



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Dealing with Northern Ireland's Past

Towards a Transitional Justice Approach





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Table of Contents

	Page
A Foreword by Michael O'Flaherty, Chief Commissioner	1
B Expert Report	
I. Introduction	3
II. Northern Ireland's Foundational Agreements	3
III. Initiatives to Date	5
IV. Issues Outstanding	12
V. Proposals from Previous Consultations	14
C Transitional Justice Plan of Action of the Northern Ireland Human Rights Commission	17

Foreword

Northern Ireland endured decades of the horror of the troubles. It lives with the legacy. We are all called on to contribute to the healing of the wounds in our society. Central to the process of healing is the delivery of a programme of what is termed "transitional justice". This technical term refers to the range of judicial and non-judicial processes that are necessary to deliver truth, justice, accountability and redress in a society emerging from armed conflict. While the mix of such processes, and the manner in which they are carried out, will differ from one territory to another, what they should all share is a common thread that renders them comprehensive, complementary and coherent. It is on that basis that transitional justice can make a substantial contribution to the consolidation of peace and the building of a new and respectful society that honours the life and dignity of all its members.

Northern Ireland has already achieved a great deal. Much was accomplished prior to the adoption of the Belfast (Good Friday) Agreement. For instance, the fair employment and treatment law had been enacted, the Housing Executive was established and the Community Relations Council had already embarked on its essential work. Many other initiatives have occurred since 1998. Since these are chronicled in this report - suffice to acknowledge here that we benefit or have already benefitted from a great deal of the initiatives that would typically serve as building blocks for transitional justice. Much though remains missing. Crucial building blocks, such as those for truth recovery or the addressing of the needs of non-fatal victims of the conflict, have not been put in place. Most glaring of all has been the absence of an architectural plan for the overall construction. In other words, and despite such worthy efforts as that of the Consultative Group on the Past, Northern Ireland has never benefitted from a coherent and integrated transitional justice framework.

Our society is suffering by reason of these omissions. Some of our most vulnerable people remain at the margins, with inadequate acknowledgement of their suffering; many are dying without ever being able to share their stories of pain and loss. There is not a day that goes by without the unresolved senses of neglect and injustice triggering societal problems. The lack of a truth recovery process means that tribal myths will continue to trump actual memory.

National human rights institutions, such as the Northern Ireland Human Rights Commission (the Commission or the NIHRC), have filled an important role in advancing transitional justice in different countries around the world. In recent years, there is a growing expectation that such institutions would be engaged in this arena.

The United Nations Office of the High Commissioner for Human Rights has suggested that such national human rights bodies might contribute in the areas of fact-finding and investigations, strengthening national archives, assisting victims, facilitating consultations on transitional justice, and institutional reform particularly through human rights training¹. National human rights bodies have increasingly embraced this potential role².

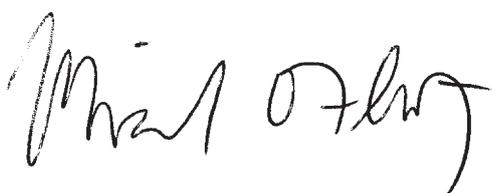
Mindful of its responsibilities in this area, in mid-2012, the Commission decided to review the opportunities and needs in the arena of transitional justice that might be appropriate for Northern Ireland, in light of the specific particularities of this context. The Commission selected independent expert Priscilla Hayner to lead the review, supported by Commission staff.

This report, drafted by Ms Hayner with support of Commission staff, is the result of consultative meetings with numerous organizations and individuals in Belfast in early December 2012, as well as a review of the literature available and previous consultations done on this subject. It must be emphasized that this brief review does not pretend to rely on the level of in-depth consultation undertaken in previous exercises of this nature; these prior reviews and their specific conclusions are summarized in Section V.

The overall objective of this report is not to satisfy all transitional justice needs, but instead to focus specifically on the role that the Commission might play in contributing to this area of work. The report comes to these proposals through first reviewing 1) the relevant texts of foundational agreements; 2) the work done to date relating to transitional justice; 3) the recommendations of previous studies and consultations, and 4) the general areas that broadly call for further attention. It is only based on this broader perspective that a work programme for the Commission could be identified.

Having considered Ms Hayner's report, the Commission adopted its transitional justice work programme for 2013-2016. This is set out in section C of this publication and is the basis for our work on this essential issue.

More broadly, we are publishing this report to inform renewed debate and consideration on transitional justice in Northern Ireland, helping us all to identify the best ways forward.



Professor Michael O'Flaherty
Chief Commissioner,
Northern Ireland Human Rights Commission

1 'Guidance Note on National Human Rights Institutions and Transitional Justice,' UN Office of the High Commissioner for Human Rights, Sept 2008.

2 For example, the Seventh Conference of African Human Rights Institutions adopted a resolution in 2009 (the Rabat Declaration) which spells out and encourages the numerous ways in which national human rights institutions can contribute to transitional justice.

