



REPORT OF THE  
**Consultative Group on the Past**  
EXECUTIVE SUMMARY







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.

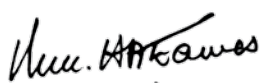
Northern Ireland has made tremendous progress out of the dark days of the violence towards peace and stable Government. But it became clear to us that finding a better way of dealing with the past would help cement that progress. To take now the final steps out of conflict will be difficult for many. 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.

## 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.

- 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.



- 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.

- 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.



# 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 of 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 the 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.

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 the 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.

## *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, businesses 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 the 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 the 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 coordination 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;

- 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.

- For ‘on the runs’ it has proved difficult to devise a scheme which avoids the criticisms levelled 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.





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