INFORMATION RETRIEVAL AND ACKNOWLEDGING THE PAST IN NORTHERN IRELAND

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Glossary of Terms & Abbreviations

Combined Loyalist Military Command (CLMC)

European Convention of Human Rights (ECHR)

European Court of Human Rights (ECtHR)

Historical Investigations Unit (HIU)

Implementation and Reconciliation Group (IRG)

Independent Commission for the Location of Victims Remains (ICLVR) – 'The Disappeared Commission'

Independent Commission for Information Retrieval (ICIR)

Irish National Liberation Army (INLA)

Irish Republican Army (IRA)

Irish Peoples Liberation Organisation (IPLO)

Northern Ireland Troubles (Reconciliation and Legacy) Act 2024 (NITRL) 'The Legacy Act'

Independent Commission for Reconciliation and Information Recovery (ICRIR)

Office of the Police Ombudsman of Northern Ireland (OPONI)

Police Service of Northern Ireland (PSNI)

Progressive Unionist Party (PUP)

Red Hand Commando (RHC)

Stormont House Agreement (SHA)

Ulster Defence Association (UDA)

Ulster Volunteer Force (UVF)

Executive Summary

This paper is designed to inform ongoing efforts to address the legacy of the conflict in Northern Ireland, in particular concerning the role of information recovery and acknowledgement in that process. [1]

Difference between investigations and information retrieval

The paper outlines the differences between an ECHR Article 2 compliant investigation and an information retrieval process with regard to addressing the legacy of the conflict in Northern Ireland. The legal obligations for an investigation include that it should be: initiated by the state; institutionally and practically independent, effective; prompt; publicly scrutinised; and involving the next of kin. Information retrieval is a broader term than investigation and it includes information gleaned from sources other than through legal investigative powers including former paramilitaries or former security force members.

How to encourage information retrieval from former non-state or state actors?

As per the Stormont House Agreement, in order to encourage information retrieval, it is necessary to create a mechanism wherein, if requested by a victim, information can be provided which will not incriminate the information provider or others and will not rendering them liable to criminal prosecution or civil actions. Drawing from the Stormont House Agreement (SHA) and Independent Commission for Location of Victims Remain Act) the paper suggests that the phrase no information from or engagement with the information retrieval process can be used directly or indirectly for any legal process should be included in the legislation establishing an information retrieval mechanism.

The difference between the Legacy Act Immunity Scheme 2024 and the SHA scheme

Drawing in particular from the high court judgement by Colton J in Re Dillon (which found the Legacy Act immunity scheme unlawful) the paper suggests a number of important differences between immunity under the Legacy Act and that which was envisaged in the SHA. The differences suggested are: a) Under the SHA, the limited immunity was self-contained within the information retrieval mechanism, with the investigative obligations being satisfied elsewhere in a separate investigative mechanism. In the case of the Legacy Act, the immunity scheme directly interfered

[1] The author is the Senator George J. Mitchell Chair of Peace, Security and Justice and a Professor of Law and Transitional Justice at Queens University Belfast. He is also currently a Leverhulme Major Research Fellow (Grant Reference MRF 2022-1130) working on how to encourage armed groups to address past harms. I would like to acknowledge the Leverhulme Trust in supporting this work. I would also like to thank colleagues from Queens University Belfast, the UK and Irish governments, civil society in Northern Ireland and members of the Victims and Survivors Forum who shared their views with me on some of the themes discussed herein. The report's contents remain the sole responsibility of the author.

with the investigative obligations with both being discharged in the same mechanism and the latter having an explicit emphasis on reviews rather than investigations; b) The intent of the legislation. In the case of the Legacy Act, as detailed by Colton J, the primary intent of the legislation was to enact an immunity process for former soldiers. In the case of the SHA, the intent was to create a bespoke information retrieval mechanism of direct utility to victims while investigations were conducted elsewhere; c) The role of victims in the process. Colton J noted that victims had no say in the Legacy Act granting of immunity and added 'It may well be that a system whereby victims could initiate the request for immunity in exchange for information would be compliant with articles 2 and 3 ECHR, but this is not what is contemplated here.' Under the SHA the limited immunity for information provided was only designed to come into effect once triggered by a victim's informed decision to engage the mechanism. d) Under the Legacy Act the immunity applied to individuals, whereas in the SHA the limited immunity was applied to information provided rather than people.

Previous experiences of non-state or state actors engaging with information retrieval

The report reflects critically on the previous experiences of loyalist and republican engagement with a range of 'top down' and 'bottom up' legacy processes. Previous experiences discussed include the UVF's Witness X engagement with the Ballymurphy Inquest, the UVF's 'from below' contribution to the John Crawford process, the IRA engagement with the Smithwick Tribunal, republican engagement with the ICLVR, IRA 'non-engagement' with the Kingsmill Inquest, IRA 'from below' engagement with the Eoin Morley, Kathleen Feeney and Stack families.

The report presents a number of lessons learned from these experiences including: (a) The importance of the reliability of limited immunity provisions to secure engagement with formal legal processes; (b) The importance of information verification powers; (c) The need for political will and capacity on the part of former members of armed groups (d) The centrality of victim trust and confidence in the process; (e) An awareness of the challenges involved as illustrated by the unsuccessful Stack process.

Information retrieval on a cross-border basis

The paper argues that in a similar fashion to the ICLVR (and as envisaged in the SHA), the information retrieval mechanism should be established on a cross-border basis, with enabling legislation in either jurisdiction and an international treaty. It also suggests that a joint initiative from both governments would not only maximise its effectiveness but also provide a practical illustration of the 'reset' of UK/Ireland relations on legacy.

How would the accuracy of information retrieval be verified?
The report argues that the most effective way to ensure that the information provided to victims and survivors is accurate in an information retrieval mechanism is to maximise the availability of verifiable data from other sources (open and closed) and cross-check the information provided. It also suggests that access to closed source materials could be achieved by providing an obligation on public authorities in both jurisdictions to provide any information required by the mechanism to carry out its functions. It also suggests drawing on the previous experience on how sensitive information was managed by analogous international mechanisms such as ICLVR or the Independent International Commission on Decommissioning (IICD).

Commentary on the level of cooperation by information holders
As per the SHA Draft Bill, it should be possible for the information retrieval mechanism to comment on the level of cooperation received from information holders.

Information retrieval and national security
The report reflects on the issue of national security redactions as a benchmark judging the intent of the UK government concerning addressing the past. It suggests that a new Legacy Act could include a bespoke criteria for information redaction that is to be applicable only for the purposes of addressing the legacy of the Northern Ireland conflict. It also suggests that a system could be established whereby a national security issue could be 'flagged' by the information retrieval mechanism Director requiring consultation with two governments, rather than all information retrieval reports being required to be read by state officials as a matter of course.

Who should oversee appointments to the information retrieval mechanism?
The two governments should consult with the First and Deputy First Ministers and determine the most effective and efficient way to proceed with the appointments to this mechanism.

Should the remit of the information retrieval body extend beyond deaths?
The report suggests that it would be pragmatic to retain the exclusive focus upon deaths as envisaged in the SHA in the early stages of the operation of an information retrieval mechanism but that the focus could be reviewed in due course.

Sequencing between investigations and information retrieval
It suggests that the investigative and information retrieval mechanisms should develop a protocol or memorandum of understanding to determine how they will interact with each other including: how families approaching both mechanisms simultaneously should be managed; and clarifying whether once an investigation has

been completed information could be shared with the information retrieval mechanism.

Sanctions for unauthorised information disclosure, timeframe and destruction of archives after completion of responsibilities

Similar to the SHA Draft Bill, legislation on information retrieval should include sanctions for the unauthorised disclosure of information by the information retrieval mechanism. It should also establish the mechanism for at least five years (with the option to extend if necessary if agreed by the two governments) and include provisions that information held by the mechanism should be destroyed after it has ceased to operate.

Should the details of the information retrieval mechanism process be contained in the new Legacy Act or in subsequent statutory regulations?

The paper argues that similar to the ICLVR and the Draft SHA Bill detailed provisions on information retrieval should be contained in primary legislation in both jurisdictions.

Different models of information retrieval

The paper presents the arguments for and against three models of information retrieval: (i) Attaching it to the Independent Commission on Reconciliation and Information Recovery (ICRIR); (ii) Repurposing the ICLVR; (iii) Introducing a bespoke cross border information retrieval mechanism via primary legislation in both jurisdictions and an international treaty. It argues that the latter is likely to be the most effective option.

Work related to themes and patterns

The report notes that the body proposed for work on themes and patterns by the SHA was excised from the previous Legacy Act and suggest that the two governments will also have to agree a means to address the broader patterns and themes of the conflict which is independent and free from political interference.

Statements of acknowledgement and apology

The report traces the evolution of conversations regarding apologies and acknowledgement both in terms of top-down initiatives (the Consultative Group on the Past 2009, Haass-O'Sullivan talks 2013, SHA 2014) but also in a number of civil society initiatives including from within republicanism and loyalism. It offers a definition of **acknowledgement** as a broad term (which can include truth recovery prosecutions, apologies and other actions) that affirmatively indicating that a wrong was done; requiring that truth be told; neither minimising the offence nor rationalising the behaviour (the opposite of denial). It also offer a definition of a public **apology** as: An acknowledgement of a wrong deliberately or negligently inflicted that is named;

a truthful admission of individual, organisational, or collective responsibility for that hurt; a public statement of remorse or regret related to the wrongful act\s or omission which is delivered with due respect, dignity and sensitivity to the victimised; a guarantee of non-repetition; being informed by a victim centred approach to apologies.

The report also includes discussion on a range of apologies by the UK government (e.g. the Billy Wright apology, the Ballymurphy apology, the Bloody Sunday apology), the Irish government (the Dublin-Monaghan bomb apologies, the Breen-Buchannan apologies), IRA apologies (e.g. the Bloody Friday apology), Sinn Féin apologies (e.g. Shankhill bomb, Stakeknife) as well as apologies by loyalists (e.g. CLMC statement). Drawing on a further range of acknowledgement and apology examples the report develops a number of themes which should inform discussion on the topic.

Acknowledgement and apologies as the truthful 'owning' of past harms
Effective acknowledgement or apologies requires a truthful 'reckoning' – an unequivocal acknowledgement of past harms without justification or explanation and a naming – where both the harm and the people to whom the apology is addressed are named.

Acknowledgement and apologies as a victim-centred process of rehumanisation
Effective acknowledgement or apologies requires a victim-centred approach to apologies places primary emphasis on the *rights*, *agency*, *voice* and *humanity* of victims. Such statements should be delivered because it is the right thing to do, to *rehumanise* those who have been harmed and not in expectation of forgiveness or generosity from those who they have harmed. Moreover, such statements are the not place to revisit views on the legitimacy of past violence.

Preparation, delivery and engagement with victims and survivors
Effective acknowledgement or apologies requires that victims should be consulted before such statements are issued to reduce the risk of retraumatisation and to provide clarity as to what is or is not possible in such statements.

Who should deliver a statement of acknowledgement or apology
Effective acknowledgement or apologies requires that such statements are delivered by people who can speak with credibility and authority on behalf of an organisation or institution.

Sequencing and presentation of acknowledgement and apologies
Effective statements of apology or acknowledgement may be offered after investigations or information retrieval has occurred and the truth about a particular event has been established. However, if a new Legacy Act is passed than commands a workable political consensus and the support of most victims and survivors, broader

statements of acknowledgement or apology before the relevant mechanisms have completed their work could make a positive contribution in building confidence that the legacy of the conflict is at last being addressed holistically.

Appendix A outlines a more detailed schema for effective apologies

Introduction & Background

This paper is designed to inform ongoing efforts to address the legacy of the conflict in Northern Ireland, in particular concerning the role of information recovery and acknowledgement in that process.

In 2014, the British and Irish governments concluded the Stormont House Agreement (SHA) with four of the five Northern Ireland political parties to establish separate investigative and information retrieval mechanisms as part of an over-arching effort to address the past in Northern Ireland.[2] All aspects of the SHA were to be underpinned by an agreed set of six principles which included 'justice and information recovery' and acknowledging and addressing the suffering of victims'.[3]

One mechanism (the Historical Investigations Unit, HIU) was designated to take over the investigative work previously done by the Police Service of Northern Ireland (PSNI) and the Office of the Police Ombudsman (OPONI).[4] Drawing upon the success of the Independent Commission on the Location of Victims Remains (ICLVR – often referred to as the 'Disappeared' Commission), a completely separate body called the Independent Commission on Information Retrieval (ICIR) was to be established by both governments and was designed to enable victims and survivors to oversee information retrieval about the deaths of their loved ones.[5] In addition to establishing two other mechanisms to facilitate reconciliation and establish an Oral History Archive, the SHA stated that in the context of the work of these various bodies '..the UK and Irish Governments will consider statements of acknowledgement and would expect others to do the same.'[6]

In 2015 the British and Irish governments signed a treaty committing to establish the ICIR information retrieval mechanism on a cross-border basis.[7] After further negotiations between the parties and the two governments in 2016 and 2017, the UK government believed in 2018 that 'while agreement has not been reached on every detail, sufficient consensus has now been reached to seek the views of the public'.[8] In May 2018 the UK government therefore published draft legislation to implement the SHA and conducted a widespread public consultation on its contents, to which over

[2] Northern Ireland Office (2014) Stormont House Agreement https://www.gov.uk/government/publications/the-stormont-house-agreement

[3] The other six principles contained in the SHA were that the approach to dealing with the past should include: promoting reconciliation; upholding the rule of law; being human rights compliant; and being balanced, proportionate, transparent, fair and equitable. Ibid para 21.

[4] Ibid Para 30-40.

[5] Ibid para 41-49.

[6] Ibid para 53.

[7] *Agreement Between The Government of The United Kingdom of Great Britain and Northern Ireland and The Government of Ireland Establishing The Independent Commission On Information Retrieval* 2015.