Expert Report

I. Introduction

1. The field of transitional justice has advanced rapidly in the last fifteen years. When the Agreement reached in the multi-party negotiations [referred to here as the Belfast (Good Friday) Agreement] was finalised in 1998, the field was barely developed. The Belfast (Good Friday) Agreement beckoned a new era after a period of violent history in Northern Ireland. It envisaged a series of measures to help transform society. It did not however contain any formal mechanism for dealing with past abuses and violations. At that time, a number of important institutions and initiatives were underway or recently concluded in other countries, including the South African Truth and Reconciliation Commission and several truth commissions and reparations programmes in Latin America, but little work had been done to gather these diverse experiences or derive lessons for contexts elsewhere.
2. Since then, there have been many dozens of national initiatives in the areas of truth-telling, special tribunals, vetting, reparations, memorials, reintegration of combatants, institutional reforms, reconciliation programmes, and other aspects of what now falls under “transitional justice”.
3. These experiences tell us clearly that no one model is appropriate for every case; there are few, if any, universal guidelines. Each country must carefully work out the substance, timing, and nature of national policies designed to confront difficult and often painful events in its past. Indeed, Northern Ireland's experience confirms that these questions are not settled quickly. Efforts to come to terms with the past often require many years, indeed many decades.
4. Reflecting its recent emergence, terminology in this field is still fluid. This report uses the term “transitional justice”, but others may prefer “dealing with the past” or “coming to terms with the past”. The general objective is the same: to develop and implement official and unofficial policies, institutions and initiatives that address the legacy of wide scale abuses (by non-state actors) and violations (by the state) that occurred in the past. This includes both the more legally-oriented elements of transitional justice (including court inquiries, inquests, prosecutions, or prison-release programmes) as well as the equally important parallel initiatives such as community reconciliation, victims' services, and institutional reforms.

II. Northern Ireland's Foundational Agreements

5. A review of recent political agreements shows limited attention to issues of accountability, recognition, or investigations into past abuses and violations. Some participants in the Belfast (Good Friday) Agreement negotiations have said that it did not seem possible to go further in this arena at that time.

The Belfast (Good Friday) Agreement

6. This Agreement, signed in 1998, was the result of peace negotiations chaired by US Senator George Mitchell. It is a multi-party agreement involving most of Northern Ireland's political parties, and a constitutional settlement where the governments of the United Kingdom (UK) and Ireland agreed to introduce and support changes in British legislation and the Constitution of Ireland relating to the constitutional status of Northern Ireland. The Agreement sought to resolve a number of issues relating

to the conflict. It made provision *inter alia* for devolved political institutions, the reform of policing, security and justice, decommissioning, and enhanced protection of human rights.

7. However, it is largely forward-looking, and thus does not set out a strategy for dealing with Northern Ireland's past, nor proposes any structured mechanism for truth recovery or reconciliation. While it recognises victims' rights and acknowledges the need to provide them financial and other support, it does not state what government should do beyond providing 'sufficient resources to meet the needs of victims.' There are commitments to supporting reintegration of prisoners and community-based initiatives to help young people facing difficulties as a result of the Troubles. Similarly, the Agreement pledged support to organisations that aim to improve reconciliation and mutual understanding.

Other Relevant Agreements

8. A number of other agreements provide elements that are relevant to the issues discussed here. The Weston Park Agreement (2001), between the governments of the UK and Ireland, aimed to fill certain gaps that had been identified in the Belfast (Good Friday) Agreement. Under the Weston Park Agreement the two governments committed themselves to a package of measures which included: a review of the Parades Commission, a commitment to address issues of police reform and policing arrangements, an intention to address the position of 'on the runs'³, and an announcement of a formal investigation by a judge of several deaths (as discussed below).
9. The St Andrews Agreement (2006) between the governments of the UK and Ireland cleared the path to restoring devolution in Northern Ireland in 2007. In addition, it established a Victims' Commissioner, announced a programme to facilitate the employment and reintegration of ex-prisoners, and addressed a range of specific issues relevant to the transition (support for Irish and Ulster-Scots languages, parading, equality legislation, the powers of the NIHR, deprivation and poverty).
10. The Hillsborough Agreement (2010) between the Democratic Unionist Party (DUP) and Sinn Fein made it possible to devolve policing and justice powers to the Northern Ireland Executive. In doing so, it touched on a range of issues relevant to the transition, including the interests of victims, and announced that a Victims' Code of Practice would be developed.
11. While these agreements did not address past human rights abuses in detail, they also did not exclude any possibility of the independent development of such policies. A review of peace agreements in many other national contexts shows that the text of an agreement often serves as a starting point, and that much consultation, debate and further policy work must follow. Indeed, there can sometimes be advantages in leaving issues to be worked through in a process of consultation, rather than having policies limited by language reached during constrained, and often pressured, political negotiations.

³ Those individuals who are suspected of committing an offence connected to the conflict in Northern Ireland but who have not yet been brought before the prosecuting or judicial authorities due to the fact they are 'on the run'.

12. Of course, it requires political will to make progress in this arena. If there is no obligation set out in a foundational agreement, this will make it more difficult to make progress in the political sphere, especially given many other demands during a transitional period. In this sense, the increasingly clear set of standards and State obligations that are set out in the international realm (as seen in court decisions, resolutions from intergovernmental bodies, and in United Nations expert reports, for example) can be of great help. The final section of this paper suggests that the Commission undertake a review of these obligations and their applicability to the Northern Ireland context.

III. Initiatives to date

13. In fact, much work has been done, and continues to be done, in relation to 'dealing with the past', both by official entities as well as by independent or civil society organisations. At the same time, it seems evident that the ad hoc, independent, or separately organized nature of these initiatives, and an absence of an overall strategy, policy or plan, has left a palpable sense by expert commentators that not very much (or certainly not enough) is being done.
14. The initiatives that have been undertaken are important, and many of them significant, and should be recognized. The following provides a summary of a number of these programs or initiatives; this is not however intended to be a comprehensive list.

Public inquiries, investigations and independent panels

15. In 1998, UK Prime Minister Tony Blair established the Bloody Sunday Inquiry to investigate the circumstances that led to loss of life in connection with the civil rights march in Derry/Londonderry on Sunday 30th January 1972. The Saville Report was published 12 years later in 2010. The Inquiry found, inter alia, that none of those shot by British soldiers had acted in any way to justify their being killed, that the soldiers had lost self-control, and that they had later knowingly given false accounts of the day's events. Immediately after the report's release, the UK Prime Minister David Cameron acknowledged in the House of Commons that members of the armed forces had acted wrongfully and without justification, and he apologised on behalf of the UK government.
16. The Inquiry also found that it would be 'wholly impracticable' to investigate the claim that a 'culture of impunity' existed. Although the Report was widely celebrated on its release as a vindication of the long campaign to clear the victims' names, some felt the Report could have gone much further in exploring culpability at the highest levels of government. Others have expressed concern at the cost of the investigation.
17. On 5th July 2012, the Police Service of Northern Ireland (PSNI) announced that it would launch a murder investigation into the Bloody Sunday deaths. This investigation is to take at least four years and will involve a team of 30 detectives. The PSNI has not commenced the investigation and has stated that it does not have the resources or expertise to undertake the investigation, and that no decision has yet been made on when it might start.

