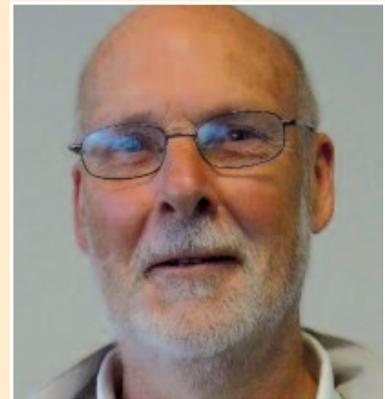


A last chance of ending Northern Ireland's Legacy Wars

Padraig Yeates

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1. Introduction

There is a widespread view that we have entered the end game as regards salvaging some sort of resolution to the Legacy Wars we have inherited from the Troubles for victims and survivors. Perpetrators, or former combatants rarely feature in the debate, although they are the other, unspoken but indispensable half of the equation.

Twenty-two years after the Belfast Good Friday Agreement, 'Lawfare' remains the default setting for addressing the issues that leave so many people locked in the past.

As we know, well over 3,500 people died during the Troubles and over 47,000 were injured. It has been estimated that a third of people in Northern Ireland were affected directly or indirectly by political violence,¹ and many others suffered in Britain, the Republic of Ireland and Europe. Not only the victims, but their children and, in some cases, their grandchildren have been told that the pursuit of 'Truth and Justice' through the courts is the only path along which they can travel to find some form of redress and 'closure'.

Every political initiative undertaken since 1998 has been predicated on finding solutions that are compliant with Article 2 of the European Convention on Human Rights, and it has been taken as a given that these must therefore be routed through the courts. While it is certainly true that the way forward must be Article 2 compliant if both governments are to honour their obligations to each other and to international bodies such as the European Court of Human Rights, it does not have to be through the courts.

The primary obstacle to exploring other options is the unwillingness of both governments and most politicians to consider them.

If little else can be said in favour of the proposals from the Secretary of State for Northern Ireland, Brandon Lewis, last March to resolve the current impasse, they are at least honest in prioritising the needs of British Army veterans over competing Legacy constituencies. They may even be Article 2 compliant, if the measures are introduced along the lines proposed in April by the Committee on the Administration of Justice (CAJ).²

Its most radical proposal is that where someone pleads guilty to a serious conflict related offence such as murder, he or she will not have to serve prison time, provided they agree to engage with the Independent Commission on Information Retrieval (ICIR) to a degree that satisfies the court. No indication is given of what would be considered the minimum level of engagement required for reconciliation purposes. And, although the importance of 'reconciliation' is emphasised repeatedly in the CAJ report, nowhere is a definition provided.

Seasoned observers will see that such a proposal might be attractive to ageing British veterans with the spectre of a trial and prison time hanging over them. It is less likely that other former combatants, particularly republicans, would be attracted by this proposal, involving as it does acceptance of the primacy of British justice during the bloodiest years of the conflict when internment was in operation and the rule of law was virtually non-existent.

For a lay person such as myself, this begs the question, why should yet another legal initiative succeed where they have failed in the past?

Perhaps the criminal justice system might not be the best way of coming to terms with the consequences of a major ethnographic conflict that extended over 30 years, addressing each event to the highest standards of criminal investigation, or not at all. Surely the past two decades are proof that reconciliation grounded in due criminal legal process is designed to fail?

2. Reconciliation on the facts is a necessary precondition to reconciliation between people and communities

The law, by its nature, is not suited to reconciliation, be it of individuals, groups or societies. It is a form of trial by combat where champions equipped with battle axes and swords are replaced by lawyers armed with legal instruments. It is designed to decide who is guilty and who is innocent, who is right and who is wrong, who wins and who loses.

It creates an environment which makes reconciliation harder. It can lead to the re-traumatisation of participants, increased hostility and lasting rancour in communities that will be passed on to yet another generation. In Northern Ireland it has led to each side keeping score, where victory goes to those whose status as victims is enhanced and, with it, the need for greater redress of past wrongs.

It is not detracting from the historic achievement of those who negotiated the Belfast Good Friday Agreement to acknowledge that we have failed so far to resolve the differences that led to conflict in the first place. It was a truce that bought precious time to create a lasting peace, but it did not lay the foundations on which that peace could be built.