[8] SOSNI Karen Bradley foreword to NIO (2018) *Consultation Paper: Addressing the Legacy of Northern Ireland's Past*. p.5

17,000 people responded.[9] In March 2020 the UK government announced its intent to unilaterally abandon the SHA.[10]

Following the publication of a Command Paper in July 2021, the government introduced the Northern Ireland Troubles (Legacy and Reconciliation) Bill in 2022, and the Legacy Act came into effect in May 2024. As has been much discussed, the latter introduced a conditional amnesty and ended all conflict-related prosecutions, civil actions, legacy inquests, Police and Police Ombudsman investigations, replacing them with the Independent Commission for Reconciliation and Information Recovery (ICRIR). In rationalising the abandonment of the SHA, the then Conservative government claimed that the ICRIR was capable of doing both the investigative and information retrieval work in one body and that therefore, in effect, there was no need for two separate institutions as envisaged under the SHA.[11]

Following a public commitment at Queens University by the then leader of the opposition Sir Keir Starmer in January 2023,[12] the Labour party committed in its manifesto to 'repeal and replace' the Legacy Act if elected, and to return 'the principles' of the SHA.[13] Before the elections, the Shadow Secretary of State for Northern Ireland Hilary Benn MP indicated that Labour would remove the immunity provisions from the Legacy Act, reinstate civil proceedings and legacy inquests but that 'he would not scrap' the ICRIR but rather 'I will see how it goes. In the end the test for this is will it work for families'.[14]

After Labour's electoral victory, in light of a Belfast High Court decision that the amnesty provisions of the Legacy Act were unlawful,[15] Secretary of State for Northern Ireland (SOSNI) Benn announced that the government would drop an appeal planned by the previous government against the amnesty finding although the UK government continued to defend an appeal brought by families concerning the independence of the ICRIR. The Northern Ireland Court of Appeal subsequently upheld the high court ruling that elements of the Legacy Act were unlawful, but it went further than the High Court. It concluded that the ban on civil actions (rather than just its retrospective elements) was unlawful and that the ICRIR was not capable of providing an equivalent level of independent investigation as an inquest. The key reasons for that decision were that ministers could prevent the ICRIR providing information to families on the basis of national security and because the ICRIR could

[9] *NIO Draft Northern Ireland (Stormont House Agreement) Bill (2018):* NIO (2018) *Consultation Paper: Addressing the Legacy of Northern Ireland's Past* (May 2018)
[10] SOSNI (18th March 2020) *Written Ministerial Statement: Addressing Northern Ireland Legacy Issues*.
[11] See e.g. NIO (2021) *Addressing the Legacy of Northern Ireland's Past.* Cmnd Paper 498.
[12] Guardian News https://www.youtube.com/watch?v=SKZUoXoUMNA
[13] Labour Party (2024) The Labour Party Manifesto: Our Plan to Change Britain, p. 117-118.
[14] SOSNI Hilary Benn quoted in BBC News 1st May 2024 'The Troubles: Legacy Act Denies Victims Like Me Closure.'
[15] Re Dillon and Others [2024] NIKB 11.

not emulate inquests in providing appropriate next of kin participation including ensuring that families were properly legally represented.[16] A further appeal by the government to the Supreme Court is scheduled to be heard later in 2025. Labour has also committed to a 'reset' in the UKs relationship with the Irish government and a return to prioritising their respective roles as 'co-guarantors of the peace process in Northern Ireland'.[17]

In December 2024 the SOSNI laid a Remedial Order under the Human Rights Act before parliament to address the deficiencies in the Legacy Act identified by the High Court and Court of Appeal in the Dillon case. That Remedial Order removed all provisions from the Legacy Act related to the previous immunity scheme and enabled all civil actions to recommence.[18] The SOSNI also announced that he would introduce primary legislation to implement the governments promise to restore most inquests, reform and strengthen the ICRIR's independence, powers and accountability, amend the disclosure regime and '*consider provisions previously included in the draft Stormont House Agreement legislation'.*[19] He also stated that he would continue to have discussions with the Irish government as co-guarantors of the Good Friday Agreement and expressed his hope that the two governments '*will be able to agree a way forward that is underpinned by the principles set out in the Stormont House Agreement.'*[20]

As noted above, this report is designed to help the UK government in its preparatory work on new primary legislation on addressing the past in Northern Ireland, as well as discussions between the two governments and other relevant stakeholders in Northern Ireland (including the political parties) on the specific issues of information retrieval and acknowledgement. The discussion below covers a range of key themes and issues which are relevant to that preparatory work and related negotiations and discussions between the various stakeholders.

1. What is the difference between investigations and information retrieval?

As noted above, the Stormont House Agreement (SHA) envisaged two separate institutions tasked respectively with investigations (the HIU) and information retrieval (the ICIR) concerning those who died during the Northern Ireland conflict. As noted, in effect the Legacy Act merged these two functions into one institution, the Independent Commission for Reconciliation and Information Recovery (ICRIR) – the body chaired by former Lord Chief Justice Sir Declan Morgan.

[16] See In the Matter of an Application by Matina Dillon and others, [2024] NICA 59. See also CAJ (2024) *What Could Root and Branch Reform of the ICIR Look Like and Would it Be Enough?*
[17] BBC News Northern Ireland 7th September 2024 'Starmer Visit Moment for Reset of UK-Ireland Relations.
[18] SOSNI (4th December 2024) *Oral Statement to Parliament: Secretary of State Oral Statement on Northern Ireland Legacy.*
[19] Ibid.
[20] Ibid.

Definition of Investigation

In the UK context, under Article 2 of the European Convention of Human Rights (ECHR), the term *investigation* places a set of procedural obligations on the state regarding the investigation into a death. An investigation in such circumstances is: (a) initiated by the state; (b) independent (both institutionally and practically) from those being investigated; (c) effective (d) prompt; (e) there must be a sufficient element of public scrutiny of the investigation or its results; and (f) the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.[21] Similar requirements are required into an investigation into breaches of Article 3 of the ECHR which relates to allegations of torture, inhuman or degrading treatment or punishment.[22] As suggested in its name, part of the purported rationale for the creation of the ICRIR was that it could use its investigative powers not only for full scale criminal investigations (in what were likely to be a small number of cases) but, also as a way to provide information via reports to families.[23] However, the question of whether the ICRIR was actually designed to conduct full scale investigations in cases which are unlikely to lead to a prosecution as opposed to 'light touch reviews' remains a question of considerable controversy.[24]

Definition of Information Retrieval

Information Retrieval is a broader term than investigation and it includes information gleaned from sources other than through legal investigative powers. For example, in the draft SHA Bill, it stated that amongst the key functions of the Independent Commission for Information Retrieval (ICIR) was to 'seek and receive information about deaths within the remit of the Commission about which eligible family requests are made; and receive information about other deaths within the remit of the Commission'.[25] Information retrieval can therefore, for example, include information that is provided voluntarily either directly to victims or indeed to a third party or other mechanism from former members of armed groups or indeed former members of the security forces (see further below).

2. How to encourage information retrieval from former non-state or state actors?

Alongside the state's obligations to conduct Article 2 compliant investigations, a key challenge with regard to the voluntary recovery of information is how to encourage individuals or organisations with relevant information to provide it. One obvious

[21] See *In the Matter of an Application by Matina Dillon and others*, [2024] NICA 59, para 158. The relevant guidance from the ECtHRs itself includes the phrase 'capable of establishing the facts, holding accountable those at fault and providing appropriate redress for victims' European Court of Human Rights (ECtHR) (2023) *Guide on Article 2 of the ECHR: Right to Life* (updated). para 214.
[22] ECtHR (2024) *Guide on Article 2 of the ECHR: Prohibition of Torture* (updated)
[23] *Northern Ireland Troubles (Legacy and Reconciliation) Act* 2023, S.15.
[24] Daniel Holder, Director Committee on the Administration of Justice, Oral and Written Evidence to the Northern Ireland Affairs Committee, 26th February 2025 committees.parliament.uk/oralevidence/15449/pdf/
[25] Northern Ireland Office (2018) *Draft Northern Ireland (Stormont House Agreement)* Bill Para 41,1, (a) and (b).

obstacle to such information being provided is that individuals may be less willing to provide it if they believe that it will incriminate either themselves or others rendering them liable to criminal prosecution or civil actions.

During the negotiations which led to the SHA the two governments and four of the five Northern Ireland political parties involved agreed that one way to encourage such voluntary information retrieval was to include a provision 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.'[26] The relevant section of the SHA draft legislation which was designed to enact this commitment was contained in S 45. S 45 (3) stated that 'The information is not admissible in any legal proceedings' — defined as any criminal or civil proceedings. It also stated in S 45 (2) that 'the provision of information to the Commission [ICIR] does not give any person an amnesty for any criminal offence'.

As noted, the ICIR drew explicitly on the experience of the ICLVR (Disappeared Commission), which has operated with a similar proviso with regard to information provided to it since 1999. The Northern Ireland (Location of Victims Remains) Act 1999 S 3 (1) states 'The following shall not be admissible in evidence in any criminal proceedings (a) any relevant information provided to the Commission and (b) any evidence obtained <u>(directly or indirectly)</u> as a result of such information being so provided.'[27] As detailed below, that guarantee has been the basis for the development of relationships of trust between the ICLVR and former members of the Irish Republican Army IRA (and the Irish National Liberation Army [INLA] in one case) which has facilitated the successful recovery of the remains of the majority of people listed by the ICLVR.[28]

The omission of the phrase <u>'directly or indirectly'</u> in the SHA draft legislation compared to the ICLVR legislation led to concerns during the subsequent consultation as to whether the information contained in a ICIR report to a family could be used for prosecutorial or civil action related legal purposes.[29]

For the purposes of clarity, any provision in a new Legacy Act which is designed to help secure information retrieval from former members of armed groups or former

[26] Stormont House Agree (2014) para 46.
[27] Similar wording is included in the relevant legislation in the Republic of Ireland, S. 5 of the *Criminal Justice (Location of Victims' Remains) Act*, 1999.
[28] To date the remains of 13 of the 17 people listed by the ICLVR have been recovered. They include the body of Jean McConville who was discovered apparently accidentally at Shelling Beach in County Louth in 2003. In addition, following information received by the ICVR, remains were recently exhumed from a cemetery in County Monaghan and were for testing to determine if they are those of Joe Lynskey, abducted and murdered by the IRA in 1972. In March 2025 the ICLVR confirmed that the remains were not those of Mr Lynskey See further BBC News 24th March 2025 'Remains Found in Grave Not those of Disappeared Victim.'
[29] Those concerns were expressed to the then Director of Legacy in the NIO Chris Flatt at a public event organised in Queens University in 2018 as part of the government's consultation on the draft SHA Bill.

security force members should be clear that no information from or engagement with the information retrieval process can be used directly or indirectly for any legal process – defined as any criminal or civil proceedings. Including the phrase 'engagement with' should be sufficient to ensure that any intermediary or interlocutor engaging with the information retrieval process (which was crucial to the success of the ICLVR) would also be protected.

3. What is the difference between the Legacy Act Immunity Scheme 2024 and the Stormont House Agreement Scheme?

There are a number of important differences between the immunity provisions introduced under the Northern Ireland Legacy Act 2024 and the scheme envisaged in the Stormont House Agreement in relation to the ICIR. These may be thematised as follows: (a) whether or not any immunity scheme interferes with the investigative obligations under the ECHR; (b) the intent of the immunity scheme; (c) the role of victims and survivors in the operation of any such scheme; (d) whether the immunity applies to people rather than information provided through a particular mechanism

Does the immunity scheme interfere with the investigative obligations under Art 2 and Article 3 of the ECHR?

As noted above, the Legacy Act immunity scheme was introduced in a context when the relevant Article 2 compliant investigative mechanisms (e.g. PSNI, OPONI, inquests and the discovery powers related to civil actions) were all being explicitly closed down and replaced by the ICRIR. The latter was established with an emphasis upon 'reviews' rather than investigations and, as discussed above, has subsequently been found not be in compliance with the state's investigative obligations under Article 2 and 3 of the ECHR in a number of respects.[30] In his decision on the legality of the now defunct Legacy Act immunity scheme in the High Court, Colton J concluded that while a statute of limitations is not unlawful per se under the EHCR, the immunity from prosecutions provisions in the Legacy Act were in breach of the applicants' rights under Article 2 and 3 (para 187).[31] In sum, he concluded that the immunity provision directly interfered with the investigative functions since, if an immunity request was granted, no prosecution or finding of civil liability would be possible.

In contrast, under the Stormont House Agreement proposed mechanisms, it is clear that the ICIR was explicitly designed not to interfere with Article 2 investigative obligations.[32] In that context, inquests and civil action were to continue operating as normal. As noted, the investigative functions previously carried out by the PSNI and

[30] *In the Matter of an Application by Matina Dillon and others*, [2024] NICA 59
[31] Re Dillon and Others [2024] NIKB 11, para 197, para 197.
[32] The Stormont House Agreement mechanisms focused only on deaths (Article 2 violations) and not on Article serious injuries (Article 3 violations).

OPONI were to be transferred to new investigative mechanism, the HIU. Under the enabling legislation, the HIU Director was required to issue a statement to include how the HIU would exercise its investigatory function in compliance with its Article 2 obligations.[33] The relevant sections with regard to the powers and responsibilities of the ICIR made clear that while information provided to the ICIR was not admissible in any legal proceeding, 'the provision of the information to the Commission (ICIR) does not give any person an amnesty.'[34] The ICIR and HIU were designed to operate in 'sealed off' systems from each other and HIU investigation was designed to be capable of not only conducting Article 2 compliant investigations but also that such investigations were capable of leading to a prosecution in the normal way[35] - with the only proviso being the HIU could not rely upon information provided to the ICIR for such a prosecution.

The intent of the immunity system

As is discussed extensively elsewhere, the origins of the Northern Ireland Legacy Act immunity scheme lay in the commitments made by the previous government to ensure that army veterans who served in Northern Ireland would receive an equivalent amnesty to veterans who had served in Iraq or Afghanistan.[36] Again in his quite lengthy consideration of the Legacy Act immunity scheme in Belfast High Court, Colton J also paid attention to the intent of the immunity scheme. Colton J notes that the government had initially planned to introduce a statute of limitations, in effect a general amnesty,[37] and that (as confirmed in a letter from the NIO to Colonel Bob Stewart MP in August 2021), this was 'designed to deliver upon the UK government's commitments to veterans who served in Northern Ireland.'[38] He also noted that while

[33] Draft Northern Ireland (Stormont House Agreement) Bill (2018) 6 (4) (a)
[34] Draft Northern Ireland (Stormont House Agreement) Bill (2018) 45 (2).
[35] Under the SHA the decision to prosecute remained that of the Director of Public Prosecutions (DPP) Northern Ireland, SHA para 35. The test for prosecution involves an evidential test (that there is evidence which is sufficient to provide a reasonable chance of success) and that the prosecution is in the public interest. See further Public Prosecution Service (2023) *Code for Prosecutors*, p.14 The Code for Prosecutors | Public Prosecution Service for Northern Ireland
[36] The previous government introduced the Overseas Operations (Service Personnel and Veterans) Act which contains provisions for a presumptive amnesty for veterans who had served overseas for most offences if they occurred more than five years previously. The written ministerial statement which signalled the abandonment of the SHA was made on the same day that this legislation was introduced (8 March 2020), with the government making clear its intent to ensure 'equal treatment of Northern Ireland veterans and those who served in armed conflicts overseas'. SOSNI Brandon Lewis, 18th March 2010 Written Ministerial Statement 'Addressing Northern Ireland Legacy Issues.' https://questions-statements.parliament.uk/written-statements/detail/2020-03-18/HCWS168
[37] There is no universally agreed definition of an amnesty in international law. Freeman defines an amnesty as *'an extra-ordinary legal measure whose primary function is to remove the prospect and consequences of criminal liability for designated individuals or classes of persons in respect of designated types of offences…'* M. Freeman (2009*) Necessary Evils: Amnesties and the Search for Justice*. Cambridge University Press, p.13. O'Shea goes further. He defines and amnesty as 'immunity in law from either criminal or civil legal consequences, or from both for wrongs committed in the past in a political context.' A O'Shea Amnesty for Crime in International Law and Practice. Kluwer p.1-2. See also L Mallinder (2008) *Amnesty, Human Rights and Political Transitions*. Hart, 3-7. For the purposes of this report, an amnesty is defined as a negation of criminal and civil liability.
[38] Re Dillon and Others [2024] NIKB 11, para 109.

the government changed tack to a conditional immunity scheme in light of the almost universal opposition to the first iteration of the immunity scheme, this was done with the proviso from the then SOSNI that there should be a 'low bar' for eligibility.[39] Colton J appeared unpersuaded by arguments from the lawyers for the government that this scheme was designed to facilitate reconciliation.'[40]

Again, in contrast, the argument that the intent of the SHA legislation was to achieve both Article 2 compliant investigations via the HIU and to facilitate information retrieval via the ICIR is a much more persuasive proposition. None of those involved in the lengthy negotiations which concluded in the SHA argued in favour of an amnesty so the idea the limited immunity of provisions with the ICIR was really intended as some sort of clandestine amnesty designed to apply beyond the operation of the ICIR is neither legally nor intellectually tenable.