18. In 2001, Judge Cory, a retired Canadian Supreme Court judge, was appointed by the UK government to investigate allegations of state forces' collusion with paramilitaries in a number of cases in Northern Ireland. His reports recommended the establishment of four public inquiries in the UK to investigate those deaths.
19. In three of these cases, inquiries were set up in 2005 and have been concluded. It was found that negligence, rather than collusion, caused the death of Billy Wright⁴. The Rosemary Nelson Inquiry found no evidence that any act by a state agency had directly facilitated her killing, although it did not rule out the involvement of a rogue agent. The Inquiry found that Royal Ulster Constabulary (RUC) members had publicly abused and assaulted Mrs Nelson, thereby legitimising her as a target; that intelligence leaks had endangered her life, and that omissions by state agencies had made her more vulnerable⁵. Though completed, the Robert Hamill Inquiry Report has not yet been published because three individuals (including a former police officer) were being prosecuted for perverting the course of justice in relation to the death of Mr Hamill. On 17th July 2013 the case against all three individuals was halted by the District Judge on the grounds that the sole witness was unreliable.
20. In the fourth death, that of Pat Finucane, no public inquiry has been held. The killing was reviewed in a report released in December 2012 by Sir Desmond de Silva QC, who highlighted 'shocking' levels of state collusion in Mr Finucane's death, but found no evidence that the government had been informed in advance of his murder or was aware of the subsequent cover-up.⁶ The Finucane family rejected the choice of this review process from its inception, in the belief that a public inquiry was necessary. On the release of Sir de Silva's report, the family described it as a 'whitewash' and a 'sham', and declared that the government had 'engineered a suppression of the truth'⁷. Northern Ireland's politicians remain deeply divided on the case, with Unionists highlighting the deaths of many IRA victims which have never been the subject of inquiries, and Nationalists universally calling for a public inquiry.
21. Inquests can play a significant role in any overall system for establishing accountability. At least two inquests related to Article 2 of the European Convention on Human Rights⁸ suggest that reliance on the coronial system alone in Northern Ireland is not adequate to deal with such investigations.⁹ In November 2012 the Senior Coroner suddenly suspended inquests into 14 controversial conflict-related deaths which had been transferred by the Attorney General to his office for investigation. Whilst that suspension has since been lifted, the episode demonstrates the legal uncertainties surrounding the inquest procedure. On 16th July 2013 the European Court of Human Rights issued judgment in two cases arising from Northern Ireland and, in both of them, found a violation of the procedural aspect of Article 2 ECHR because of the excessive delay in investigating the deaths.¹⁰ In the case of *McCaughey and others v the United Kingdom*, the European Court said: "The Court considers that the carrying out of investigations, including holding

⁴ The Billy Wright Inquiry Report, available at <http://www.official-documents.gov.uk/document/hc1011/hc04/0431/0431.asp>.

⁵ 'The Rosemary Nelson Inquiry Report', available at <http://www.official-documents.gov.uk/document/hc1012/hc09/0947/0947.pdf>.

⁶ Pat Finucane Review, available at <http://www.patfinucanereview.org/report/index.html>.

⁷ 'Pat Finucane's widow calls de Silva report "a whitewash"' The Guardian, 12 December 2012.

⁸ Article 2 ECHR reads "Right to Life 1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is protected by law 2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in the defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection." Article 2 imposes a procedural obligation to conduct an effective official investigation resulting from use of force by the state (see *McCann v. the United Kingdom* [1995] 21 EHRR 97) and any death resulting from the state's failure to protect the right to life (see *Edwards v. the United Kingdom* [2002] 12 BHRC 190)

⁹ Inquest into the death of Pearse Jordan (concluded in October 2012) and the Inquest into the deaths of Martin McCaughey and Dessie Grew (concluded in May 2012).

¹⁰ *McCaughey and others v the United Kingdom* (Application no: 43098/09) 16th July 2013 and *Collette and Michael Hemsworth v the United Kingdom* (Application no: 58559/09) 16th July 2013

inquests, into killings by the security forces in Northern Ireland has been marked by major delays. It further considers that such delays remain a serious and extensive problem in Northern Ireland".¹¹