A system of mediation, overseen by senior members of the British and Irish judiciaries, may achieve a greater degree of Truth and Justice than the legal arena, although its objectives would be modest. Instead of proving who is right or wrong, who is guilty or innocent, or establishing reconciliation between former combatants and victims or survivors, it could provide a process that allowed these two groups to engage with each other to address the facts of what occurred,

because this is the necessary first step towards healing past harms on the basis that without agreement on the facts, there can be no basis for agreement on anything else.

The requirement for the former combatant to engage with victims and survivors, initially through the offices of a mediation officer but then more directly, if circumstances permit, would provide for a far more honest exchange of information than any legal cross examination in a court. It would also allow the participants to learn more about each other, and themselves in the process.

3. The Truth Recovery Process (TRP) is a Logical and Necessary Extension of the Good Friday Belfast Agreement

The opening 'Declaration of Support' to the Good Friday Agreement is unequivocal in its commitment to helping victims and survivors of the conflict.³ Point 2 of the Declaration states that, 'We must never forget those who have died or been injured, and their families', adding that 'we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all'.

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

Under the 'Reconciliation and Victims of Violence' section, all the contracting parties recognise 'it is essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation'. They further recognise 'that victims have a right to remember as well as to contribute to a changed society. The achievement of a peaceful and just society would be the true memorial to the victims of violence.

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

These groups already exist and include organisations established by former combatants. The value of their work in developing 'reconciliation and mutual understanding and respect between and within communities and traditions, in Northern Ireland and between North and South' is recognised as playing 'a vital role in consolidating peace and political agreement'.

The Agreement recognises this work as, 'An essential aspect of the reconciliation process' promoting 'a culture of tolerance at every level of society'. But what is not acknowledged explicitly is that as well as involving former combatants who have served terms of imprisonment arising from their involvement in the conflict, these organisations include participants who were sometimes heavily involved in the conflict, but never convicted of an offence. This does not prevent them from participating in very positive educational and reconciliatory activities, but it does inhibit the degree to which they can make a contribution to the Truth Recovery Process and the opportunity of communicating their knowledge and experience to the wider community.

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

Other objectives outlined under its heading on 'Policing and Justice', emphasise the role of 'community involvement where appropriate' in achieving the delivery of justice 'efficiently and effectively'.

Paragraph 5, under the 'Policing and Justice' heading envisages major reforms, including, 'measures to improve the responsiveness and accountability of, and any lay participation in the criminal justice system'; as well as 'mechanisms for addressing law reform' and reviewing 'the scope for structured co-operation between the criminal justice agencies on both parts of the island'.

Lack of progress towards these objectives does not invalidate their desirability.

They are also addressed in the Stormont House Agreement in the paragraphs on 'The Past', and Legacy issues.⁴

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

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

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

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

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

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

Paragraph 47 states that, 'The ICIR will be given the immunities and privileges of an international body and would not be subject to judicial review, Freedom of Information, Data

Protection and National Archives legislation, in either jurisdiction’.

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

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

The ICIR has been the most successful initiative undertaken under the auspices of the Stormont House Agreement and, if it is compliant with the terms of the Good Friday Agreement it is hard to see why a Conditional Amnesty scheme designed to recover the Truth about 1,700 unsolved murders and thousands of other serious incidents that caused life changing injuries to many people, and years of suffering for them and their families are not.

4. Historical Precedents

All of these measures are Article 2 compliant because the British and Irish governments have agreed they are. Far from being new, amnesties have been used to help end violent political conflict in Ireland for centuries, because they facilitated a return to normal life and mitigated against the most toxic legacies of past violence. The eighteenth century provided an important watershed in this context, dividing wars of contested dynastic and religious allegiances from those defined in more modern ideological terms. Unlike the Jacobite cause, which ended with the death of the Young Pretender in 1788, these new movements were not contingent on the fate of a dynasty or individual but were inspired by the ideals of the American and French revolutions.

The first and bloodiest contest of the modern era in Ireland was the Rising of 1798, which was followed by selective amnesties for members of the United Irishmen. Others followed subsequent periods of unrest. The most important were those applied by the British government after the Treaty was ratified by Dail Eireann in 1922 and by the Free State after the Civil War.