The role of victims in the immunity process

Another distinction between the Legacy Act and SHA scheme is on the central issue of the role of victims. As Colton J. noted in his finding against the immunity scheme, if an applicant for immunity meets the criteria the ICRIR must grant immunity. The victims have no role or say in these decisions.'[41] Importantly for current purposes Colton J. added 'It may well be that a system whereby victims could initiate the request for immunity in exchange for information would be compliant with articles 2 and 3 ECHR, but this is not what is contemplated here. [42][my emphasis]

Under the scheme envisaged under the SHA, the limited immunity for information provided to the ICIR would only affect the rights of victims or survivors who had made a decision to engage in with the ICIR. Such engagement by a victim or survivor would be done in the full knowledge that the information provided could not be used in a civil or legal proceeding.

The distinction between immunity applying to individuals rather than information.

A final important distinction between the immunity scheme contained in the Legacy Act and the SHA is the object of the immunity provisions. The now defunct Legacy Act immunity scheme in effect applied to individuals, to people.[43] If an individual applied for and was granted immunity[44] the immunity panel had a number of immunity options but the granting of immunity 'must be broad enough in scope to cover all the serious or connected Troubles-related offences which the panel considers the person's conduct…would tend to expose that person [my emphasis] to

[39] Re Dillon and Others [2024] NIKB 11, para 114.
[40] Re Dillon and Others [2024] NIKB 11, para 114. para 157.
[41] Re Dillon and Others [2024] NIKB 11, para 187.
[42] Ibid.
[43] Legacy Act 2023 op cit. (S 19)
[44] Legacy Act 2023 op cit. (S19,7).

investigation/and or prosecution.'[45] Moreover, the Explanatory Notes for the Legacy Act notes 'an award of general immunity is likely to be appropriate in most cases.'[46] In contrast the immunity scheme envisaged under the SHA legislation was explicitly focused on the information provided to the ICIR. Indeed, as noted, the relevant section in the SHA draft bill was entitled 'Information Provided to the Commission [ICIR]: No Amnesty, Information Inadmissible. [my emphasis][47]

Previous experiences of non-state or state actors engaging with information retrieval processes

The challenges associated with soliciting information voluntarily from former members of armed groups or members of the security forces are obvious. That said, there are also important examples where such information has been provided in a range of settings aimed at addressing the legacy of the conflict. These have included engagement with formal justice processes as well as 'bottom-up' efforts seeking information retrieval and acknowledgement.

Witness X and UVF Engagement with the Ballymurphy Inquest

The best known example of loyalist cooperation with a formal legacy mechanism was the evidence provided by 'Witness X', who acted as 'an interlocutor with loyalist veterans' concerning the possible involvement of the UVF in the Ballymurphy killings investigated by the Ballymurphy Inquest.[48] Witness X had originally sought to be considered as a 'Properly Interested Person' at the Inquest but that request was denied by the presiding Coroner, now Lady Chief Justice Keegan.[49]

This evidence suggested that a number of UVF units were active in the area including a UVF sniper (now deceased) who was using a Mauser rifle, which was relevant in a number of the deaths being considered. Reports from the PSNI and Forensics Service

[45] Northern Ireland Office (2023) Explanatory Notes: Northern Ireland Troubles (Legacy and Reconciliation) Act para 110.
[46] Ibid.
[47] Draft Northern Ireland (Stormont House Agreement) Bill s 45.
[48] While Witness X was granted confidentiality, a dispute arose during the course of the inquest concerning whether he could offer evidence from behind a screen at the Inquest. That permission was not granted, and Witness X did not appear three times when scheduled to give evidence. When it was suggested that a solicitor could give evidence on behalf of Witness X, the Coroner Keegan J noted 'well that's novel. An interlocutor for an interlocutor.' BBC News 16th October 2019. 'Ballymurphy UVF Interlocutor Fails to Show at Inquest.' Eventually the Keegan J, concluded that Witness X's evidence should be considered, even though Witness X was ultimately not available for cross examination in the Inquest. An agreed process was devised wherein written evidence was produced 'through a collaborative process between counsel an agreed summary was read in' and his evidence was considered 'as part of the overall picture'. *In the Matter of a Series of Deaths that Occurred in August 1971 at Ballymurphy West Belfast*, [2021] NI Coroner 6, Incident 1 (The Deaths of Father Hugh Mullan and Frank Quinn) at para 248.
[49] If designated a *Properly Interested Person* at an Inquest, gives an individual a right to participate in the proceedings and to play an active part at the Inquest hearing including (in person or through a lawyer) asking questions of witnesses, addressing points of law and receiving relevant documentation from the Coroner. See further *The Coroners (Practice and Procedure) Rules (Northern Ireland)* 1963.

of Northern Ireland stated that there was no forensic link between any of the recovered bullets and that weapon. The Coroner ultimately concluded that there was 'no evidence of value' to suggest that the UVF were responsible for the deaths.[50] The now Lady Chief Justice Keegan determined that all 10 victims were entirely innocent and that 9 of the 10 were definitively shot by the army.[51] The Coroner also rejected submissions from the Ministry of Defence that at least some of those killed could have been at the hands of the UVF, stating such a suggestion was 'speculative and does not accord with the evidence I have heard.'[52] The UVF were accused by some of the Ballymurphy families and by their lawyers of attempting to 'muddy the waters' regarding the army's responsibility for the killings.[53]

UVF 'From Below' Engagement in The John Crawford Process

Amongst loyalists, the most prominent example of an informal information retrieval (and acknowledgement) process was that concerning the UVF murder of John Crawford in 1974.[54] The UVF were on ceasefire when the murder took place and had never admitted responsibility for the killing. Almost fifty years later, following an 18-month process of engagement between John Crawford's son Paul and Winston Irvine who operated as an interlocutor to the UVF (developing what Mr Crawford described as a 'relationship of trust').[55] After a complex process of Mr Irvine engaging with others who in turn engaged with some of those involved the organisation eventually admitted responsibility for the killing in a statement provided to Mr Crawford.

The statement included the truth about UVF responsibility for the killing, factual details about the murder sought by Mr Crawford and a statement of acknowledgement reiterating the expression of 'abject and true remorse' for the killing of innocent victims issued by former UVF commander Gusty Spence when he declared the Combined Loyalist Military Command cease-fire in 1994.[56] Mr Crawford has described the process and the UVF statement as a success, which 'had gone much further than he had expected'.[57] He has also stated that the interlocutor in the process operated with 'good will, honesty and integrity' and that the process had corrected

[50] *In the Matter of a Series of Deaths that Occurred in August 1971 at Ballymurphy West Belfast*, [2021] NI Coroner 6.
[51] While she made clear that Mr John McKerr was an entirely innocent civilian, the Coroner could not arrive at a definitive finding regarding who was responsible for his killing. The military were in the area at the time and there was no suggestion of UVF involvement in this killing, but the Coroner could not make a determination who was responsible on the available evidence. ibid para 162.
[52] Ibid Incident 1 (the killing of Father Hugh Mullan and Frank Quinn), para 491.
[53] Irish News, 3rd May 2018, 'Ballymurphy Massacre Campaigners Sceptical About UVF Claims.'
[54] K. McEvoy (2023) *The Killing of John Crawford: A Victim-Centred and Co-Designed Truth Recovery Process.* Mr Irvine recently pleaded guilty to a number of possession of firearm and ammunition offences and is awaiting sentencing. BBC News 2nd December 2024 'Winston Irvine Pleads Guilty to Firearms Offences.'
[55] Ibid p.18.
[56] For an analysis of this statement and its after-life see K. McEvoy (2024) 'Abject and True Remorse: Loyalism and the Politics of Regret.' *Irish Studies in International Affairs* 35,2, 56-79.
[57] K. McEvoy (2023) Crawford report op cit. p.25.

some of the narrative understood by the family and that he had received the 'full answers' that he had sought.[58]

Amongst republicans, there are a broader range of prominent examples of engagement with processes designed to address the legacy of the conflict on both sides of the border.

IRA Engagement with The Smithwick Tribunal

In the Republic of Ireland, the Tribunal established to investigate allegations of collusion between Gardai in Dundalk Police Station and the IRA in the murder of two RUC officers secured 'voluntary cooperation of former personnel of the IRA' through an intermediary including some of those 'who had an operational role' in the killings.[59]

It should be noted that the Smithwick Tribunal operated under the Tribunal of Inquiry (Evidence) (Amendment) Act 2002. Section 8 of that Act provided that 'A statement or admission made by a person before an investigator shall not be admissible as evidence against the person in any criminal proceedings'.[60] In addition to this immunity provision in the Republic of Ireland, the UK Attorney General also gave an undertaking that no criminal proceeding would result in the United Kingdom against a person as result of admissions they had made to the Tribunal which was of course operating in the Republic of Ireland.[61] In that context, without any risk of prosecution in either jurisdiction from the information provided, the IRA engagement with the Tribunal took a number of forms.

First, those involved in the ambush provided a written document setting out their version of how it was mounted. The Tribunal subsequently sought clarification, by way of written questions and written responses were provided and, at that point, the Tribunal sought a meeting between members of its legal team and some of the former members of the IRA. After some negotiation as to the modalities, and some checking and cross checking of details, a meeting ultimately occurred in April 2011 between members of the Tribunal legal team and three former IRA members (including one who was present and had a command role in the killings), all in the presence of intermediaries.[62] Similar to the Ballymurphy Inquests, despite the wishes of the Tribunal Chair, none of these individuals were willing to give evidence in person or be cross-examined but Smithwick J. decided to include a thirteen page detailed

[58] Breakingnews.ie 16th May 2023 'Information from UVF Corrected Family's Narrative – Paul Crawford'
[59] Smithwick J, (2013) *Report of the Tribunal of Inquiry into Suggestions That Members of An Garda Síochána or Other Employees of the State Colluded in the Fatal Shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on The 20th of March 1989* Para 22.1.1
[60] Tribunals of Inquiry (Evidence) (Amendment) Act, No 7 of 2002, Section 8.
[61] Notice 09/01. See also Smithwick Tribunal report op cit., para 1.467.
[62] Ibid.

account of the exchanges in full in his findings as a 'valuable resource' for the Tribunal rather than evidence per se.[63]

The IRA claimed that 'at no point was there any input from the Gardai or any other sources or agency regarding the planning or execution of this operation.'[64] They also claimed that the killings were planned after a car was spotted in the Dundalk Gardai car park and one of the police officers was recognised as an RUC officer and provided detailed information on the lengthy surveillance operation on the officers (from the summer of 1988 to March 89) and the killing which involved over 40 people. Smithwick J. detailed a number of elements of the IRA account which he said were corroborated by other evidence including regarding the lengthy surveillance on two police officers, previous instances when the planned ambush was aborted, and the detailed account of the 'operational phase' of the murders.

However, he questioned the reliability of other aspects of the IRA account including whether or not Chief Superintendent Breen was the key target of the assassination (the IRA claimed not) and he also focused on the relevance of a comment from one of the IRA personnel that 'we are not going to compromise former comrades or locations.'[65] Smithwick J, ultimately concluded that such a sensitivity towards former comrades could be extended to include a Gardai member who had provided information to the IRA. He concluded that it was more likely that information concerning the movement of the two police officers was leaked from Dundalk Garda Station than as a result of the IRA acting alone.[66]

Republican Engagement with the ICLVR

As discussed above, the other well-known process involving cooperation between republicans and an official cross-border legacy process is the work of the ICLVR in seeking to locate the remains of those murdered and disappeared by republicans. The latter has involved significant engagement between the ICLVR and former members of the IRA and in one case the INLA contributing directly to the recovery of 12 bodies to date.

At a recent event held in Queens, the former lead investigator for the ICLVR Geoff Knupfer reflected on his experiences including of working with families and republicans.[67] Geoff reflected on a range of issues including managing 'digs' and developing and maintaining relations with both victims and interlocutors to

[63] Ibid Para 22.1.2
[64] Ibid Section Headings *Final Approved Note* (para 22.2) *Written Questions and Answers* (para 22.3) and *A Face-to-Face Meeting Between Former Personnel of the Provisional IRA and Members of the Tribunal's Legal Team* (para 22.4) pp.399-412.
[65] Ibid para 22.7.7
[66] Ibid para 23.2.2
[67] Mr. Knupfer was also a former detective Chief Superintendent in the Greater Manchester Police Service.

republican armed groups. Noting the success of the Commission, Geoff paid tribute to the fortitude and forbearance of the families of their disappeared through what was a long and harrowing process. He argued that the success of the Commission was due in part to the way in which the legislation was drafted which he described as 'absolutely inspired', in particular the form of limited immunity which facilitated engagement with the Republican Movement.[68] Noting that the engagement of republicans came about as a result of political pressure and not just humanitarian impulses, and that they undoubtedly sought to control the process at different junctures, he charted how relations were developed and improved over the years after a slow start. He continued:

> Following my appointment in 2005, the Republican Movement created a channel or point of contact through which all the then declared cases could be pursued. Joint site visits were made and, where possible, meetings were set up with individuals who had knowledge of various cases. This process worked well, and, without doubt, the Commission received strong support from the Movement. As the years rolled by, interlocutors and participants in these events become more comfortable with the fact that what was said to the Commission stayed within the Commission (no arrests; no convictions; admissibility of 'evidence') … This process simply couldn't have happened without the support and active participation of the Republican Movement and its members. I pay particular tribute to our intermediaries and interlocutors and also to those former participants who have had the courage and conviction to come forward over the years.[69]

IRA Non-Engagement with the Kingsmill Inquest

It is also worth noting at this juncture the failure of republicans to engage with the Kingsmill Inquest into the murder of ten protestant civilians at Kingsmill in County Armagh in 1976.[70] The IRA was on ceasefire at the time of the murders and the killings were claimed by a group called the 'South Armagh Republican Action Force' and denied by the IRA.[71] This claim for responsibility also included a statement that the killings were in retaliation for the loyalist killings of Catholic civilians the Reavey

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[68] K. McEvoy (1st November 2024) *Armed Groups Transition and Dealing with the Past*. QUB Mitchell Institute Blog. Original speech on file with the author. https://www.qub.ac.uk/Research/GRI/mitchell-institute/ResearchandImpact/Blogs/ArmedGroupsTransitionandDealingwiththePast.html

[69] ibid

[70] *In The Matter of Inquests into the Deaths of ten men on the Kingsmill Road, County Armagh*, [2024], NI Coroner 21. One Catholic man on the minibus had been picked out and told to run away and one man, Alan Black, was seriously wounded but survived.

[71] A similar name had been used to claim responsibility for another sectarian attack on an Orange Hall in Newtownhamilton in 1975 in which five protestant men were murdered, see further P. Taylor (1997) *Provos: The IRA and Sinn Féin*, Bloomsbury p.195-196. See also R. English (2003) *Armed Struggle: The History of the IRA*. Pan Books, p. 173.

brothers and the O'Dowds who had been murdered the previous evening.'[72] The Inquest made extensive use of forensic evidence which linked many of the weapons used to a large number of IRA murders and attempted murders of RUC officers and British army personnel by the IRA and concluded unequivocally that the IRA was responsible for this 'overtly sectarian' attack. The Coroner Sherrard J. also said:

> The IRA failed to engage with the Inquest. There has been no acknowledgement by the IRA of the utter wrongness of the atrocity, its impact on those bereaved or the damage caused to the entire community. Kingsmill was an overtly sectarian attack by the IRA. It was mounted because the deceased men were Protestants and for no other reason.[73]

In reviewing the judgement and related media coverage of the inquest it is difficult to determine the precise nature and extent of the efforts on the part of the Inquest to engage with the Republican Movement or indeed the precise political or legal reasons for the latter's non-engagement. The fact remains that the IRA failed to engage with the Inquest and as the judgement makes clear, there is no doubt that the IRA was responsible for the sectarian murders of these ten protestant civilians.