22. Between 1989 and 2003, Sir John Stevens conducted three separate non-public government inquiries into alleged collusion between loyalist paramilitaries and the security forces. Sir Stevens claimed that state agents had severely obstructed his investigations, with evidence intentionally concealed, falsified, or in some cases, destroyed. The first inquiry found some evidence of collusion, albeit 'neither widespread nor institutionalised.' The report of the second inquiry, begun in 1993, was never published and no charges were brought. The third inquiry, concluded in 2003, found 'collusion, the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence', and other problems.¹²
23. In 2006, the Historical Enquiries Team (HET) was established as a separate investigative unit of the PSNI. It was tasked with re-examining 3,268 killings between 1969 and the signing of the 1998 Belfast (Good Friday) Agreement. It makes available to families information uncovered during investigations into conflict-related deaths. In 2012, at the request of the Chief Constable PSNI, the Minister of Justice commissioned Her Majesty's Inspectorate of Constabulary (HMIC) to inspect the role and function of the HET. The HMIC inspection report was published in full on 3 July 2013 and includes the finding that the HET is not conforming to current policing standards in a significant number of important areas, including an approach to cases where there is state involvement inconsistent with the UK's obligations under Article 2 ECHR.¹³ The inspection contains a total of 20 recommendations aimed at improving the effectiveness of the HET. On 4th July 2013 the Northern Ireland Policing Board declared it "has no confidence in the leadership of the HET".¹⁴ The Board has established a working group to take forward and oversee the implementation of all the recommendations contained in the HMIC report.
24. The Office of the Police Ombudsman is a non-departmental public body established to provide an independent, impartial police complaints system. It has undertaken to investigate complaints from the public and referrals by the PSNI Chief Constable, including in relation to deaths and other serious matters believed to have involved members of the RUC between 1969 and 1998. In March 2012 the Ombudsman announced that his office would receive an additional £10m over the next 6 years to complete its historical investigations and on 23 January 2013 announced that his office will now resume these investigations.
25. In 2010 Baroness Nuala O'Loan, the former Police Ombudsman, and Richard Harvey QC were appointed to form an independent panel, funded by the government, to oversee a PSNI investigation into murders and other serious crimes by the UVF in north Belfast. The panel, known as the Operation Stafford Independent Review Panel, was established to alleviate concerns from victims, witnesses and others about the investigation's independence. The panel meets PSNI detectives to review progress in the case and thereafter briefs families with any relevant information.

¹¹ Ibid 144

¹² Stevens Enquiry 3: Overview and Recommendations available at <http://cain.ulst.ac.uk/issues/collusion/stevens3/stevens3summary.pdf>.

¹³ <http://www.hmic.gov.uk/media/inspection-of-the-police-service-of-northern-ireland-historical-enquiries-team-20130703.pdf>

¹⁴ <http://www.nipolicingboard.org.uk/news/article.htm?id=14330>

Focus on victims and survivors

26. The Government asked the first Northern Ireland Victims' Commissioner, Sir Kenneth Bloomfield, to examine the feasibility of providing more recognition to victims of the Troubles. His report, *We Will Remember Them*, was published in 1998.
27. The legal definition of a victim in Northern Ireland is set out in *The Victims and Survivors (Northern Ireland) Order 2006*; that is, any of the following:
- '(a) someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident;
- (b) someone who provides a substantial amount of care on a regular basis for an individual mentioned in paragraph (a); or
- (c) someone who has been bereaved as a result of or in consequence of a conflict-related incident.'
- This was devised for the purposes of the mandate of the Commissioner for Victims and Survivors, and has also been adopted by the Victims and Survivors Service. The absence of a 'hierarchy of victims' from the definition remains controversial for some.
28. The Commission for Victims and Survivors (CVSNI) is a non-departmental public body, was established in June 2008, and is led by a full-time Commissioner. Its statutory duties include: promoting awareness of the interests of victims and survivors; reviewing the adequacy and effectiveness of law, practice and services in relation to victims and survivors; advising government; and ensuring that victims and survivors are consulted.
29. After a pilot scheme, CVSNI established a permanent Victims and Survivors Forum in 2012. It is comprised of 23 victim members and 2 non-victim 'Associate Members' and has three objectives:
- i) to contribute to CVSNI's assessment of victims and survivors and to its funding arrangements and the provision of services;
 - ii) to advise CVSNI on Dealing with the Past (for which purposes a Working Group has been set up);
 - iii) to advise CVSNI on the contribution of victims and survivors to building a shared and better future.
30. The Victims and Survivors Service became operational in April 2012. It is the delivery body for funding for victims and survivors and takes its direction from the Office of the First Minister and Deputy First Minister (OFMDFM). This Service replaces the Northern Ireland Memorial Fund and the Community Relations Council Victims and Survivors Programme.
31. The Independent Commission for the Location of Victims' Remains was established by legislation in 1999. Its functions include receiving information on the whereabouts of the remains of victims of violence, and disclosing such information for the purpose of helping to locate the remains.¹⁵ At least seventeen individuals are believed to have been murdered and secretly buried; nine bodies have thus far been located.¹⁶

¹⁵ In this case, a 'victim of violence' is defined as a person killed before 10 April 1998 as a result of an unlawful act of violence committed on behalf of, or in connection with, a proscribed organisation (s1(4) Northern Ireland (Location of Victims' Remains) Act 1999).

¹⁶ <http://thedisappearedni.co.uk/about/>

Memorials, Remembrance and Documentation

32. A number of memorial projects have sought to acknowledge the dead and give comfort to victims. Most are community initiatives. The Troubles Linen Memorial is an on-going piece of art that seeks to re-narrate the deaths caused between 1966 and 2006. Numerous monuments to the dead have been erected across Northern Ireland, although most of these are single identity; for example, the Shankill Memorial Park and the Falls Garden of Remembrance. A number of initiatives, such as memorial marches, are organised solely by family members of victims or the community itself, without the input of the state, political parties or NGOs.
33. There is a £300m redevelopment proposal for the Maze prison site to include a conflict resolution centre. The centre is expected to undertake education and research, provide a venue for conferences on conflict, and include an exhibition space and archive.
34. The 21st of June each year has been promoted as a Day of Reflection by the NGO Healing Through Remembering. This is one of a number of initiatives by the group that aims to create an opportunity for personal reflection, to acknowledge the hurt and pain caused by the conflict, to reflect on personal attitudes, and to make a commitment that such loss should never happen again.
35. Several non-governmental storytelling projects have been established. For example, the Ardoyne Commemoration Project collated 300 oral interviews, recording the stories of the 99 people from the Ardoyne area killed during the conflict. These testimonies have been published in an edited volume distributed to the participants. Wave, Stories from Silence, is an online storytelling archive, documenting the experiences of bereaved families and some of those who were injured during the troubles.
36. The CAIN website, an online archive, provides a wide range of information, research and analysis of the conflict and politics in Northern Ireland. It is based at INCORE, at the University of Ulster, and is part of ARK, a resource shared by Queen's University Belfast and the University of Ulster.

