduce set up costs and allow for a speedier operationalisation of the support services for the initial pilot project phase.

In Britain and the Republic separate arrangements might be made, but hopefully the resources and experience of the Victims Commission would be available, as well as extra funding provided by the British and Irish governments to enable it to do so.

#### **B.4. Inter-communal Circle event for acknowledgement**

The Reconciliation Commission might also promote dialogue between victim/survivor families from one community telling their story to the other community, so that their experience can be heard, understood and acknowledged. This could be between local neighbour communities or between rural and urban communities in an inter-communal exchange/encounter.

### **C. Reconciliation Commission (RComm)**

The Co-Chairs have an important role to play not alone in overseeing the efficient and fair operation of the JFU and TRU but in providing moral leadership to civil society and eliciting a political response from party leaders. The two governments must also give leadership and set political time aside to support the process over the two years as the pilot develops.

The first year should be devoted to getting the three units up and running to achieve their project goals. The final six months will involve a more active time for Commission members to pull together the themes and lessons emerging from the truth recovery and facilitation units. This will prepare the way for the report from academic historians and lay the ground for the statements of acknowledgement from the churches, civil society organisations and the two governments.

#### **C.1. Composition of the new Commission**

- Two Independent Co-Chairs to be appointed by the UK and Irish governments. These should be senior Judges who are not currently serving in either the UK or RoI jurisdictions. Former senior Judges from another jurisdiction, who are acceptable to both governments could also serve.
- An agreed number of members representative of civil society groups: including representatives of the churches, trauma specialists, legal, academic and political science academics, victims/survivors and former combatants.

This proposal envisions the two Co-Chairs setting up an executive team within the Commission to deliver the two year programme of reconciliation work.

#### **C.2. Independent academic report on themes**

The challenge for the academic team appointed to assess the causes of the conflict is to create a historic context after fifty years that helps all communities in Northern Ireland, Britain and the Republic to understand better what happened and draw the lessons for us all. The academics are unlikely to come up with one agreed bridging narrative without some process of consensus building being put in place by the RComm. The Commission should facilitate multiple communal narratives, particularly when both North and South, over the next five

years, will be commemorating the War of Independence, the establishment of the Irish Free State, the setting up of Stormont in Northern Ireland and the Civil War.

More recently, it has been suggested by emeritus Professor Henry Patterson that the work of historians should start early on, after the Commission has been established. This proposal supports his view that themes and contextual issues should be addressed by academics in the background. The report by the two foreign policy experts, Richard Haass and Meghan O'Sullivan in 2013, made a list of themes that may be worthy of exploration.

28 May 2020

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