Republican 'From Below' Engagement with Information Retrieval and Acknowledgement

Republicans have also been engaged in a wide range of 'from below' efforts designed to address the legacy of past harms committed during the Northern Ireland conflict.

By way of illustration, In 1990 republican activist Eoin Morley was shot dead by the IRA who alleged that he was a state informer.[74] In addition to pursuing justice and accountability through the formal justice system (including an inquest, Police Ombudsman Office, Historical Enquiries Team, civil actions and a judicial review), Eoin's mother Eilis also engaged directly with the IRA leadership. Following an internal investigation the IRA issued a statement in 2007 which confirmed that the murder was not sanctioned by the IRA leadership, that 'the killing of Eoin Morley was

[72] Kingsmill Inquest Judgement Op cit. para 240. In response to questions concerning the failure of republicans to engage with the Kingsmill Inquest Sinn Féin First Minister Michelle O'Neill said, 'Let me be again categorical, I am sorry for every loss of life throughout the conflict, but my job as a political leader of today is to build towards the future, is to try and help to heal the wounds of the past.' She also said that the Kingsmill Inquest 'underlines why we need to deal with the past properly' and criticised the British government's legacy act as 'driving a coach and horses through the desires, wishes and needs of all families. That includes the Kingsmill families who deserve truth and justice, who deserve a public inquiry, who deserve answers, but for my job as leader of today, I speak for Sinn Féin, I speak as first minister in front of you today, I am sorry for every lost life including those in the Kingsmill disaster.' Quoted in Irish News, 17th April 2024 'Kingsmill Inquest Underlines Need to Deal with the Past Properly.' Stormont First Minister Warns. See also Irish Republican News 18th April 2024 'Kingsmill: Shameful Legacy Act Bringing Curtain Down in Legal Actions.'

[73] Ibid. para 318.

[74] Mr Morley was a member of the Irish People's Liberation Organisation (IPLO), a breakaway organisation from the INLA. See further OPONI (2005) *Statement Under Section 62 of the Police (NI) Act 1998 on the Investigation by Police of the Murder of Eoin David Morley on 15 April 1990*. OPONI.

wrong'. It also stated that the allegations of him having been an informer were 'incorrect and totally inaccurate' and that:

> ..the IRA leadership offers its apologies to the Morley family for the grief and pain they have suffered as a result of our actions and the subsequent false allegations levelled against Eoin Morley.'[75]

In a similar fashion, a 14-year-old civilian girl named Kathleen Feeney was shot dead by the IRA in Derry in 1973. The IRA in Derry originally blamed the army for the shooting, later claiming that the organisation had killed a soldier in retaliation. Following an approach to the leadership of the Republican Movement by the family,[76] in 2005 the IRA leadership accepted that Kathleen had in fact been killed by an IRA Active Service Unit who were firing at a British Army patrol. The IRA stated:

> The IRA accepts responsibility for the death of Kathleen Feeney. Our failure to publicly accept responsibility for her death until now has only added to the hurt and pain of the Feeney family. The leadership of Oglaigh na hEireann [IRA] wish to apologise unreservedly to the Feeney family for the death of Kathleen and for all the grief that our actions have caused to them.[77]

While there are several other broadly successful examples of IRA engagement in 'from below' information retrieval and acknowledgement work, it is worth noting another process which apparently did not ultimately help to bring closure to the victims involved. In 1983 Brian Stack, Chief Officer at Portlaoise Prison on the Republic was shot and seriously wounded, dying over a year later from his injuries. The IRA never admitted the murder. In 2013 Gerry Adams, then a TD, arranged a meeting between Mr Stack's two sons and an unnamed senior figure from the IRA. The IRA leader stated:

> 'I want to acknowledge that the IRA was responsible for the death of your father. I regret that it has taken so long to clarify this matter for you... This action was not authorised by the IRA leadership and for this reason the IRA denied any

[75] Irish Republican News April15th 2007 'Family Welcome IRA Apology.' In response a Morley family statement said 'We understand that it would have been easier for the Provisional movement to continue with the charade that were the ever changing 'reasons' given to try to justify Eoin's murder. For the PIRA to take the unprecedented step of fully retracting the explanation given at the time and in subsequent statements, and to apologise for what happened is a bold move and we, Eoin's family, welcome it.'

[76] In his account of the process, Kathleen's brother Harry states that he approached Martin McGuinness and former Sinn Féin MLA Raymond McCartney who promised in turn to approach the IRA with the family's request and the response from the IRA was made public 3 months later. See H. Feeney (2022) *The 14th November: The Day Time Stood Still*. Independently Published, p.132-133. Mr Feeney also details how he later met the former IRA member who killed his sister directly and the latter also apologised directly to him -p. 144.

[77] Text of Irish Republican Army (IRA*) Statement on the Shooting of Kathleen Feeney on 14 November 1973*, Quarry Street, Derry, 23 June 2005. The family statement in response was 'In memory of our parents Kathleen and Harry Feeny. The family of Kathleen Feeney decided to seek an unconditional apology from the Provisional IRA for the death of their sister who was shot dead 32 years ago. Kathleen was then aged 14 years old. It is the families wish that this will bring closure.' Reproduced in H. Feeney op. cit. p. 140-141.

involvement. The IRA was responsible for your father's death. This operation should not have taken place. While the IRA can no longer comment on this matter let me express my sorrow for the pain and hurt your family suffered'[78]

The Stack family initially thanked Mr Adams and stated that while the acknowledgement from the IRA leader had brought some closure, they were still left with unanswered questions.[79] However, a number of year later one of Mr Stack's son claimed that the murder had indeed been sanctioned and called upon Mr Adams to name the person who had attended the meeting purporting to represent the IRA.[80]

Lessons learned from previous armed group engagement with Information Retrieval[81]

A number of lessons on the viability of information retrieval may be drawn from the previous experiences of loyalist and republican engagement in such processes.

First, as evidenced by the engagement of the IRA with the ICLVR and the Smithwick Tribunal, the clarity of the immunity provisions concerning engagement with such formal state-created mechanisms was key to ensuring that no information provided could be used for in legal proceedings and was crucial to securing armed group engagement. Relationships of trust evolved over time in the case of the ICLVR in particular, but such relations were premised on a guarantee that none of the information gleaned could be used for prosecutorial purposes. In contrast, as evidenced by the Ballymurphy Inquest and possibly the Kingsmill inquest, while such legal proceedings do include protections against self-incrimination for witnesses,[82] the requirement to attend a public hearing may itself present a disincentive for engagement by information providers.

Second, as illustrated by the information provided by republicans to the ICLVR and Smithwick Tribunal and by the UVF Witness X to the Ballymurphy Inquest, such information provided is not simply taken 'on trust' but rather must be rigorously cross checked against other sources of information. As noted, in the case of the Ballymurphy

[78] Reproduced in The Independent 9th August 2013 'IRA Finally Admits Killing Prison Officer Brian Stack During the Troubles'; Irish Times 9th August 2013 'Family of prison officer killed by IRA question Garda Inquiry.'
[79] Ibid.
[80] Irish Times 9th December 2016 'Adams with Not Name Man in Stack Murder Controversy: Sinn Féin Leader Says Breaking Confidential Process would add to Political Point Scoring.'
[81] In writing this report, I also sought to examine past experiences of information retrieval or acknowledgement engagement from former members of the security forces. While there obviously numerous accounts of the ways in which former soldiers, police officers and members of the security services have engaged (or not) with official processes such as the Saville Inquiry, Inquests, Police Ombudsman Investigations etc, there is much less information on analogous 'from below' engagement in information recovery or acknowledgement processes from former state actors. Probably the best know example is that of Richard Moore who was blinded as a 10-year-old boy in 1972 when he was hit by a rubber bullet fired by a British soldier. Mr Moore later successfully managed to meet the soldier responsible via the BBC (Charles Innes) who explained the circumstances of the shooting, a relationship evolved and many years later the soldier apologised to him. See further R. Moore (2010) *Can I Give Him My Eyes: The Inspiring Story of a Boy Blinded in War Who Found Freedom in Forgiveness*. British Library. BBC News 1st Sept 2020 *Richard Moore: Soldier Who Blinded Schoolboy Says Sorry.*
[82] *The Coroners (Practice and Procedure) Rules* op cit, Article 9.

Inquest and the Smithwick Tribunal, the coroner and tribunal chair came to conclusions which differed from the information provided by the respective armed groups based on evidence and information gleaned elsewhere.

Third, across all of the formal and 'from below' processes, information retrieval requires victim engagement on the one hand and political will and capacity on the part of the armed group on the other. Such processes are normally only initiated once a victim has expressed a desire to engage. As evidenced by the success of the John Crawford process, this process was driven by the tenacity and perseverance of John Crawford's son Paul. However, it also required significant work on the part of the interlocutor in developing a relationship of trust between he and Paul and then a significant amount of work and engagement on the part of the UVF to provide the information sought by the Crawford family.

Finally, the challenges of such work should not be underestimated and as evidenced by the Stack case, the information provided may not be sufficient to bring closure to all families who engage in such work. Nonetheless, the success of such processes for some families including those who have had the remains of their loved ones returned by the ICLVR, the Crawford family, the Morley family and others suggest that information retrieval from former members of armed groups or the security forces should be an option for those victims and survivors who wish it.

Should information retrieval be done on a cross-border basis?

In order to maximise its effectiveness, an information retrieval mechanism should operate on a cross-border basis with enabling legislation in either jurisdiction and an international treaty between the two governments as occurred with the ICLVR and was contained in the SHA. The logic that information retrieval should be done on an all-island basis was accepted during the SHA negotiations in the design of the ICIR and that logic remains as persuasive today. The conflict touched all parts of the island of Ireland as well as the United Kingdom, victims and survivors and indeed those responsible for past acts of violence also continue to live in both jurisdictions.[83] Moreover, on a political level, creating a cross-border mechanism to facilitate information retrieval would represent a practical and symbolic expression of the recent commitments by both governments to a 'reset' of relations concerning addressing the legacy of the conflict.

[83] As noted above the section in the SHA on the ICIR also included an obligation on both governments to assist the ICIR in seeking information from other jurisdictions. SHA op cit. para 45.

How would the accuracy of information retrieval be verified?

As noted above, information retrieval from former members of armed groups or the security forces must be cross checked with other sources to ensure that the veracity of the report provided to victims and survivors is as accurate as possible.

The Draft Northern Ireland (SHA) Bill included a provision that the reports provided to families 'must contain only information the credibility of which has been established to the satisfaction of the Commission [ICIR].'[84] The same wording is contained in the treaty between the UK and the Government of Ireland.[85] The relevant explanatory note on the legislation states only that 'information contained within a report will not be subjected to the same standard of testing that would be expected in the criminal justice system, this clause requires that the credibility of the information must be established to the satisfaction of the Commission.'[86]

The obvious way to ensure that the information provided to victims and survivors via an information retrieval mechanism is accurate is to maximise verifiable data from other sources (open and closed) and cross-checking the information provided. The information retrieval mechanism would require staff with the relevant research skills to access open-source materials. Access to closed source materials could be achieved by providing an obligation on public authorities in both jurisdictions to provide any information required by the mechanism to carry out its functions. There may be challenges related to the sharing of sensitive information to a mechanism operating on a cross-border basis. However, an exploration of how this issue has been managed by other analogous successful organisations which have operated on a cross-border basis (e.g. the ICLVR or the Independent International Commission on Decommissioning, IICD) would be instructive.

How would the information retrieval body deal with unsolicited information?

Again, drawing from the Draft Northern Ireland (SHA) Bill and the treaty between the two governments regarding the ICIR, an information retrieval mechanism should be able to receive unsolicited information. That information would then be held secured for the lifespan of the operation of the mechanism so that it would be available to access if a request for information came in from an eligible victim or survivor.

Commentary on the level of cooperation by information holders

Information retrieval from former members of armed groups or the security forces would be on a voluntary basis. However, it should be possible for the information retrieval mechanism to comment on the level of cooperation received from information holders. Under the Draft Northern Ireland (SHA) Bill, the ICIR was

[84] NIO (2018) SHA Draft Bill op cit., Article 42 (2)
[85] Agreement between UK and Government of Ireland op cit. Article 3 (2).
[86] NIO (2018) SHA Bill Explanatory Notes op cit., para 142.

required to produce a report both on the themes and patterns it had identified from its work but also 'the level of cooperation it has received in carrying out its work.'[87] Such provisions could be replicated in any new legislation for information retrieval in the annual reports of the mechanism.

Information retrieval, national security and non-interference with ongoing legal proceedings

The issue of national security redaction and how sensitive information should be managed in addressing the legacy of the conflict in Northern Ireland has long been a source of tension. Following the conclusion of the SHA negotiations, a leaked version of the UK enabling legislation in 2015 contained so many national security redactions that it was described by the then Irish Foreign Minister as a 'smothering blanket.'[88] With regard to information retrieval, the Draft Northern Ireland (SHA Bill) 2018 provides that the ICIR must not 'do anything in carrying out its functions which might a) prejudice the national security interests of Ireland or the United Kingdom, (b) put at risk the life or safety of any person, or (c) have a prejudicial effect on any actual or prospective legal proceedings in the United Kingdom or Ireland.[89] Similar wording is contained in the Treaty between the treaty between the UK and the Government of Ireland with the proviso extended to include the national security interests of Ireland as well as the UK.[90]

The provisions on protecting life and not prejudicing actual or prospective legal proceedings are fairly uncontentious and should be retained. However, the redaction of information going to families on the basis of national security considerations remains highly controversial.

There is widespread suspicion that national security considerations have been used as means of covering up past embarrassing actions on the part of state actors or agents and to thwart the efforts of families to discover what happened to their loved ones and why. As the PSNI Chief Constable Jon Boutcher stated recently:

> The failures since the Good Friday Agreement of continued secrecy around legacy disclosure is counterproductive and damaging to the confidence of communities in the authorities charged with their protection. The Police Service is especially conscious of this as regards the trust in policing which continues to be negatively impacted by legacy. Families not only suffered the unimaginable loss of loved ones, but they also then experienced systemic obstruction when

[87] NIO (2018) Draft SHA Bill op cit., Article 42 3 (a) and (b).
[88] Irish News 27th November 2015 'Charlie Flanagan Critical of National Security Smothering Blanket.'
[89] NIO (2018) Draft SHA Bill op cit., Article 42 (2)
[90] Agreement between UK and Government of Ireland op cit., Article 2 (2).

seeking to discover what happened. They deserve to be listened to, acknowledged and told the truth.'[91]

With regard to investigations, as discussed above, the capacity of the UK government to redact information produced by the ICRIR from going to affected families was found to be in breach of the ECHR by the Northern Ireland Court of Appeal in Dillon and others. The Court of Appeal found that 'the SOSNI has an effective veto over whether and how the ICRIR can share any such information. This last feature it is said by the applicants strikes at the heart of the independence of the process in cases where significant amounts of sensitive information are involved' and that 'the perceived effect of this power of veto viably raises a valid query as to independence.'[92] The Court of Appeal further noted that 'the ICRIR must effectively seek permission' from the SOSNI to share information – 'That is likely to cover a significant amount of material in many cases where State involvement in a Troubles-related death is alleged.'[93] The Court concluded that it 'shared the concerns of the applicants (Mrs. Dillon et al) 'that the 2023 Act clearly places the final say on disclosure in the hands of the SOSNI.'[94]

As noted above, in response to this finding, the SOSNI has promised new legacy legislation. In making this announcement the SOSNI stated that he would ' amend the disclosure regime so that it is fair, transparent, and - crucially - allows for the greatest possible disclosure of information following very closely the model for statutory inquiries and other established processes.'[95] It is not clear at the time of writing what precise changes are envisaged to give effect to the promise to allow the 'greatest possible disclosure of information.' However, for both investigations and information retrieval, the issue of information redaction on the grounds of national security will be viewed by many as a benchmark to judge the intent of the UK government.