Recognition and Apologies

37. As noted, the UK government has publicly apologised for the 'unjustified and justifiable' killings that occurred in Derry/Londonderry in January 1972; Prime Minister David Cameron also issued an official apology to the Finucane family in 2011 and again in 2012 for the state collusion in the murder of Pat Finucane.
38. In 2005, then Prime Minister Tony Blair apologised in private to members of the Conlon and Maguire families for the wrongful convictions of 11 people in relation to IRA bombs in Guilford and Woolwich in 1974.
39. In April 1994, the Combined Loyalist Military Command's ceasefire statement offered 'abject and true remorse' to the loved ones of 'all innocent victims'.

40. In April 2002, a statement from the IRA to the British and Irish governments included the offering of 'sincere apologies and condolences' to the families and friends of 'non-combatants' killed and injured by IRA actions; it also acknowledged the grief and pain of the families of 'combatants on all sides'. The IRA has also issued apologies in respect of the deaths of some specific individuals.
41. In January 2013, the President of Sinn Féin, Gerry Adams T.D.¹⁷ apologised in the Dáil to the families of members of the Irish state forces killed by republicans during the conflict.

Former Prisoners

42. Under the early release scheme of the Belfast (Good Friday) Agreement, more than 450 qualifying¹⁸ prisoners were released on licence.¹⁹ The Secretary of State has the power to suspend a licence and recall an individual to prison if he or she believes they have broken or are likely to break a condition of their licence. The licence can then be confirmed or revoked by the Sentence Review Commissioners.
43. The Community Foundation for Northern Ireland has co-ordinated funding for ex-prisoner groups since 1995. Its aim is to reintegrate ex-prisoners and support their contributions to conflict transformation and peace building. Funding has been provided by the EU PEACE Programmes, Atlantic Philanthropies, and others.
44. Initiatives undertaken by former prisoner groups include: cross-community interaction aimed at conflict transformation; restorative justice projects to eradicate paramilitary retribution attacks and advocate change in the formal justice system; and attempts to build grassroots capacity and leadership. Several initiatives have aimed to develop the social economy of communities.
45. The 'From Prison to Peace' initiative has been established by former prisoners associated with the main paramilitary organisations that participated in the conflict. The consortium meets to discuss common difficulties faced by former prisoners as well as conflict transformation and social change, and publishes the STEPS magazine on their work to build a more stable and peaceful Northern Ireland. Former prisoners have begun an education programme to reach out to youth, in part to discourage any misrepresentation or romanticism about the reality of the conflict.
46. OFMDFM has published guidance for employers in the public, private and voluntary sectors. It aims to assist employers to follow best practice in recruiting people who have conflict-related convictions.²⁰ The guidance reflects commitments that were made in the Belfast (Good Friday) and St Andrews Agreements.

¹⁷ A Teachta Dála (TD) is a member of Dáil Éireann, the lower house of the Oireachtas (the Irish Parliament)

¹⁸ See section 3 Northern Ireland Sentences Act

¹⁹ The Sentence Review Commission was established to oversee the early release of prisoners who were released on licence. Under the Northern Ireland Sentences Act 1998 the licence is subject only to the conditions that a) that he does not support a specified organisation; b) he does not become concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland; c) in the case of a life prisoner, that he does not become a danger to the public.

²⁰ 'Recruiting People with Conflict-Related Convictions: Employers' Guidance' (OFMDFM 2007), available at <http://www.ofmdfmi.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf>.

Reconciliation and anti-sectarianism

47. A number of on-going initiatives aim to promote reconciliation and counter sectarianism. Both the British and Irish governments, as well as OFMDFM, have provided financial support to such efforts. The European Union has allocated over one billion pounds to projects in Northern Ireland via the three PEACE funding cycles. Northern Ireland and the border counties of Ireland have received support from the International Fund for Ireland and the Atlantic Philanthropies, totalling some £718 million, as well as from other charities and foundations.²¹
48. Numerous community groups, supported by this funding, have engaged in extensive cross-community work to build better relations across interfaces and between communities. These range from small group meetings to discuss specific issues, to residential trips for children and adults to places such as Corrymeela, which is an open village where people of all faiths and backgrounds come together and learn to live in a community committed to a vision of working toward a shared future and community reconciliation.
49. During the conflict, efforts were made by the UK government to tackle discrimination and sectarianism in the areas of housing, employment and education. In 1971 the Northern Ireland Housing Executive was established as NI's strategic housing authority, and given a key role in allocating social housing and enhancing the condition of the housing stock. The first House Condition Survey in 1974 found that Northern Ireland had the worst housing conditions in Britain and amongst the worst in Europe.²² The 2011 stock condition survey found the level of unfitness at just 4.6% and the rate of failure of the Decent Homes Standard has reduced further to 11%.²³ The NIHE also has a key role in promoting a more inclusive society and has developed a Community Cohesion Strategy which sets out its commitment to promoting mixed housing where it is practicable, desirable and safe.
50. There are 1200 schools in Northern Ireland; 62 of which are defined as integrated.²⁴ In addition, a number of other schools have significant numbers of minority Catholic or minority Protestant children enrolled in them. The statutory curriculum includes 'mutual understanding' as a key element in all learning areas and the examination of issues such as diversity, inclusion/exclusion and conflict and reconciliation are compulsory.²⁵ The Community Relations, Equality and Diversity in Education (CRED) policy was developed by the Department of Education to contribute to improving community relations between young people, by providing opportunities both in formal and non-formal educational settings for children to build relationships with those of different backgrounds. A pilot scheme run by the School of Education in Queens' University, the Sharing Education Programme, encourages participating schools to collaborate and share resources, which provides opportunities for cross-community contact by pupils.