The British measure provided for ‘a general amnesty in respect of offences committed in Ireland for political motives prior to the operation of the Truce of 11th, July last’. The Free State amnesty was agreed in November 1924 and applied to prosecutions ‘in respect of criminal acts committed or alleged to have been committed between the 6th day of December, 1921, and the 12th day of May, 1923, in any case in which it appears that the act was committed or purported to be committed in connection, directly or indirectly, with the state of rebellion’.

There were a number of factors leading to these decisions but both were predicated on clear outcomes to both conflicts. That was not the case in 1998.

The table below outlines other important differences.

War of Independence	Civil War 1922-24	Troubles 1968-1998
Clear cut political settlement	Clear cut military outcome	Unresolved military and political outcomes
Shared Democratic Values	Shared Political Legacy	Contested Political Legacies and Values
Rival States recognised the political legitimacy of the other	State and Civil Society vs 'Public Band' (IRA)	State vs several political and paramilitary bodies and Paramilitaries vs Paramilitaries
An Ethnographic Conflict in the North was elided by the negotiators and 'parked' for future resolution	Personal and Group Animosities and conflicting political objectives remained between two nationalist alliances	Personal and Group Animosities between nationalist and Unionist communities and within nationalist and Unionist communities remained
The Treaty was an international settlement in which both parties accepted the legitimacy of the other	There was no legal basis for the actions of the Free State government before December 6th, 1922, when the Treaty came into effect. The measure therefore covered the illegal actions of all protagonists, political as well as military	Legal clarity exists on the powers of the British and Irish states

The uncertain politico-military outcome of the struggle in Northern Ireland and the decision of the parties not to include an amnesty, either conditional or unconditional, as part of the peace process left major Legacy issues for both communities unresolved, especially for the victims and survivors of the conflict.

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

5. A Framework for a Justice and Victim-Sensitive Approach to Truth Recovery

The starting point is to create a means by which the pain and loss of victims/survivors can be suitably addressed in the absence of effective legal remedies. They need to know what happened, why it happened and to do so as soon as possible. These issues are paramount for families because it is through Truth Recovery that healing often begins. It is also necessary for some former combatants.

All need to achieve a sense of justice even at this late stage, many years after the event, particularly in situations where there have been no prosecutions and are unlikely to be in the foreseeable future. This is important because deeper issues remain that legal remedies will not repair. The benefits of inter-communal reconciliation initiatives such as those where the stories of victims and survivors are heard, understood, and acknowledged by the other community are well established. Not so, with former combatants. It is through such Truth Recovery processes that a sense of justice, as well as an acknowledgement of each other's identities can be regained. For those who say this is not real justice, we must emphasise that this is not a soft option. Rather, it is a more positive, painful, cathartic and emotionally healing experience than a court hearing; and is capable of producing more information and greater insights for all involved. Northern Ireland has many skilled facilitators who can assist victim/survivor groups through province-wide initiatives.

Time is running out for all those affected by the first decade of the conflict. As one survivor has argued: "We cannot forget the past. While I don't really see Justice as possible, it is a real injustice not being able to access the truth. I want to hear the truth around what happened and get to the bottom of things. That means documents being released or doors opened by the paramilitary gatekeepers so that victims like me can meet the perpetrator face to face to answer my questions and reveal the truth." This must also happen where state agencies are involved.⁵

6. Recommendation for an extra-judicial way forward

Providing conditional amnesties to former combatants willing to engage in mediation processes can allow us to make access the truth more immediately than alternative means:

- With victims and survivors no longer having to consider all the implications of legal proceedings, they can more freely access the truth and answers to questions that have burdened them for decades.
- Requests for reports from police investigations into legacy cases could happen more speedily and in a spirit of full disclosure. The process by which families receive such reports could be through a family support team and done more sensitively than in the past.
- Former soldiers, police officers, paramilitary combatants and public servants would be freer to come forward with information and some of them, at least, want to do so before it is too late. That space will not open up without lifting the fear of prosecution, including prosecution under the Official Secrets Acts in both the Republic of Ireland and the United Kingdom.

What is really needed at this stage of the post-Agreement peace process is relational inter-communal justice that facilitates communities in restoring positive social relationships with neighbours, without fear of perpetuating hatred. This can be achieved by facilitating a Truth Recovery process that acknowledges, through multiple steps, that it is possible to enable the victims and survivors to sit down with the former combatant(s) in a safe place. By recovering the truth of what happened together, expressing their mutual sorrow and regret, they can strengthen the resolve on all sides to ensure political violence is never used again to achieve identity aspirations. This type of justice restores respect for the rule of law and deters similar acts in the future.