An obvious option would be for the UK government to devise a bespoke criteria for information redaction in the new Legacy Act that is to be applicable only for the purposes of addressing the legacy of the Northern Ireland conflict – i.e. specifically reducing to zero its potential 'read-across' to other national security contexts in the UK.

In the SHA, the phrase used regarding limitations of onward disclosure of 'damaging' information was that it would only be enacted 'to ensure that no individuals are put

[91] Written evidence submitted by PSNI to the Northern Ireland Affairs Select Committee 25th February 2025, *Relating to The Government's new approach to addressing the legacy of the past in Northern Ireland inquiry* [LPNI0015]
[92] Re Dillon and Others [2024] NICA 59 Dillon para 225
[93] Dillon para 232.
[94] Dillon para 233.
[95] SOSNI Oral Statement op cit. 4th December 2024 Secretary of State oral statement on Northern Ireland Legacy - GOV.UK

at risk, and that the governments' duty to keep people safe and secure is upheld.' [96] Instead of using the blanket term national security, it would be possible in a new Legacy Act to place a legal obligation on the Director of any investigative or information retrieval legacy mechanism to consider: (a)the duty to protect life (Article 2, ECHR); the duty to prevent harm (Article 3, ECHR); the duty to consider the source of any potential identifiable threat; and (d) the protection of *lawful* and *contemporary* counter-terrorist methodologies. All of these considerations should be considered in the context of a general obligation that the reasons for restricting disclosure should be 'particularly convincing and weighty.'[97] The Act could also contain appropriate appeal mechanisms on information redaction available to either the UK government, the Director of the legacy mechanism or affected families.[98]

With regard to voluntary information retrieval, the risk of a 'chill factor' to information providers knowing that each and every information retrieval report is required to be read by state officials (e.g. MI5 or Gardai intelligence) before being passed to the families is self-evident. In addition to including a specific criterion for information redaction, a further obvious solution would be to designate the information retrieval mechanism itself as having the responsibility for determining legitimate national security concerns and devising a protocol wherein its Director would consult with either government if national security issues were required to be 'flagged'. As above, the Act could also contain appropriate appeal mechanisms on information redaction available to either the UK government, the Director of the legacy mechanism or affected families.

If the term national security is to be retained in the new Legacy Act – and the UK government is to heed the urging of the Chief Constable and to move away from the culture of 'systemic obstruction' which has characterised the state's approach to information disclosure concerning legacy matters to date – any amendments designed to minimise redactions from reports to families emanating from the investigative mechanism (currently the ICRIR) should at the very least be matched with regard to reports emanating from an information retrieval mechanism.

Who should oversee appointments to the information retrieval mechanism?

The appointment process to an information retrieval mechanism should be designed to maximise public confidence in its independence and capacity to conduct such sensitive work. Under the terms of the SHA, the ICIR was to have a chairperson of

[96] Stormont House Agreement op cit. para 37.
[97] Smith and Grady v. United Kingdom (1999) 29 EHRR 493. For a detailed discussion see further See K. McEvoy et al, (2017) *Dealing with the Past in Northern Ireland: A Proposed Model for Information Redaction under the Stormont House Agreement* (QUB Human Rights Centre 2017). https://cain.ulster.ac.uk/victims/docs/mbt/2017-08_MBT_Redactions-Dealing-Past.pdf
[98] Ibid.

international standing (appointed by both governments in consultation with the First and Deputy First Minister), two further appointees appointed by OFM/DFM and one each by the two governments. The two governments should consult with the First and Deputy First Ministers and determine the most effective and efficient way to proceed with the appointments to this mechanism.

Should the remit of the information retrieval body extend beyond deaths?

Under the terms of the SHA, the remit of both the investigative mechanism (HIU) and the information retrieval mechanism (ICIR) were limited to deaths as a result of the Northern Ireland conflict. At least in part because of legal advice that investigative obligations extended beyond deaths (Article 2, ECHR) to include serious injuries (Article 3, ECHR), the Legacy Act commits the ICRIR to investigating or reviewing serious troubles related incidents including deaths and events resulting in 'serious physical or mental harms'.[99] As noted above the legal obligations upon the state concerning investigations do not translate directly to information retrieval. It would seem pragmatic to retain the exclusive focus upon deaths as envisaged in the SHA at least in the early stages of the operation of an information retrieval mechanism. After a suitable time had elapsed, and the workload and working practices of the mechanisms had been properly established, provision could be included for that decision to be reviewed.

Sequencing between investigations and information retrieval

Another issue to consider is the relationship between the legacy investigative/review process and information retrieval. Given the age of many of those affected by the conflict, there is an obvious pressing need that information retrieval should not have to wait until investigative processes have been wholly completed. Moreover, some families may understandably wish to maximise the opportunities for information retrieval by approaching both investigative mechanism and the information retrieval mechanism simultaneously.

The investigative and information retrieval mechanisms should therefore develop a protocol or memorandum of understanding to determine how they will interact with each other. This might include how the issue of families approaching both mechanisms simultaneously should be managed. In addition, assuming that the limited immunity provision discussed above regarding information retrieval have been included, information could not be passed from the information retrieval mechanism to its investigative counterpart. However, once an investigation had been completed, it might be feasible for information from the investigative mechanism to

[99] S 1 (6) a serious troubles related incident includes deaths and serious injuries defined as resulting in paraplegia; quadriplegia; severe brain injury or damage; severe psychiatric damage; total blindness; total deafness; loss of one or more limbs; severe scarring or disfigurement.

be passed in the other direction to the information retrieval mechanism in order to assist the latter with the process of information verification.

Sanctions for unauthorised information disclosure, timeframe and destruction of archives after completion of responsibilities.

Similar to the proposed ICIR mechanism under the SHA, consideration will have to be afforded to a number of issues concerning how the information retrieval mechanism would operate in practice. Under the SHA Draft Bill it was an offence for any member of the ICIR to disclose any information about a death in its remit without the permission of the ICIR with anyone found guilty of such an offence being liable for a maximum of two years imprisonment or a fine or both. The treaty between the UK and Ireland included provisions that the ICIR would operate for five years with three months preparatory. The Draft Bill states that Secretary of State may 'by regulations, make provision for winding up the ICIR', but before doing so, he or she must consult the Irish government and any other persons the Secretary of State deems appropriate. [100]It continues that the ICIR could operate for five years 'or any other period which is agreed' between the two governments. That Draft Bill also included provisions for the destruction of all materials after the ICIR had ceased to operate.

These broad parameters should inform the deliberations on the establishment and management of an information retrieval mechanism. i.e. It should include provisions for the unauthorised disclosure of information to be deemed an offence punishable by up to two years imprisonment and or a fine, the mechanism should be established to operate for at least five years (with the option to extend if necessary and agreed by the two governments) and the information held by the mechanism should be destroyed after it has ceased to operate.

Should the details of the information retrieval mechanism process be contained in the new Legacy Act or in subsequent statutory regulations?

As detailed above, the best-known analogous effort at information retrieval concerning the legacy of the conflict (the ICLVR) required primary legislation in Westminster and the Dáil in 1999 and a treaty between the two governments. The Northern Ireland (Local of Victims Remains) Act 1999 (and its equivalent in the Republic of Ireland) includes provisions on the work and function of the ICLVR including: privileges and immunity for Commissions and staff; premises and expenses; questions relating to the inadmissibility of evidence in criminal proceedings; restrictions on forensic testing; restriction on the disclosure of information.

[100] Draft SHA Bill op cit., S 49 (2), (4).

In a similar vein, following on from the SHA in 2014, most of the important aspects of the ICIR were again detailed in primary legislation - the Draft Northern Ireland (SHA) Bill 2018. Articles 40-49 included even more specific details on a range of issues including: the key functions of the ICIR in terms of its information retrieval and report writing work; its responsibilities with regard to confidentiality, national security etc; its legal privileges and those of its staff; the nature of the immunity regarding information provided and the fact that it was not an amnesty; arrangements to assist the ICIR in conducting its work; offences for a breach of any of the above provisions; the consequences for and unauthorised disclosure of information by members of the ICIR and arrangement for the conclusion of the ICIR's work.

The logic of specifying this level of detail in primary legislation via the new Legacy Act (rather than in subsequent regulations) remains as powerful as it was in 1999 or 2018. Such detailed provisions in primary legislation would provide the appropriately robust legal buttresses against likely legal challenges and a practical framework to facilitate this important work in both jurisdictions with confidence. Moreover, as noted above, it would also symbolise the genuine reset of British Irish relations on legacy as indicated by the two governments in autumn 2024.[101]

DIFFERENT MODELS FOR INFORMATION RETRIEVAL

There are three possible ways in which information retrieval could be achieved concerning the Northern Ireland conflict. These are detailed below, as well as their respective merits and demerits.

Option One – Information Retrieval Via The ICRIR

One option for information retrieval from former members member of armed groups or the security forces would be to locate it within the structures of the ICRIR. As noted, when the previous government first put forward the idea of a general amnesty in July 2021 and 'moving away from criminal justice outcomes', it also proposed that police and police ombudsman investigations, inquests and civil actions would all be replaced by one 'new information recovery' body with its investigative powers focused on 'robust information recovery'.[102] That body became the ICRIR as established via the Legacy Act 2023. As discussed above, in effect the ICRIR sought to combine the investigative functions envisaged in the SHA as being conducted by the HIU and the information retrieval functions of the ICIR in one place.[103] However, the Legacy Act included legal powers for the ICRIR to 'require a person to attend at a time and a place

[101] BBC News Northern Ireland 7th September 2024 'Starmer Visit Moment for Reset of UK-Ireland Relations.
[102] Northern Ireland Office (2021) Addressing the Legacy of Northern Ireland's Past. Command Paper 498, p.11
[103] SOSNI Hilary Benn, Hansard Vol 752, Col. 657 24th July 2024 Northern Ireland Troubles (Legacy and Reconciliation) Act: Repeal.

to provide information with the possibility of a £5,000 fine for non-compliance - whereas the ICIR had been premised on the voluntary provision of information.[104]

The logic of combining these two functions in one body was obviously that information retrieval would happen in a context where that body could grant immunity from prosecution. As the former SOSNI Chris Heaton Harris told the House of Commons in resisting a vote by the House of Lord to remove the conditional immunity from the Legacy Act, '…conditional immunity is a crucial aspect of the information recovery process. The Government believe it is the best mechanism by which we can generate the greatest volume of information in the quickest possible time…'[105] Again as discussed above, those immunity provisions have now been found to be unlawful and abandoned by the current government. Moreover, the current government has indicated a willingness to strengthen the ICRIRs investigative powers.[106]

In a context where the ICRIR investigative powers have potentially been strengthened via a new Legacy Act, and the immunity provision removed, the logic of having investigations and voluntary information retrieval housed in the same body is diminished. Some advocates of this approach have suggested that it might be possible to create a 'firewall' between the investigative and information retrieval work within the ICRIR. Previous analogous experiences of 'firewalls' within singular bodies would not instil confidence in the workability of such an approach.[107] The self-evident 'chill factor' of having investigative and information retrieval functions housed within the same institution suggests strongly that the ICRIR is not the appropriate vehicle to secure voluntary information retrieval.

It should also be noted that the ICRIR only has legal powers to operate in the United Kingdom whereas the logic of information retrieval (as evidenced by the work of the ICLVR) is that it should be able to work on a cross border basis in order to maximise its effectiveness for victims and survivors.[108] Moreover, having taken an inter-state

[104] Legacy Act 2023 op cit. S 14 (2) and Schedule 4, part 1.
[105] SOSNI NI (2023) Chris Heaton Harris, Hansard Northern Ireland Troubles (Legacy and Reconciliation) Bill Vol. 736m 18th July 2023, Col 825
[106] SOSNI (2024) Hilary Benn, Written Ministerial Statement – Legacy Northern Ireland. 7th October 2024.
[107] The Historical Enquiries Team operated a system of assigning different teams to do different investigative roles, tasking some (made up of police officers from outside Northern Ireland) with investigating allegations including of collusion while others (which included police officers from Northern Ireland) focused on investigated paramilitary cases. As a number of critical reports outlined, in practice, as one senior investigator confirmed, supposed firewalls between these teams 'was impossible to enforce', with staff sometimes sharing rooms and 'open and informal discussions between teams about aspects of cases.' P. Lundy (2009) Can the Police be Policed? Lessons from the Historical Enquiries Team Northern Ireland. *Transitional Justice Institute Research Paper* No.09-06, p.36. The Historical Enquiries Team was ultimately wound up because of its inability to conduct effective investigations into cases involving state actor cases. See further HMIC (2013) *Inspection of the Police Service of Northern Ireland*. HMIC.
[108] Para 45 of the SHA (op cit.) also included provisions that the ICIR's remit would cover both jurisdictions but also that 'the ICIR will also be free to seek information from other jurisdictions, and both governments undertake

challenge to the ECtHR on the legality of the Legacy Act, the Irish government has made clear that it cannot cooperate with the ICRIR unless it is persuaded that it is operating lawfully under the ECHR and that it commands the support of the victims and survivors.[109] Again, the ICRIRs ability only to operate in the UK is a further serious limitation on its information retrieval capacity.

Option Two – Expanding the Remit of the ICLVR to include Information Retrieval

Another possible option for information retrieval would be to repurpose the ICLVR, expanding its remit to include information retrieval for deaths related to the conflict in Northern Ireland rather than solely receiving information related to the location of victims remains. As discussed above, the ICLVR is widely regarded as having been a successful mechanism which has contributed significantly to the recovery of the remains of the majority of those murdered and 'disappeared' by the IRA and INLA.[110]

The advantages of such an approach would that the ICLVR already exists and has the capacity to operate on both sides of the border. In addition, the ICLVR has already established relationships of trust and credibility with republicans affiliated to the IRA and the INLA and has had the practical experience of working with intermediaries to those organisations over a number of decades. It has also developed good working relations with the Gardai and Police Service of Northern Ireland in both jurisdictions. Finally, it has shown itself as being very adept at maintaining good relations with the victims and survivors with whom it has engaged.

The disadvantages to repurposing the ICLVR is that it might distract from the ICLVR ongoing efforts to recover the remaining bodies of those disappeared during the Northern Ireland conflict. The ICLVR's hard-won reputation for the care and sensitivities of its staff towards victims and survivors built up over many years. The families of the remaining disappeared might well be concerned that such a significant expansion of its remit would inevitably impact on the ICLVRs focus and capacity to deliver in the recovery of the remains of their loved ones.

In addition, from a legal perspective, the primary legislation which established the ICLVR in both the UK and the Republic of Ireland and the enabling treaty would all have to be significantly amended in any case. From such a vantage point, the advantage of an existing legal framework which would require significant rewriting

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to support such requests.' The importance of information retrieval being able to reach beyond the two jurisdiction was highlighted by the successful work of the ICLVR on the case of Seamus Ruddy. Mr Ruddy was murdered and disappeared by the INLA in France in 1985 and the ICLVR managed to recover his remains in Foret Domaniale near Rouen and return them to his family in 2017. See BBC News 6th May 2017 'Human Remains Found in Search of French Forest.'