²¹ Paul Nolan, 'Northern Ireland Peace Monitoring Report: Number One' (2012 CRC).

²² http://www.nihe.gov.uk/more_than_bricks.pdf

²³ http://www.nihe.gov.uk/northern_ireland_house_condition_survey_main_report_2011.pdf

²⁴ Integrated Education brings children and staff from Catholic and Protestant traditions, as well as those of other faiths, or none, together in one school. For the past 30 years, in a deeply divided society, integrated schools have been an alternative to an educational system in which most children attend largely religiously separated schools. See <http://www.nicie.org/>. For statistics see http://www.deni.gov.uk/enrolments_in_schools_1213_-_february_release_-_final-3.pdf

²⁵ Education (Curriculum Minimum Content) Order (NI) 2007.

51. Northern Ireland had implemented anti-discrimination or anti-sectarian initiatives prior to the Good Friday Agreement. The Fair Employment (Northern Ireland) Act 1976 outlawed workplace discrimination on the grounds of religious belief and political opinion; the Education (NI) Order 1989 imposed a statutory duty on the Department of Education to encourage and facilitate integrated schools; and the Race Relations (NI) Order 1997 outlawed discrimination on the grounds of colour, race, nationality or ethnic or national origin in Northern Ireland. Some progress has been made: by 2010, for example, 86% of those polled in Northern Ireland described their workplace as a 'neutral space' always or most of the time.²⁶ Nevertheless, challenges around equality, access, and discrimination continue.

IV. Issues outstanding

52. Despite the many efforts, there is a strong view, among those consulted for this report, that something – or probably several things – are missing, and that the past remains insufficiently addressed, thus increasing the tensions in inter-community relations. Consultations were undertaken in late 2012 with victims, former prisoners, community groups, transitional justice experts and academics, and members of key institutions; these conversations suggest a number of ideas.
53. Among those consulted, many called for a more holistic approach to transitional justice in Northern Ireland. The absence of any centralised oversight or co-ordination of transitional justice efforts was felt both to impede those trying to make advances in this area, and to contribute to the public perception that little was being done. Experts, victims, and others stressed the need for a medium to long term strategy on these issues, in contrast with the current ad hoc approach to policy and funding.
54. Many expressed support for some form of non-judicial truth-seeking mechanism. Whilst the work of, inter alia, the Historical Enquiries Team, the Police Ombudsman and government funded memorialisation projects was acknowledged, the interest in a more comprehensive truth-seeking initiative was clear. There are gaps in current mechanisms, such as the failure to investigate the cases of those injured but not killed. Further, many relatives of those killed by paramilitaries feel they will never know the truth because of the oaths of silence taken by group members and the absence of records. A recurrent positive theme was the opportunity for truth telling at an organizational, rather than individual level. It was said that most former paramilitary members may not be willing to accept individual responsibility for acts undertaken at the behest of a group, but that the organization may be willing to provide further information about what happened and why. Some also believed that the Government and its agents or former agents may not be willing to take part in a robust truth-seeking exercise, either at an individual or organization level. Nevertheless a truth body might provide a useful strategy for some victims to receive recognition and information from organizations responsible for specific acts. An organization could potentially release information, where an individual might not.

55. It should be noted that the support for a formal truth recovery process is not universal, nor was it a consensus in our consultations. In early 2012, First Minister Peter Robinson and DUP leader expressed opposition to a truth commission to deal with the legacy of the troubles.²⁷ However, particularly in relation to events occurring in the 1970s, there is a real sense of urgency given the need both to access information from aging perpetrators and give some solace to elderly victims.

When is a country ripe for a truth commission? Three critical elements should be present. First, there must be the political will to allow and, hopefully, encourage or actively support a serious inquiry into past abuses... Secondly, the violent conflict... must have come to an end... Third, there must be an interest on the part of victims and witnesses to have such an investigative process undertaken and to cooperate with it.

OHCHR, 'Truth Commissions', (2006, pg 2, see: <http://www.ohchr.org/Documents/Publications/RuleoflawTruthCommissionsen.pdf>).

56. There is also a need for further attention to victims and survivors in the arena of reparations. Whilst most of those injured or bereaved received compensation just after the event, many are living in poverty today in part due to these initial events.²⁸ Some have not had access to any compensation, for various reasons. One of the obstacles to progress in this area is the definition of victim, which is understandably controversial. For example, the reaction to the recommendation by the Consultative Group on the Past in relation to reparations ultimately overshadowed the many other recommendations in that report. There would be merit in carrying out a distinct process of reflection and consultation on the subject of reparations.

Compensation is important but [reparations] work best when seen as part of a comprehensive justice policy, rather than as an isolated effort. The situation is worse when this is the only redress on offer, with no truth-telling, criminal prosecutions or significant institutional reforms. This may give the impression that reparations are a bribe to buy the silence or acquiescence of the victims.

OHCHR, 'Reparations Programmes', 12.

57. Whilst the Victims and Survivors Service and the Commission for Victims and Survivors reflect a government commitment to support for victims, both must address reported inaccessibility for those requiring their services. Further, community victims groups could usefully be supported and trained to provide the best possible care for their members.