7. Sequencing steps for introducing a Justice-sensitive approach

The first step in the Truth Recovery Process would be to appoint a Reconciliation Commission along the lines set out below to create the environment needed to develop a victim-sensitive and justice-sensitive approach. It would be difficult to introduce the legislation for conditional amnesties for former combatants without first initiating a process in the back channels to facilitate a series of acknowledgement statements from former republican and loyalist activists, as well as from both governments. The formula is already there in the October 1994 Combined Loyalist Military Command (CLMC) ceasefire statement that helped facilitate the peace process. A new series of sequenced acknowledgement statements is required from all parties to the conflict, updated and expanded to speak to the current situation. Elements in the wording need to connect past suffering with renewed remorse, together with a recommitment by all to respect differing aspirations and pledge never again to resort to violence to achieve political ends.

The original 2014 Stormont House Agreement proposals, provided (paragraph 53) that the UK and Irish governments would consider making statements of acknowledgement at the end of a five-year process, through the Implementation and Reconciliation Group. We believe this sequence should be reversed. Acknowledgments should be frontloaded and kick off a process of sequenced meaningful steps so as to optimise the environment for legislation.

This requires practical positive steps for victims and survivors, including the speedy implementation of the pension provisions for all those seriously injured, the creation of 'a safe space' for frank discussion of issues of anger, grievance, guilt, shame, injustice, forgiveness and mercy, substantial public investment in Mental Health and Trauma Services at community level, a victim-sensitive focus to the proposed independent PRONI Oral History Archive where families from all backgrounds can share their experiences, and provision for mid-summer day (21st June) to be made a national day of reflection across these islands when all those who have died and suffered in the conflict are remembered.

Meanwhile, the British and Irish governments should establish structures that facilitate an extra-legal Truth Recovery and Justice process based on the establishment in the first instance of a Reconciliation Commission to oversee the creation of dedicated units, headed by a mutually agreed international Chair, or senior members of the British and Irish judiciaries to whom the Chief Executive of such a Commission and its operational wings would be answerable.

8. A Reconciliation Commission

There would be two operational components to the Commission:

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

8.1. The Truth Recovery Unit (TRU) needs to be seen as independent by all communities, as originally envisaged in the Stormont House Agreement (paragraph 38) for the HIU. But it should be staffed by professional civilian investigators instead of members of the PSNI, An Garda Síochána or any British police force. This is because the purpose of the unit is to verify information received by the Reconciliation Commission, not assemble evidence for a

prosecution, and it will on occasion have to investigate the activities of police officers and members of state security agencies, North and South, and in Britain.

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

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

The original process offered by the Independent Commission on Information Retrieval (ICIR) was felt to be too clinical by many victims and survivors, and former combatants. They felt it offered little dignity or humanity. There was little respect shown to victims and survivors when they received family reports. For many it was a dehumanising and re-traumatising experience, not sufficiently interactive and unsuited to a Truth Recovery process. It frequently failed to ensure factual and emotional closure as intended, because only the victims and survivors know the questions to which they need answers. Specialised and highly sensitive victim/survivor emotional support will be needed for both the investigative stages of the process and the interactive phase. Truth Recovery is about more than simply retrieving information and details of an individual killed or injured. The healing power of the truth recovery process is for the victims/survivors to make meaning out of the suffering caused by a violent event that often remains fresh in the memory. Close cooperation will be needed between the Unit's family support workers and non-political/non-partisan support groups such as Wave.⁶

- Participants in a safe mediation process might, without being prescriptive, include:
- Protestant/unionist and Catholic/nationalist victims and survivors of the IRA
- Mainly Catholic nationalist victims and survivors of the Loyalist paramilitaries (UVF, RHC, UDA)
- Mainly Catholic nationalist victims and survivors of British Army and Northern Ireland security forces, particularly in the early years of the conflict
- Victims and Survivors of intra-paramilitary feuds within Protestant and Catholic communities
- People in Britain and the Republic who lost family members in Troubles related incidents
- Members and families of the Security Forces killed or seriously injured

Initiatives such as these, convened in cooperation with victim and survivors' organisations, have been found to be very healing for victims and survivors.