[109] Irish News 6th March 2025 'Ireland Not at Point of Dropping Case on Legacy Act, Harris Says.'

[110] L. Dempster (2021) *Transitional Justice and the Disappeared of Northern Ireland.* Routledge.

verus bespoke legislation and a new treaty for a new institution might be quite a marginal gain.

Option Three – A New Stand-Alone Information Retrieval Body

A third option would be to create a bespoke independent information retrieval mechanism separate from investigations along the lines of the ICIR as agreed to in the SHA in 2014.

The first obvious advantage to this option is a political one. Establishing a standalone information retrieval mechanism such as the ICIR was already agreed to by four of the five political parties in Northern Ireland and the two governments in the SHA. The current UK government has also indicated its intent to approach the legacy of the conflict in a manner that is consistent with the 'principles' of the SHA. As noted above, 'justice and information recovery' and 'acknowledging and addressing the suffering of victims' are amongst the six principles of the SHA.[111] Moreover as detailed above, the establishment of a new cross border body through legislation in both jurisdictions and an international treaty would be proof-positive of a genuine reset of UK-Ireland relations on legacy.

A second related advantage of this approach is that a significant amount of work has already been done on how this option would work. As discussed above, a treaty was signed between the British and Irish governments to establish this mechanism on a cross-border basis in 2015 and details on its powers were outlined in the Draft Northern Ireland Stormont House Agreement Bill 2018. While some of this work would require updating – for example in using the language suggested above drawn from the ICLVR (no information from or engagement with the information retrieval process can be used directly or indirectly for any legal process – defined as any criminal or civil proceedings) – much of that previous work could be adapted for the new Legacy Act in the UK, equivalent legislation in the Republic and an updated treaty.

A third advantage to this option is the apparent 'buy-in' of at least some of the other key stakeholders to such an approach. For example, at a recent event in Queens, former IRA prisoner and Sinn Féin's policy lead on legacy Sean Murray said:

> 'The British government has argued in defending their recent approach that there is no alternative [to the ICRIR]. Well, there is an alternative. That alternative has been outlined here today. Especially if you want to achieve information recovery. There is a precedent, and that precedent is the Independent Commission for the Location of Victims' Remains. It took time for it to work but it did work well, as trust was built, as leadership was given, as

[111] The Stormont House Agreement op cit.

> political will was exercised. So, you can build a similar process in terms of the ICIR. During those negotiations the Sinn Féin delegation was asked will you get buy-in for these mechanisms. We replied if the mechanisms are there with all of the legislative safeguards that Kieran was referencing republicans shall not be found wanting. That remains our position on this issue. So, there is an alternative…. [112]

Unlike republicans, loyalists were not directly involved in the negotiations of the SHA and the design of mechanisms such as the ICIR and their commitments to same have been less explicit. In their 'Declaration of Transformation' statement in 2018 a number of loyalist leaders noted 'We also recognise the importance of a legacy process designed to help Northern Ireland confront the past and from that experience build a society of possibility and hope. We have made this clear many times and have indeed contributed to previous work on dealing with the past'[113] In practice, amongst the loyalist groups it is the UVF who have been most prominently involved in such information and retrieval work as detailed in the John Crawford process discussed above. The UVFs involvement in that process was described as 'a proof of concept' for information retrieval.[114] At the same Queens event above, Winston Irvine who played the role of interlocutor to the UVF in the John Crawford process, also noted that both the British and Irish governments needed to set up investigative and truth recovery mechanisms and concluded: 'Without fundamental changes, such as the introduction of protections or safeguards for interlocutors, who is going to give the information?… There needs to be fundamental reform of these policies, and I hope people are listening today."[115]

The only discernible cons to this approach would be the political charge that by creating a limited immunity scheme to facilitate information retrieval the governments were being 'soft' on paramilitaries. However, for the reasons detailed above (i.e. this was agreed in the SHA, the intent of the scheme, the investigative duties being discharged elsewhere and the mechanism being triggered by victims and survivors who wished to use it) such a claim would be readily rebuffed. Moreover, such political considerations are surely trumped by the moral obligation towards

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[112] K. McEvoy (1st November 2024) *Armed Groups Transition and Dealing with the Past*. QUB Mitchell Institute Blog. Text of original remarks on file with the author.
https://www.qub.ac.uk/Research/GRI/mitchell-institute/ResearchandImpact/Blogs/ArmedGroupsTransitionandDealingwiththePast.html

[113] *Loyalist Declaration of Transformation* 9th April 2018. Joint Statement of the Red Hand Commando (RHC); Ulster Defence Association (UDA); and Ulster Volunteer Force (UVF) https://cain.ulster.ac.uk/events/peace/docs/2018-04-09_loyalist-declaration.htm

[114] Crawford report op cit.

[115] Ibid.

those victims and survivors to find routes to information retrieval while the possibility still exists.

Work related to Themes and Patterns

The Stormont House Agreement also provided for the creation of an Implementation and Reconciliation Group (IRG) to promote reconciliation and to oversee research on the 'themes, archives and patterns' of the conflict. The IRG was to be made up of political appointees based on the parties' then electoral strength (DUP 3, Sinn Féin 2, one each from SDLP, UUP, Alliance) plus one representative each from the UK and Irish governments. Five years after the IRG and the other legacy institutions were established, the IRG was to commission independent academic experts to produce a report 'on themes and patterns.' The information for this academic work was to be done primarily by drawing from the information provided from the other legacy mechanisms.

With colleagues I have previously provided a detailed critique of the legislative proposals for the establishment of this mechanism in the SHA Draft Bill.[116] One obvious challenge for any such body made up of party-political appointees would be how to ensure the independence of the academics commissioned to write reports on the themes and patterns identified by the other legacy mechanisms. We had previously suggested that the two major funding bodies for social science and the arts in the UK (the Economic and Research Council [ESRC] and Arts and Humanities Research Council [AHRC]) should be engaged explicitly to commission the academic work on patterns and themes to ensure independence, impartiality, and best practice in the academic research – in effect shifting that work away from the risk of political control and interference by political appointees.[117]

If the two governments agree to the establishment of separate investigative and information recovery mechanisms, by definition much of this work will be individualistic in nature. In order to effectively promote reconciliation and ensure that the broader lessons of the past are learned in order to prevent conflict from reemerging, the governments will also have to agree a means to address the broader patterns and themes of the conflict which is independent and free from political interference.

Statements Of Acknowledgement and Apology

In this section I consider the closely related topics of acknowledgement and apologies and how such actions might complement investigations and information recovery. As detailed below, the apologies discussed herein are public apologies by those

[116] The Model Bill Team (2019) 'Addressing the Legacy of Northern Ireland's Past: Response to the NIO Public Consultation.
[117] Ibid p. 89.

authorised to deliver them on behalf of an institution or organisation rather than private apologies from individuals to affected victims and survivors. Private apologies may also contribute to addressing the past, but they are not the focus of this report.[118]

Introduction and Background

In addition to the provisions in the SHA discussed above, the SHA 2014 also included a commitment with regard to acknowledgement. It states that in the context of the work of the other mechanisms agreed to in SHA '…, the UK and Irish Governments will consider statements of acknowledgement and would expect others to do the same.'[119]

There was a significant pre-history to this rather sparse wording which is worth briefly summarising for current purposes. The local cross-community NGO Healing Through Remembering produced a number of reports calling for apologies and acknowledgement from both state and non-state actors from the early 2000s onwards.[120] In 2009 the Consultative Group on the Past which was appointed by the previous Labour government to address the past included recommendations for apologies as well as what it termed "an element of responsible self-acknowledgement" which required "as well as reflection wrongs done to us, we should consider wrongs we have done to others, or perhaps things we could have done differently, with an ultimate focus on taking responsibility for the future"[121] (p.102). In the year prior to the SHA's successful conclusion, extensive and ultimately inconclusive political negotiations resulted in a proposed agreement being presented to the two governments which had an extensive reflection on 'acknowledging past acts'.[122] It suggested that disagreement on the meaning of the past should 'not stand

[118] For example, Alan McBride (whose wife Sharon and father-in-law Desmond were amongst the 8 civilians killed in the IRAs Shankill bomb in 1993) has spoken of how an apology from an individual Republican ex-prisoner had a significant effect on him. He said '..we were at a conference together in Edinburgh some years ago… I spoke about Sharon and that day on the Shankill – when I finished [name omitted] turned to me and said, What happened that day in the Shankill Road was wrong, and I, as an Irish Republican, am sorry. ..what he did in that moment in time was to moved me to an entirely new place where I was able to hear for the first time the experiences of others who had participated in the conflict, the difference for me was that he didn't add "but you have to understand," because at the end of the day I knew the Shankill bomb was wrong and I just needed someone from the Republican community to acknowledge it, without dressing it up in the language of conflict.' Alan McBride speech – CAJ Conference (May 14-15th 2009) *Reflecting on the Work of the Consultative Group on the Past* Belfast: Committee on the Administration of Justice. Text made available to the author.

[119] Stormont House Agreement op cit., para 53.

[120] Healing Through Remembering (2002) *The Report of the Healing Through Remembering Project*. Belfast HTR, pp vi-vii; Healing Through Remembering (2006) *Acknowledgement and its Role in Preventing Further Violence*. p.14; Healing Through Remembering (2006) *Making Peace with the Past: Options for Truth Recovery Regarding the Conflict in and about Northern Ireland.* Belfast: HTR.

[121] Consultative Group on the Past (2009) *Report of the Consultative Group on the Past*, *Belfast: CGP, p. 152, 102.*

[122] R. Haass and M. O'Sullivan (2013) *An Agreement Amongst the Parties of the Northern Ireland Executive on Parades, Select Commemorations and Related Protests; Flags and Emblems; and Contending with the Past* p.22-24.

in the way of individuals and groups acknowledging those events, their role in them, and the fact that they had a profound impact on society.' It also suggested that:

> Sincere acknowledgements are a foundational step in the effort to contend with Northern Ireland's past. They constitute powerful gestures by individuals involved in the conflict and send an important message to other such individuals, to the people of Northern Ireland, and to the world that those responsible for causing pain are prepared to accept their responsibility and that after conflict and division comes the difficult task of reconciliation. Such gestures, if multiplied and sustained, are apt to lighten the shadow that Northern Ireland's past casts on its present and unlock significant potential for progress toward a shared and peaceful future.[123]

The Haass O'Sullivan document stated that while the burden 'rests most heavily on those, whether paramilitary or state actors, who acted outside the rule of law' some may have contributed to the environment within which violence flourished and that 'to publicly acknowledge these realities does not equate them' but rather such acknowledgements 'will help bring about a better climate.' It suggested that apologies were necessary but not sufficient and concluded:

> We encourage individuals, organisations, and national governments to work together on specific statements of acknowledgment, including by discussing language, timing, and other matters in private before public statements are made, to ensure that such acknowledgements are carried out in ways that contribute positively to healing and reconciliation.[124]

Definition of Acknowledgement

The notion of acknowledgement is a broad term which can encompass a range of actions including truth recovery, prosecutions, commemoration, apologies and reconciliation focused efforts to address the past.[125] Amongst the meanings discussed in the Oxford English Dictionary the most relevant for current purposes defines acknowledgement as 'an act of acknowledging, confession, admission, or owning something'.[126] Similarly, Stamato describes acknowledgement as 'affirmatively indicating that a wrong was done; it requires that truth be told, neither minimising the offence nor rationalising the behaviour.'[127] Acknowledgement is the opposite of

[123] Ibid p.22.
[124] Ibid.
[125] S. Cohen (2001) *States of Denial: Knowing About Atrocities and Suffering*. Cambridge: Polity, 227-240. See also J. Quinn (2010) *The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti*. Vancouver: UBC Press. p.17-18.
[126] Oxford English Dictionary Online 2025 *Definition of Acknowledgement* (accessed 25.03.25) https://www.oed.com/dictionary/acknowledgement_n?tab=meaning_and_use#26226274
[127] L. Stamato (2009) "Peace and the Culture and Politics of Apology", *Peace Review: A Journal of Social Justice*, 20, 389-397 at p. 394.

denial- it is a process which requires 'knowing (and admitting to knowing) exactly what happened.'[128]

Definition of Apologies

As above, apologies are one form of publicly acknowledging and taking responsibility for past harms. Having previously reviewed a wide range of apologies, as well as an extensive range of academic and policy resources, it is possible to offer a definition of a public apologies of relevance for this report. For current purposes a public apology may be defined as:

- An acknowledgement of a wrong deliberately or negligently inflicted that is named.
- A truthful admission of individual, organisational, or collective responsibility for that hurt.
- A public statement of remorse or regret related to the wrongful act\s or omission which is delivered with due respect, dignity and sensitivity to the victimised.
- A guarantee of non-repetition.
- Informed by a victim centred approach to apologies.[129]

The role of statements of acknowledgement during the Northern Ireland peace process

Statements of apology and acknowledgement from the two governments, republicans and loyalists have played an important role during the Northern Ireland peace process. For illustrative purposes, a number are discussed below before a more thematic analysis is presented of key issues concerning the broader relevance of acknowledgement and apologies to discussions on a new Legacy Act and other efforts to address the legacy of the conflict.

Apologies and Acknowledgement by the UK government

The UK government has issued quite a lot of Northern Ireland conflict related public apologies, usually in the wake of legal or investigative process which have revealed state culpability in deaths or other human rights violations. For example, former SOSNI Owen Patterson apologised for the negligence on the part of the Northern Ireland Prison Service which contributed to the murder of former LVF leader Billy Wright in the Maze Prison by the INLA following the public inquiry into his death.[130] Prime Minister David Cameron also apologised for the 'shocking levels of state collusion' in the murder of human rights solicitor Pat Finucane following the De Silva

[128] Cohen op cit. p.222.
[129] As detailed further below, a victim-centred approach to apologies places particular emphasis on seeing apologies as way to deliver upon the rights, agency, voice and humanity of victims.
[130] BBC News 14th September 2010 'Negligence Not Collusion Led to Billy Wright Murder.'

review into his death.[131] Former Prime Minister Boris Johnson also apologised to the Ballymurphy families after the Inquests into the killings of their loved ones.[132] Perhaps the best known of these UK state apologies was that issued by Prime Minister David Cameron in the wake of the Saville Inquiry finding that those killed on Bloody Sunday were entirely innocent and that the army had killed these civilians without justification. In a speech that was broadcast live to a crowd on a big screen outside the Guild Hall in Derry (in which the families had received advance copies of the Saville report earlier that day) Mr Cameron told the House of Commons:

> "I am deeply patriotic; I never want to believe anything bad about our country; I never want to call into question the behaviour of our soldiers and our Army, which I believe to be the finest in the world.. But the conclusions of this report are absolutely clear: there is no doubt; there is nothing equivocal; there are no ambiguities. What happened on Bloody Sunday was both unjustified and unjustifiable. It was wrong… what happened should never, ever have happened. The families of those who died should not have had to live with the pain and hurt of that day, and with a lifetime of loss. Some members of our armed forces acted wrongly. The Government are ultimately responsible for the conduct of the armed forces, and for that - on behalf of the Government - indeed, on behalf of our country - I am deeply sorry.[133]

Apologies and Acknowledgement by the Irish government

The Irish government has also issued a number of prominent conflict related apologies. Like the UK government, these have usually in the wake of investigative process which have confirmed failings on the part of state agencies and in one case (the Breen-Buchanan murders), a finding of Gardai collusion with the IRA. Below are a number of illustrative examples.