²⁷ Belfast Telegraph, 27 February 2012

<http://www.belfasttelegraph.co.uk/news/troubles-amnesty-and-truth-commission-are-ruled-out-by-robinson-16123700.html?>

²⁸ See 'The needs of individuals and their families injured as a result of the Troubles in Northern Ireland' Marie Breen-Smyth commissioned by WAVE Trauma Centre, May 2012 pg 10 <http://www.surrey.ac.uk/politics/files/cii/WAVE%20Final%20Report.pdf>

58. In both the Belfast (Good Friday) Agreement and the St Andrew's Agreement, the governments of the UK and Ireland pledged continued support and assistance for reintegration of former prisoners. However, ex-prisoners' groups still report many difficulties in reintegration including discrimination on the basis of their past convictions in access to jobs, travel, education and insurance. Some suffer mental health challenges, with little support. Former prisoners report that their families sometimes also suffer prejudice and discrimination only because they have a family member who is known to be an ex-prisoner. OFMDFM has published useful guidance on the employment of former prisoners, but it carries no legal weight as such. Further consideration should be given to address these difficulties in relation to integration and normalization.
59. Some persons in the consultation meetings expressed serious concern regarding the education and attitudes of young people in relation to the conflict. Recent events highlight the important role of engaging youth in inter-community relations. A targeted education programme could work to change sectarian attitudes amongst children and young people and address the intergenerational legacy of the conflict. Former prisoners and community groups are making efforts, but the involvement of political representatives could also be helpful in advancing this further. Appropriate training and resources for schools could help ensure that teachers are confident and equipped to address these sensitive issues.

V. Proposals from previous Consultations

60. A number of specific proposals have emerged over the years from commissions or other bodies asked to look into these areas. Some of these have resulted from extensive consultations. Amongst the persons consulted in late 2012 by the NIHRC, there was still strong support for many of these recommendations, particularly those of the Consultative Group on the Past. The three most relevant sets of official recommendations are summarized here:

'We Will Remember Them': Report of the Northern Ireland Victims' Commissioner, Sir Kenneth Bloomfield KCB (1998)²⁹

61. The report of the first Victims' Commissioner recommended a comprehensive review of criminal injuries compensation³⁰ for victims, and highlighted the lack of awareness of the special needs of victims. The report recommended resources and research on the treatment of trauma, including the establishment of a professional trauma centre.
62. The report also recommended a Memorial Appeal, to be funded by government and private sources. This would focus on compensating the children of victims who have suffered social or education disadvantage as a result of the violence.
63. Whilst the Bloomfield Report noted that the possibility of a truth commission should not be overlooked, it could only occur 'in the context of wide-ranging political accord.' The report also recommended consideration of a memorial day and a 'Northern Ireland Memorial in the form of a beautiful and useful building within a peaceful and harmonious garden.'

²⁹ Available at <http://cain.ulst.ac.uk/issues/victims/docs/bloomfield98.pdf>.

³⁰ Criminal injuries compensation is a monetary award paid by the government to people who have suffered loss because they are a victim of crime.

Report of the Consultative Group on the Past (January 2009)³¹

64. The Consultative Group on the Past ('CGP Report'), chaired by Archbishop Robin Eames and Denis Bradley, was based on consultations with 141 individuals and groups; public meetings across Northern Ireland, Britain and Ireland, and numerous written submissions received over two years. Its recommendations centred on achieving a uniform and comprehensive mechanism to address Northern Ireland's past.
65. The Report recommended an independent Legacy Commission to deal with the past by combining reconciliation, justice and information processes. This Commission would be chaired by an International Commissioner, and follow four strands of work over five years:
- a) *Helping society towards a shared and reconciled future, through a process of engagement with community issues arising from the conflict*
This would involve championing societal issues arising from the conflict, such as addressing sectarianism, and co-operation with churches and community leaders.
 - b) *Reviewing and investigating historical cases*
A new independent Review and Investigation Unit would take over the work of the Historical Enquiries Team and the Police Ombudsman's historical cases team.
 - c) *Conducting a process of information recovery*
Recovering information important to relatives would be distinct from the investigative procedures, and overseen by a separate Commissioner.
 - d) *Examining linked or thematic cases emerging from the conflict*
Thematic examination of issues such as collusion would take place without public hearings, to facilitate more open and frank disclosure.
66. It was recommended in these circumstances that there be no new public inquiries; the case of Pat Finucane could be dealt with by the Legacy Commission. Outstanding inquests would remain with the Coroner.
67. A Reconciliation Forum was also recommended, through which the Legacy Commission and CVSNI could liaise to tackle societal issues relating to the conflict. The Forum would have a mandate to promote the improvement of services for related healthcare needs. It would also advise Government on addressing societal issues, policy and delivery of services.
68. The CGP Report recommended a reparations payment of £12,000 to the nearest relative of anyone who died as a result of the conflict in Northern Ireland since January 1966. This recommendation was widely criticized.

³¹ Available at <<http://www.irishtimes.com/focus/2009/troubles/index.pdf>>.

One of the greatest challenges faced by reparations programmes is where, exactly, to set the level of monetary compensation. Practice varies significantly from country to country... The rationale offered (if at all) for selecting a given figure also varies... It is clear that these choices depend on the political bargaining that takes place and with an eye to feasibility rather than to questions of principle. This... means that existing practice is of questionable value as precedent. Indeed, requiring future programmes to justify their decisions concerning compensation levels may in itself produce salutary results.

OHCHR, 'Reparations Programmes', 27.

69. The CGP Report recommended that OFMDFM guidance on the elimination of discrimination against those with conflict-related convictions should be placed on a statutory footing, applicable to recruitment and the provision of goods, facilities and services.
70. The CGP Report expressed support for the Day of Reflection recommended by Healing Through Remembering, and considered that the First and Deputy First Ministers should make a joint keynote address to the Northern Ireland Assembly and guests, reflecting on the past and renewing their commitment to a shared future. It was suggested that a memorial should be kept under consideration by the Reconciliation Forum.