Will former combatants have the confidence to come forward? At least some former combatants, whether members of paramilitary organisations or the security forces, may be willing to engage with victims and survivors, once the possibility of prosecution is removed.

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

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

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

8.2. Justice facilitation will be a discrete mediation process co-designed with victims and survivors' families, and with former combatants, with organisational support groups on hand if needed. It will be held in a safe, confidential space under similar rules as Chatham House and convened by the JFU facilitation team after careful preparation and bilateral meetings with each side.

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

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

The Justice Facilitation Process would function as follows:

- 1 The former combatant approaches the JFU with an offer of disclosure.
- 2 The JFU has a Questionnaire that the former combatant is required to fill out.
- 3 The former combatant must state what happened, when, where, why, how and to whom (if they know the identities of victims and survivors).

- 4 They must make it clear if they are making an application on behalf of themselves or a group. If the latter, they must provide proof of this through some accompanying documentation that can be independently verified showing the consent of the other parties. (While group applications may be less likely to occur, they would allow for fuller disclosure.)
- 5 The contents of the application cannot be disclosed to any law enforcement agency, or other third party.
- 6 Nothing disclosed by the applicant(s) either intentionally, or inadvertently can be used to investigate or prosecute another individual or group.
- 7 Nothing disclosed by the applicant(s) either intentionally, or inadvertently can be used as the basis for a civil action for reparations or other damages or loss by victims and survivors. (Any compensation for loss of life, injuries, or other losses would be paid by the state, or states, concerned.)
- 8 The identity of the applicant(s) will remain confidential in the initial phase of the process and may remain so where its disclosure might have repercussions for their own families. This might be a particular problem where injuries and deaths arose within communities as a result of intra-community paramilitary conflicts.
- 9 Penalties only arise in the case of false statements. Such penalties should be significant enough to discourage cranks, attention seekers and malicious declarations.
- 10 It will be a criminal offence to disclose any information submitted by an applicant without their prior knowledge and consent. This applies to all parties to the Process.
- 11 Having received an application, the JFU will ask the TRU to appoint an investigator.
- 12 Having satisfied itself as to the applicant's bona fides, and the basic facts with the assistance of the TRU investigator, the JFU will appoint a Mediation Officer to approach victims and survivors to notify them of the nature of the information received and ask if they wish to engage with the former combatant. If so, on what basis? The Mediation Officer would be able to call on the services of the TRU investigator as required. This would include interaction by the investigator with victims and survivors, as well as former combatants.
- 13 Where the victims and survivors wish to engage, they would meet with the Mediation Officer to discuss the basis of the engagement. The first phase would be through the Mediation Officer who would decide if, and when it would be appropriate for the parties to meet face to face.
- 14 The Mediation Officer would design protocols based on the discussions with both parties, which they would be required to sign to enable the Process to move to the next stage. In the early phases of the programme this would inevitably be on a trial and error basis but drawing on best practice elsewhere.
- 15 The Mediation Officer would also have to consider the most appropriate conditions under which both sides could engage. Factors such as their respective state of health and whether they lived in the same jurisdiction would be considered. If the number of victims and survivors was large, they might need to meet separately with former combatant(s), or in small groups. Factors such as mobility, disability, age and mental capacity might arise on both sides.

- 16 Transportation, accommodation and other expenses should be available from an agreed fund.
- 17 The Mediation Officer would have discretion to recommend counselling and other supports for participants. As with other expenses these would be paid for by the government(s) from an agreed fund.
- 18 To give a degree of finality to the process there would be a requirement for both sides to respond within specified time frames to each phase. If victims and survivors wish to withdraw from or suspend the process, they should be granted a three-month period of reflection. However, the overall process should not take more than 15 months, except by the mutual agreement of all parties.

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

The Mediation Officer and TRU investigator would be given full access to official documents, including army and police records, as well as public sources, to ensure the account is as full and accurate as possible. In particularly sensitive instances, this task might be undertaken by the Judges appointed to oversee the Process.

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

If a joint statement is achieved, it should be made public after a short period of time and the parties encouraged to engage with the wider community through schools, conflict resolution groups, researchers, and other relevant audiences to promote greater understanding of the nature of the conflict; inspire others to participate; and counter the longstanding problem of transgenerational transfer of conflict that bedevils societies such as Northern Ireland.