Following a lengthy campaign concerning the quality of the Gardai investigation into the UVF Dublin Monaghan bombings in 1974, the Irish government established a number of investigative processes including the Barron Commission which reported in 2003. Amongst other findings, the report criticised the poor quality of the Gardai investigation.[134] After the Barron report was published, the then Minister for Justice Equality and Law Reform Michael McDowell said '…it was a matter of regret to him

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[131] Prime Minister David Cameron Statement on Patrick Finucane 12th December 2012 https://www.gov.uk/government/speeches/prime-minister-david-cameron-statement-on-patrick-finucane--2

[132] Prime Minster Statement on Ballymurphy, 19th May 2021, Hansard Vol 695.

[133] Prime Minister Statement 15th June 2010, Hansard, Col 740

[134] Barron J. (2003) *Interim Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings*. A number of additional processes were established after the Barron report. See. E.g. P. McEntee (2007) *Commission of Investigation into the Dublin Monaghan Bombings of 1974: Final Report.*

that the report had found inadequacies with the Garda investigation.'[135] A few years later, the then Taoiseach Bertie Ahern went further telling a Dail Committee that:

> 'formal apologies have been made by the Gardai Siochana and Ministers. In meetings with victims and survivors, I have offered my apologies on behalf of the Government for mistakes that were made in the past. I wish to place that once more formally on the record of the House today.'[136]

Mr Ahern has subsequently gone even further, arguing in 2024 that a formal state apology for the investigation into Dublin Monaghan 'would certainly help.'[137]

In the wake of the finding by the Smithwick Tribunal that it was likely that information had been leaked from the Gardai station in Dundalk to the IRA on the movement of RUC officers Breen and Buchanan a number of formal apologies were issued on behalf of the state. The Tánaiste Eamon Gilmore stated:

> The Government apologised immediately on the publication of Judge Smithwick's report, but I wish to place that apology on the record of this House. On behalf of the Government and the people of Ireland, I apologise without reservation to the Breen and Buchanan families for any failings identified in the report on the part of the State or any of its agencies. I am truly sorry for the loss and suffering that both families have endured.[138]

The Irish Justice Minister Alan Shatter also apologised stating:

> "It is a matter of the utmost gravity that he (Judge Smithwick) has concluded that an unidentified member, or unidentified members, of An Garda Síochána in Dundalk Garda station colluded with the IRA and that collusion resulted in the tragic death of two respected RUC officers. "I want to, on behalf of the government and the state, unreservedly apologise to the families of both men for any failings on the part of this state.[139]

Apologies and Acknowledgement by Republicans

Republicans have also offered a range of apologies and statements of acknowledgement both during the conflict and as part of the peace process. During the conflict, apologies were often issued on behalf of republican armed groups following 'mistakes' including the killing of civilians in shooting or bomb attacks. The

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[135] Irish Examiner 10th December 2003 'Calls For Inquiry into the 30-year-old Bombing.'
[136] Statement by Bertie Ahern (Taoiseach) in Dail Eireann on the Barron Reports, 30th January 2008. available https://cain.ulster.ac.uk/issues/politics/docs/dott/ba300108barron.htm
[137] Newstalk 17th May 2024 'Ahern: State Apology for Dublin Monaghan Would Certainly Help'
[138] Tánaiste Eamon Gilmore, Dáil Éireann debate - Wednesday, 4 Dec 2013, Vol. 823 No. 3
[139] BBC News 3rd December 2013 'Smithwick Tribunal: Reaction to Irish Police Collusion.' The Taoiseach Enda Kenny was in Tokyo at the time of the release of the Smithwick report and stated that he endorsed the apology offer by Minister Shatter on behalf of the government 'fully and without reservation.' Irish Independent 5th December 2013 'Taoiseach Backs Up Shatter's Apology on Tribunal.'

author has a database of 325 republican apologies, almost 300 of them from the IRA.[140] For example, IRA apologies were issued following a range of high profile bombings leading to the loss of civilian life including Bloody Friday,[141] Claudy,[142] La Mon,[143] Enniskillen,[144] Warrington[145] and the Shankill bomb.[146] The IRA also issued apologies after cases of mistaken identity (e.g. two Australian tourists mistaken for British soldiers in Holland), [147] or attacks that were not sanctioned by the leadership (e.g. the Stack murder discussed above) or for the killing or injuring of those wrongly accused of being a state informer (e.g. the Morley case discussed above).

Perhaps the best-known IRA apology is that which was issued on the 30th Anniversary of the Bloody Friday bombings in Belfast when over 20 IRA bombs killed 9 people and injured approximately 130 others, many of them seriously. The IRA statement read:

> Sunday 21 July marks the 30th anniversary of an IRA operation in Belfast in 1972 which resulted in nine people being killed and many more injured. While it was not our intention to injure or kill non-combatants, the reality is that on this and on a number of other occasions, that was the consequence of our actions. It is therefore appropriate on the anniversary of this tragic event, that we address all of the deaths and injuries of non-combatants caused by us. We offer our sincere apologies and condolences to their families. There have been fatalities amongst combatants on all sides. We also acknowledge the grief and pain of their relatives.'[148]

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[140] The archive was compiled by Dr Kevin Hearty, then a post-doctoral research fellow at the Mitchell Institute, Queen's University Belfast working with the author and other colleagues on an ESRC funded project (grant reference ES/N010825/1) on apologies and dealing with the past. That database is drawn from d mainstream print outlets such as *Belfast Telegraph*, *Irish News*, *Newsletter*, *Irish Times* and local newspapers such as *Andersonstown News*, *Derry Journal*, *Newry Reporter* as well as 'in-house' publications, e.g. *An Phoblacht/Republican News* [IRA], *Combat/Purple Standard* [UVF], *The Loyalist* [UDA]. In addition, between from 2013 to 2015 the author worked with colleagues (Kate Turner, Sarah Jankowitz, Jayme Reavers and Martin Beddeleem) at the Belfast-based NGO Healing Through Remembering (HTR), who established a baseline database on apologies drawn from newspaper sources in Northern Ireland. Drawn primarily from Northern Ireland newspapers, the latter included 93 statements of acknowledgement and/or apology on conflict-related events up to 2014. I am a grateful to all for their previous assistance in compiling these databases.

[141] 'Call to British working class', *Republican News,* 28 July 1972, 1; 'Beware of British propaganda', *Republican News,* 28 July 1972, 3; 'Statement', *Republican News,* 4 August 1972, 7; IRA statement', *An Phoblacht*, 18 July 2002, 3; 'INLA declares ceasefire', *An Phoblacht,* 27 August 1998, 5.

[142] *Lost Lives,* 241; 'Sinn Féin on the publication of the Claudy report', *An Phoblacht,* September 2010, 32.

[143] 'All killings and tragedies stem from British interference', *Republican News,* 25 February 1978, 1; 'Spy chief shot down by an M-60', *An Phoblacht,* 22 February 1978, 8.

[144] 'Enniskillen tragedy', *An Phoblacht*, 12 November 1987, p 1; 'Terrible price of British rule', *An Phoblacht,* 12 November 1987, 2; 'After Enniskillen', *An Phoblacht,* 19 November 1987, 3.

[145] 'Every death calls out for peace', *An Phoblacht,* 25 March 1993, 1; 'Warrington tragedy – what the IRA said', *An Phoblacht,* 25 March 1993, 2; 'Warrington', *An Phoblacht,* 25 March 1993, 6

[146] 'Ten die in premature explosion', *An Phoblacht,* 28 October 1993, 2; 'Sustain the peace effort', *An Phoblacht,* 28 October 1993, 1 & 16.

[147] 'Mistaken identity in Dutch shooting', *An Phoblacht,* 31 May 1990, 2; 'Interview with GHQ spokesperson, Óglaigh na hÉireann', *An Phoblacht,* 22 June 1990, 2.

[148] An Phoblacht 18th July 2002 'IRA Apologises to Families of Non-Combatants'; The Guardian 17th July 2002 'IRA Says Sorry for 30 years of Civilian Deaths.'

Other prominent apologies have been issued by Sinn Féin leaders addressing past IRA actions. Perhaps the best know of these was the statement issued by Martin McGuinness on the 20th anniversary of the Shankill bombing. Mr McGuinness said:

> Today the relatives of those killed 20 years ago by the IRA in the Shankill bomb gather to remember their loved ones. My thoughts and sympathy are with them and the wider community in the Shankill as they rightly come together to mark that terrible event in our past… It's a legacy all republicans will share with sincere regret and sorrow. The fact is this tragedy was caused by republicans. The reality of republicans' responsibility for it; the grief and heartache created for the bereaved; and their understandable feelings about what happened must be acknowledged. The result of that IRA action 20 years ago cannot be defended. However, I do not, as a republican leader, seek to hypocritically distance myself from the loss of so many innocent lives on the Shankill and the scores of people injured. Instead, I and other republican leaders have dedicated ourselves through the Peace Process to ensuring events like the Shankill bombing never happen again. At the weekend, Seán Kelly [one of the bombers] made what I believe was a genuine attempt to apologise for the terrible human loss created on that day. I endorse that apology, and the apology made to all innocent victims by the IRA many years ago.[149]

Within the broader republican community there has been an ongoing conversation about the role of apologies and acknowledgement for at least two decades. In 2003 a number of NGOs, activists, victims and ex-prisoners from the Republican community produced an important discussion document on dealing with the past. [150] The Eolas document discussed a number of different truth recovery options suggesting that all of then should be '…based on the need for a public acknowledgement of the suffering endured by all victims of the conflict. This acknowledgement requires revealing, understanding and accounting for the past.' [151] In arguing for good faith engagement by the state it also suggested that 'this may encourage Republicans especially to come forward and acknowledge their role. If we call upon the state to bare all, then we must expect that all protagonists do the same.'[152] In 2012, the then Sinn Féin national chairperson Declan Kearney created something of a political stir when he called on Republicans to 'be prepared to take the lead' in helping to shape an 'authentic reconciliation process.' Specifically, he suggested:

> Regardless of the stance of others, we should recognise the healing influence of being able to say sorry for the human effects of all actions caused during the armed struggle. All sensible people would wish it had been otherwise, that these

[149] An Phoblacht 23rd October 2013 'The Shankill Bomb Anniversary – Martin McGuinness on the Legacy of the Past.'
[150] Eolas (2003) *Consultative Paper on Truth and Justice*. Belfast: Eolas. Eolas is the word in Irish for Information. See further An Phoblacht (30th October) '*Truth and Justice Consultation Launched'*.
[151] Eolas (2003) ibid p.3
[152] Ibid p.18

> events had never happened, that other conditions had prevailed. The political reality is that those actions cannot be undone or disowned…It requires bravery to take risks in struggle, but it takes exceptional moral leadership and self-belief to build a real reconciliation process, one with the ability to help overcome the hurt caused by armed struggle.[153]

In recent years republican leaders have also offered other apologies related to past IRA actions in recent years – including those previously considered legitimate targets. For example, Sinn Féin President Mary Lou McDonald said that has said that she has 'no issues' as Sinn Féin leader saying sorry for IRA killings.[154] In 2024 the interim report into the activities of the British agent Stakeknife called on the republican leadership to acknowledge and accept that the IRA's brutal acts of torture and murder of suspected agents were wrong and to apologise to the victims and their families.[155] In response Sinn Féin Vice President and First Minister Michelle O'Neill said 'The tragedies of the past have left a deep legacy of trauma and suffering right across our society and we must never forget those who have died or been injured and their families. I am sorry for all the lives lost during the conflict without exception." When asked by reporters if she wanted to take the opportunity to apologise to the families of informers Ms O'Neill replied:

> Yes, I've said it before and I'm going to repeat it again today for all those families out there that lost a loved one. I am sorry for every single loss of life and that is without exception. That's for every person who was hurt or impacted by our conflict. I think it's important that today as the Sinn Féin new generation, Good Friday Agreement generation, that I would repeat that for those families. I can only hope – because this is ultimately their day – that they can take some comfort from that.[156]

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[153] An Phoblacht 5th March 2012 'Declan Kearney: Uncomfortable Conversations are Key to Reconciliation.'

[154] Irish Daily Mirror 3rd January 2022 'Mary Lou McDonald has 'No Issues' as Sinn Féin Leader Saying Sorry for IRA Killings. Ms McDonald said "The IRA issued an apology 20 years ago. There's no issue around acknowledging suffering. I have no issues as the leader of Sinn Féin and as a Republican expressing deep sorrow and apology for pain that was suffered, none at all." In 2021, the day after the funeral of Prince Philip, Ms Mc Donald also said she was sorry for the IRA assassination of Lord Mountbatten which she described as heartbreaking for the Royal family. However, she did caveat those remarks by also pointing out that the army and forces associated with Prince Charles carried out many violent actions in Ireland. Daily Telegraph 18th April 2021, 'Sinn Féin Leader Apologises for the Death of Lord Mountbatten Following Prince Philip's Funeral.'

[155] J. Boucher (2024) *Operation Kenova: Northern Ireland 'Stakeknife' Legacy Investigation* p.39. The report also called for an apology from the UK government. The government responded that it while its deepest sympathies remained with all the families who lost loved ones during that dark period it would be inappropriate to comment further until relevant litigation had concluded and until the Kenova final report is received. BBC News 11th March 2024 'Stakeknife: Government Operation Kenova Criticised.'

[156] Breaking News.ie 8th March 2024 'Michelle O'Neill Apologises to Families of IRA Campaign Against Alleged Informers.'

Apologies and Acknowledgement by Loyalists

Loyalist groups have apologised during the conflict and transition, albeit less frequently than their republican counterparts. The review of relevant media archives discussed above includes 40 apologies from the UVF and 50 from the UDA. Perhaps the iconic apology from armed groups in Northern Ireland was that contained in the Combined Loyalist Ceasefire Statement (CLMC) in 1994.[157] In declaring the Loyalist ceasefire Gusty Spense included these words:

> In all sincerity, we offer to the loved ones of all innocent victims over the past twenty years, abject and true remorse. No words of ours will compensate for the intolerable suffering they have undergone during the conflict. Let us firmly resolve to respect our differing views of freedom, culture and aspiration and never again permit our political circumstances to degenerate into bloody warfare.[158]

In focus groups conducted throughout Northern Ireland and the Republic by the author and colleagues on the ESRC project discussed above, once asked which conflict-linked apology (if any) they could recall, it was the 1994 loyalist ceasefire apology that was referred to most frequently in both jurisdictions. Despite have been issued over three decades ago, the CLMC apology has been highly successful in what public relations specialists term 'message retention.' Given its iconic status it is also worth briefly reflecting on how it was received by victims and survivors.

As one might have expected, the receptiveness of victims of loyalist violence to apologies was mixed in the immediate aftermath of the statement. Some victims responded positively, such as Josephine Fusco, whose husband was shot dead by loyalists and who told the *Belfast Telegraph*: 'It's great to see that it might all be over for the kids' sake. A lot of the worry for them has gone for now.'[159] A woman whose husband had been murdered eighteen months previously by the UDA said: 'I was hoping to hear that they would apologise for what they've done. After all, it's the human thing to do.'[160] On the other hand, the widow of a prison officer murdered by the UVF the previous year responded: 'I do not accept the loyalist apology offered to victims' relatives. My husband was a decent man and I want to know why he was shot.'[161] One prominent victim who was shot and paralysed by the UDA, writing on the 21st anniversary of the ceasefire, argued: 'I got my apology from Gusty Spence

[157] The CLMC encompassed the Ulster Volunteer Force (UVF), the Ulster Defence Association (UDA) and the Red Hand Commandos (RHC).