A Shared Future and other government policy statements

71. *A Shared Future: Policy and Strategic Framework for Good Relations in Northern Ireland*,³² was published by the Secretary of State for Northern Ireland during a period of direct rule in 2005. It intended to set out government policy in relation to the legacy of the Troubles. In a similar vein to the Belfast (Good Friday) Agreement, it looked more to the future than the past, with an emphasis on building a new Northern Ireland in which community space, education and resources are shared by all.
72. The strategic framework of *A Shared Future* was never endorsed by the devolved administration. In 2010, OFMDFM published its own consultation paper, *Cohesion, Sharing and Integration*.³³ This met with widespread criticism from those in the peace building and reconciliation field, who believed that it represented accommodation of division rather than a vision of a shared community. Both the Alliance Party and the Ulster Unionist Party withdrew from the strategy group, and the finalised policy document was never published.
73. On 23rd May 2013 the First Minister and deputy First Minister published its good relations strategy *Together: Building a United Community*. The strategy outlines a vision of

"a united community, based on equality of opportunity, the desirability of good relations and reconciliation - one which is strengthened by its diversity, where cultural expression is celebrated and embraced and where everyone can live, learn, work and socialise together, free from prejudice, hate and intolerance."

It sets out four key priorities: 1) children and young people; 2) shared community; 3) safe community, and 4) cultural expression.

³² Available at <<http://www.irishtimes.com/focus/2009/troubles/index.pdf>>.

³³ Available at <http://www.ofmdfmi.gov.uk/reformatted_final_print_version_csi_-_26.07.10.pdf>.

Transitional Justice Plan of Action of the Northern Ireland Human Rights Commission

74. In Northern Ireland the NIHRC is one of many potential actors in the field of transitional justice. It should not, and cannot, respond to all needs in this area of work. However, it has an important, if distinct, role to play, given the close relationship between transitional justice and broader human rights developments, and the Commission's unique functions.
75. In the international context, national human rights institutions (NHRI) have traditionally had a central role in transitional justice. Guidance from the UN Office of the High Commissioner for Human Rights details a number of contributions that a NHRI might provide, including facilitating or carrying out investigations, gathering and archiving information for truth recovery, assisting victims, facilitating consultation on transitional justice, and assisting in institutional reform through human rights training.³⁴
76. The Commission will consider a number of specific transitional justice related initiatives, outlined below. These are intended to respond to the needs identified above, by addressing certain matters in depth, and by setting out the baseline on which further work and policy proposals can develop. The Commission commits, during the next two years, to developing and carrying out the agreed programmes of work. An internal assessment of progress and priorities will be undertaken after the first year in order to adjust the plan as needed.
77. The Commission will focus its attention as follows: engaging international mechanisms; policy and legal analysis; and engaging with political society.

Engaging international mechanisms on transitional justice

78. To take full advantage of global expertise and recent experiences, and to benefit from the UN's considerable work in this area, the Commission will encourage an invitation for an official visit by the UN Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non-Recurrence. Such an invitation must come from the State.
79. The Commission will review the recommendations on Northern Ireland and how to deal with its past that emerged during the UK's Universal Periodic Review (UPR) hearing at the UN Human Rights Council, as well as treaty bodies, such as that of the Committee Against Torture (CAT) in May 2013. The Commission will urge the UK government to address transitional justice in its next UPR report and to report on it to the treaty bodies, as relevant.

Policy & Legal analysis

80. The NIHRC will give consideration to the best means to move towards a more integrated and holistic transitional justice policy for Northern Ireland. In this regard it may be that recommendations of the Consultative Group on the Past, and specifically its proposed Legacy Commission, are worthy of particular attention. The NIHRC will advise in favour of appropriate policy responses to strengthen the overall approach to transitional justice for Northern Ireland.

³⁴ 'Guidance Note on National Human Rights Institutions and Transitional Justice' (UN Office of Human Commissioner for Human Rights, Sept 2008).

81. Analysis is needed in the areas outlined below. The Commission will:
- a) review the UK's international obligations relating to transitional justice and their application in the context of the conflict in Northern Ireland. This will include setting out the relevant conventions, standards, case law and international best practice in the field of transitional justice, and analyse how well these best practice standards have been met.
 - b) conduct a legal review of the rights of victims of violence in Northern Ireland, in relation to transitional justice. This will encompass, *inter alia*, truth processes and access to information, reparations, and the accountability of perpetrators.
 - c) conduct a legal review of the proposals stemming from previous consultations, and the degree to which they would meet legal obligations and protect and promote victims' rights, as outlined in the reviews suggested in (b) immediately above.
 - d) conduct a legal and policy analysis of issues affecting the rights of such actors as former members of paramilitary groups, including ex-prisoners. In doing so the NIHRC will pay particular regard to amnesty, or forms of conditional immunity, for past crimes taking into account the needs and sensitivities of victims. This would intend to respond to outstanding legal issues pertaining to 'on the runs' and other related issues. This work would build on previous research undertaken in Northern Ireland and elsewhere. Questions would include:
 - i. the legal limits on amnesty/conditional immunity;
 - ii. the procedural options for implementing amnesty or other forms of conditional immunity;
 - iii. the potential models to link amnesty and truth-telling or other transitional justice measures;
 - iv. the level of public and victim consultation required or recommended before the policies in this area should be concluded.
 - e) As part of the joint Committee,³⁵ work in conjunction with the Irish Human Rights Commission to consider what transitional justice initiatives might be undertaken jointly; similarly, consider areas in which it would be appropriate for the joint Committee to contribute or take part in a broader transitional justice strategy for the island of Ireland.

Engaging with political society

82. Political will and serious engagement will be required for these difficult issues to be addressed. The NIHRC will develop a strategy for engaging with the UK government, the Irish government and the Northern Ireland Executive with the aim of encouraging dialogue and political support for transitional justice mechanisms aimed at addressing Northern Ireland's past.

³⁵ In accordance with the Belfast (Good Friday) Agreement, the Commission meets with the Irish Human Rights Commission in a joint Committee. This Committee is a forum for considering human rights issues in the island of Ireland, affecting both jurisdictions.



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