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

If the Truth Recovery Process is successful it might encourage political leaders to go beyond their usual political narratives by acknowledging more fully the concerns, collective hurts and fears of the other side. The current communal narratives make it difficult for each side to accept the legitimacy of the other's narrative.

Oversight by the British and Irish governments

As far as possible, the process should utilise existing structures in each jurisdiction. In Northern Ireland, the main site of conflict, it could draw on the resources of existing agencies such as the Office of the Victims Commissioner, Community Relations Council and district level Good Relations units across the province.

In Britain and the Republic new structures might be needed, and funding would have to be provided by the British and Irish governments.

Reconciliation Commission (RComm)

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

Conclusion

One thing all those concerned about resolving the problems of the Troubles are agreed on is that the time for doing so in ways that involve all of the participants, whether as victims and survivors, or former combatants is running out. Most of those directly affected by the bloodiest years of the conflict are now in their sixties, seventies or eighties. Many are dead and, in the case of former combatants, have taken what they know to the grave with them.

While some may have left a testimony behind, such accounts can be self-serving and, even when not, are often flawed by a failing memory and by the writer having incomplete knowledge or understanding of the context in which they operated. The Witness Statements given to the Bureau of Military History and the Pension Applications relating to the earlier Troubles, both of which have been released by the Irish Government in recent years, illustrate the pitfalls involved in self-reporting of the past. Despite the relatively limited degree of critical examination to which pension applications were subjected, it is sufficient to illustrate how far personal recollection or, in some cases wishful thinking, can depart from the facts.

Yet, the information contained in both of these archives was collected much nearer to the time when the events recorded took place than is possible for the early and bloodiest years of the more recent Troubles. The dangers of perpetuating myths are therefore at least as great. Many are already well established.

Like everyone else, I have an interest to declare as a member of the Republican Movement who stayed with what became the Official Movement for many years after the split in 1969/70. I have also been a journalist and a trade union activist for most of my working life. I have been a plaintiff, a defendant and a witness in court proceedings but, above all, I have covered cases, both criminal and civil, as a reporter for various publications.

As a lay officer in the National Union of Journalists, I have taken part in negotiations, mediation and, when these failed, industrial action. Fortunately, strikes were very few.

Like many people involved in conflict, I have learnt that mediation is better than litigation, not alone as a means of ending conflict but of helping people understand and come to terms with the past, without allowing that past to steal much of the rest of their lives as well.

The courts cannot give us peace within ourselves, let alone with the neighbours with whom we share this island.

Visit <https://www.truthrecoveryprocess.ie/documents> to further explore what is being proposed.

Notes

- ¹ The Methodist Church in Ireland, “Submission by the Council on Social Responsibility of the Methodist Church in Ireland to the NIO consultation on the proposed legacy structure” (18 September 2018), p.1.
- ² Kieran McEvoy et al, “Prosecutions, Imprisonment and the Stormont House Agreement: A Critical Analysis of Proposals on Dealing with the Past in Northern Ireland” (April 2020), pp.47-49.
- ³ “Agreement reached in the multi-party negotiations” (1998), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf [last accessed 06/08/2020].
- ⁴ “The Stormont House Agreement” (2014), <https://www.gov.uk/government/publications/the-stormont-house-agreement> [last accessed 06/08/2020].
- ⁵ Submission by the Council on Social Responsibility of the Methodist Church in Ireland to the NIO consultation on the proposed legacy structure.
- ⁶ For more on WAVE Trauma Centre, see <https://wavetraumacentre.org.uk/>.

References

- McEvoy, K., Holder, D., Mallinder, L., Bryson, A., Gormally, B., and McKeown, G. (2020), “Prosecutions, Imprisonment and the Stormont House Agreement: A Critical Analysis of Proposals on Dealing with the Past in Northern Ireland”, <https://caj.org.uk/wp-content/uploads/2020/04/Prosecutions-Imprisonment-the-SHA-LOW-RES.pdf> [last accessed 04/08/2020].
- Methodist Church in Ireland (2018), “Submission by the Council on Social Responsibility of the Methodist Church in Ireland to the NIO consultation on the proposed legacy structure”, <https://www.irishmethodist.org/sites/default/files/MCI%20Submission%20Legacy%20Structures.pdf> [last accessed 04/08/2020].