[158] CLMC, 'Ceasefire statement', 13 October 2004. Avalable https://cain.ulster.ac.uk/events/peace/docs/clmc131094.htm

[159] Interview in *Belfast Telegraph*, 13 October 1994, 'Nationalists hail truce as end of fear.'

[160] Interview in *Belfast Telegraph*, 13 October 1994, 'Too late to halt heartbreak'.

[161] Interview in *Irish Independent*, 14 October 1994, 'No end to grieving for widows'.

that crisp October day; abject and true remorse. I can't remember if I accepted it at the time but, in a way, in later years I did. I say in a way because it was not an apology from the individuals who were in my home but from loyalism as a collective.'[162]

The 1994 statement also became a palimpsest upon which all loyalist approaches to dealing with the legacy of the past have been overwritten. In 2004, an important discussion document on the views of the UVF and the Progressive Unionist Party (PUP) reproduced the statement and described it as having 'paved the way for a new beginning for this constituency' but cautioned that while acknowledging the need to be 'bold and brave', there was also a requirement to be honest and realistic about 'what can be delivered within our current political context'.[163] The authors made clear that loyalists would not be compelled to 'stand up and say sorry' and that the 1994 ceasefire statement 'must not be misunderstood as a rejection of the political cause for which loyalists fought'.[164] It also expressed concerns that if any truth process were established and victims were expecting an apology, then the perceived 'lack of political remorse' on the part of loyalist ex-combatants might be viewed as 'salt rubbed into victims' wounds', which would in turn be unlikely to contribute to healing.[165] As discussed above, the CLMC statement on abject and true remorse was also reproduced as part of the statement delivered to Paul Crawford by the UVF concerning their murder of his father in 1974.[166]

Acknowledgement and Apologies as the Truthful 'Owning' of Past Harms

An effective statement of acknowledgement or apology requires a truthful 'owning' of past harms. As the UN Special Rapporteur on Transitional Justice has argued, such statements must be truthful ' in order to validate the experience of victims and restore their dignity.'[167] The key truth telling elements of effective apologies are what is sometimes referred to as a *reckoning* – an unequivocal acknowledgement of past harms without justification or explanation and a *naming* – where both the harm and the people to whom the apology is addressed are named.[168] Such an approach to apologies or statements of acknowledgement avoids vague, euphemistic or legalistic language

[162] Paul Gallagher 'A view on the Loyalist Community Council by one of their victims', *Slugger O'Toole*, 19 October 2015, available at: https://sluggerotoole.com/2015/10/19/a-view-on-the-loyalist-community-council-by-one-of-their-victims/ (16 January 2024). Gallagher was shot and seriously injured when the UDA took over his house to wait on a republican target. When that target didn't turn up, they shot Gallagher six times as they left his house, shattering his spine.

[163] EPIC, *Truth Recovery: A Contribution From Within Loyalism* (Belfast, 2004), p.1.

[164] Ibid, p 9.

[165] ibid 9.

[166] K. McEvoy (2023) Crawford report op cit.

[167] UN Special Rapporteur on Transitional Justice (2019) *Report of the Special Rapporteur on the promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence* A74/147, p.11

[168] E Sanz (2012) *National Apologies: Mapping the Complexity of Validity*. https://www.centrepeaceconflictstudies.org/wp-content/uploads/National_Apologies.pdf

or efforts to otherwise minimise the effects of past harms. Once publicly expressed they become part of the historical record which cannot be rewritten.

Acknowledgement and Apologies as a Victim-Centred Process of Rehumanisation.

For current purposes, a victim-centred approach to apologies places primary emphasis on the *rights*, *agency*, *voice* and *humanity* of victims.[169] What this means in practice is that apologies cannot be used to obviate or otherwise interfere with the rights of victims to justice, truth, or reparations. Rather apologies and acknowledgement should be viewed as one route to the delivery of those rights. It means, as detailed below, victims must be facilitated in exercising their agency in the preparation and delivery of apologies. Their voices need to be heard and respected – and where possible, they must be consulted with on the words used, the style, and the context of the delivery of apologies.

It also means that victims and survivors should not be coerced or otherwise pressurised into the acceptance of apologies or indeed forgiveness of those who have harmed then in the name of reconciliation or other larger social goals. Those who are preparing an apology or a statement of acknowledgement should do so because it is the right thing to do and not in expectation of forgiveness or generosity from those who they have harmed.

Moreover, a victim-centred apology or statement of acknowledgement is not one wherein the views of an organisation on the legitimacy or otherwise of past violence is restated. By way of illustration, the INLA cease-fire included a 'heartfelt and genuine apology' for their past actions, stating that it was never their intention to become 'embroiled in sectarian or internecine warfare… Those actions should never have happened.' The statement continued 'We have however nothing to apologise for in taking the war to the Brits and their loyalist henchmen.'[170]

In a similar vein, past apologies which distinguish between civilian and non-civilian casualties risked causing further hurt to the loved ones of those considered 'legitimate targets'. All state and non-state actors involved in the Northern Ireland conflict consider at least some of their past actions as legitimate and wish to commemorate those friends, families and comrades who were killed, injured or imprisoned during the conflict. Victim-centred statements of acknowledgement or apologies do not denigrate past sacrifices or the right to respectfully remember the dead. However, it is indisputable that all conflict requires a dehumanisation of the 'enemy' in order to

[169] K. McEvoy and K. McConnachie, (2013) 'Victims and Transitional Justice: Voice, Agency and Blame, *Social and Legal Studies* 22(4) (2013), 489–513; C. Lawther (2021) 'Let Me Tell You': Transitional Justice, Victimhood and Dealing with a Contested Past.' *Social and Legal Studies* 30, 6, 890-912.

[170] Irish National Liberation Army (INLA) (22nd August 1998) 'Ceasefire Declaration' Available https://cain.ulster.ac.uk/events/peace/docs/inla22898.htm

justify and rationalise violence. Statements of acknowledgement or apology should therefore be seen as a victim-centred opportunity to rehumanise all of those who were killed or injured without exception and not to replace or revisit arguments about the justifiability of past violence.

Preparation, Delivery and Engagement with Victims and Survivors

In order to maximise their effectiveness, statements of acknowledgement or apology should where possible be preceded by engagement with victims or their representatives either directly or through an interlocutor. The apologising government or non-state organisation needs to understand clearly what precisely victims want or expect to hear in such a statement.

By way of illustration, prior to the issuance of Prime Minister Cameron's apology with regard to Bloody Sunday, there was extensive discussions between the NIO, Bloody Sunday families and their representatives about the choreography concerning the launch of the report. [171] In addition, there was also prior consultation on the context of the apology. As one Bloody Sunday family member told the author:

> I received a call from an NIO official [a few weeks before the statement] as did other sort of prominent Derry citizens…she said, the Prime Minister is going to make a statement. Can you talk to me what you as a family member would like to see within it? And I said well, first and foremost there's nothing worse than a half-baked apology. So, if there is going to be an apology, I said, it needs to be done in such a way that it's well worded, it comes from the heart, and you're not offering an apology in one hand and then backslide in the other hand. So, it has to be resolute and fulsome. And I said, what was committed on the streets of Derry was nothing short of murder and what happened since Bloody Sunday has a lot to do with how people were treated by the State and by the legal processes afterwards.[172]

In short, prior discussion on the contents and style of delivery of a statement of acknowledgement or apology offers practical and symbolic respect to victims but also improves the opportunity of the statement being more effective and reduces the chances of retraumatisation. It may also present an opportunity for the apologising organisation to be clear as to what is and is not possible in the statement to come.

Who Should Deliver a Statement of Acknowledgement or Apology

The 'who' question is important for the delivery of statements of acknowledgement or apology. It must be someone who can speak with credibility and authority on behalf

[171] See J. Campbell (2012) *Setting the Truth Free: The Inside Story of the Bloody Sunday Justice Campaign*. Dublin: Liberties Press. esp. Ch. 14-15.
[172] Author's Interview with Bloody Sunday Victim, 1st December 2017.

of the state or organisation responsible for the past wrong.[173] State apologies are usually offered by prime ministers or presidents precisely because they can speak with authority as representing the state, including sometimes in contexts where the wrongs occurred long before their tenure.[174]

For non-state armed groups or the political movements affiliated to them the 'who' question may present some challenges. If a person is purporting to speak publicly on behalf of a proscribed organisation, they may still be liable to prosecution for membership of that organisation. The televised CLMC ceasefire statement discussed above was delivered by one of the founders and leaders of the UVF, Gusty Spence. Mr Spence had previously been convicted of murder in 1966 and had been Officer Commanding of UVF prisoners in Long Kesh. He was chosen in part because he was a well-respected senior loyalist who had been there at the start and end of the campaign.[175] Written statements from loyalist groups still in existence present less obvious legal risks than televised broadcasts.[176]

For republicans, as noted above Martin McGuinness has issued a number of important statements of acknowledgement and apology, in particular with regard to the Shankill and Warrington bombs. His status, both as a Sinn Féin leader but also as former IRA commander gave him obvious credibility in apologising for past specific past IRA actions such as the Shankill bomb.[177]

Given that the IRA has formally left the political stage it would seem unlikely that the IRA's Nom de Guerre 'P. O'Neill' will be resurrected for such purposes.[178]

Current Sinn Féin leaders like First Minister Michelle O'Neill and party president Mary Lou McDonald (who were not members of the IRA) can of course speak on behalf of the contemporary republican movement in making statements of acknowledgement or apology and as discussed both have done so. However, their status in apologising for particular IRA acts might be questioned by some republican veterans. As one former IRA prison leader has suggested 'if you wore the boots, it

[173] Sanderijn Cels, Saying Sorry: Ethical Leadership and the Act of Public Apology, *The Leadership Quarterly* 28 (2017), 759-779.
[174] Schaafsma et al., The Political Apologies Database, *Political Apologies Across Cultures* (2 December 2021), available at: https://www.politicalapologies.com/?page_id=1118.
[175] Jim Cusack and Henry McDonald, *UVF* (Dublin, 1997), 321. As the former senior UVF leader and subsequent leader of the PUP David Ervine said with regard to Spence, 'Here was the alpha and omega, perceived by many to be the first of the violent men of this recent era, reading out a statement that pulled the curtain down, or we hoped would pull the curtain down, on a brutal and awful past', quoted in Peter Taylor, *Loyalists* (London, 1999), 234.
[176] The Nom de Guerre used by the UVF and Red Hand Commando during the conflict and transition was Captain William Johnston, Adjutant. See e.g. *Statement by the Ulster Volunteer Force (UVF) on Decommissioning*, 27th June 2009.
[177] An Phoblacht 23rd October 2013. *The Shankill Bomb Anniversary: Martin McGuinness on the Legacy of the Past.*
[178] BBC News 28th September 2005 'Who is P. O'Neill?'

makes it that much more credible.'[179] Those apologising on behalf of an organisation also need to prepare and manage their internal constituencies. If an apology is issued by a political leader but then is subsequently contradicted by others from within that constituency – e.g. critiquing the status of the apologiser to speak regarding past IRA actions - the effectiveness of that apology risks being undermined. Obviously, republicans or loyalists themselves are best placed to make judgements on the management of their own constituency regarding who can speak with authority on behalf of their respective movements.

Sequencing and Presentation of Acknowledgement and Apologies

As noted above, a number of significant apologies have come immediately in the wake of investigative or legal processes (when the truth about past harms has been established) or to mark the anniversary of particular events such as the IRA Bloody Friday bombings where there is no dispute as to organisational responsibility. There is an obvious logic to the truth of a particular event being known first and then the statement of acknowledgement or apology coming afterwards. For example, Geraldine Finucane criticised the previous apology from Prime Minister Cameron for collusion in the assassination of her husband while still resisting the establishment of public inquiry to establish the truth about the murder.[180]

However, it is also possible to envisage a role for more general statements of acknowledgement or apology from both state and non-state actors coming *before* the completion of investigative or information recovery processes into specific events. As discussed during the Hass-O'Sullivan negotiations of 2013, such statements of acknowledgement could be designed to contribute toward reconciliation. Moreover, if investigative and information recovery mechanisms are established with a new Legacy Act which can command a workable political consensus and the support of most victims and survivors, such broader statements of acknowledgement or apology could make a positive contribution in building confidence that the legacy of the conflict is at last being addressed holistically. Once investigations or processes of information recovery have been completed about specific events, such work could be followed up by more specific statements related to the particular instances featured in the relevant reports returned to families.

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[179] Interview former IRA prison commander, 20th November 2017.

[180] Mrs Finucane told a US Congressional Committee *'the prime minister apologised for the collusion, which we welcomed. He stood up in Parliament and apologised. But as my son said to me at the time, it's like you coming to me and saying, I want to apologize to you. And I say, what do you want to apologize for? And you'd say, well, I can't tell you. It's very serious, but I can't tell you. Believe me, I'm really, really sorry..'* Geradine Finucane 18th March 2015 'Testimony Before US Congress, Commission on Security & Cooperation in Europe, Washington DC, 18th March 2015.' In 2024 the Labour government finally agreed to the establishment of a public inquiry into the murder of Mr Finucane. The Guardian 11th September 2024 'Public inquiry announced into 1989 murder of Belfast solicitor Pat Finucane.'

Consideration also needs to be given to the presentation of statements of apology and acknowledgement. As evidenced by the Bloody Sunday apology, effective public apologies or statements of acknowledgement require careful planning and choreography to maximise their effectiveness. In some instances, this could involve an appropriately dignified ceremony – which involves victims in the planning and delivery of the public apology – is required in order to maximise the dignity, solemnity, and seriousness of such events.

Conclusion

There is clearly a role for public statements of acknowledgement and apology to compliment investigations and information recovery. The importance of that role has been a constant theme in a number of over-arching efforts to address the legacy of the conflict from the report Consultative Group on the Past (2009), the Haas O'Sullivan negotiations (2013) and the Stormont House Agreement (2014) but did not feature significantly in discussions on the Legacy Act 2022. Apologies and acknowledgement have also featured in parallel 'from below' discussions including in civil society as well as specifically within both republican and loyalist constituencies.

Acknowledgement and apologies should feature as part of ongoing discussions concerning a new Legacy Act informed by the themes above. Such discussions should include the framing of acknowledgement and apologies as: a victim-centred process of rehumanisation; conversations on how victims may be engaged concerning the preparation and delivery of statements; a debate on who should deliver such statements in order to maximise their effectiveness; and a clear eyed view on the sequencing and presentation of such statements in terms of investigations and information recovery including the role of such statements before and after the work of investigations and information recovery is completed.

Appendix One: Recommendations for the Design and Implementation of Effective Apologies.[181]

Consultation with those to whom apology is addressed

Comprehensive and effective consultation with those affected by harms inflicted is key to the delivery of a victim-centred apology. It enables the apologiser to establish what victims want and need to hear and what they do not want to hear. Victims should ideally be afforded the opportunity to read draft apologies and to offer feedback on the appropriateness of the language used and, on the setting, and context of the delivery of the apology, which helps to avoid unnecessary pitfalls and the possibility of an apology causing more harm than good. In situations in which collective apologies are being issued, it is important that victims groups consult internally and agree, insofar as possible, upon the parameters of what they would like the apology to include.

Consultation within the apologising constituency

In order to deliver a meaningful apology that is not subsequently qualified, rescinded or undermined, apologisers should consult widely within their own constituencies. If there are limits to what the apologiser can say, the apology should at least be communicated clearly to victims and their representatives as part of the consultation process, in order to manage the expectations of victims.

Naming and acknowledging of harm deliberately or negligently inflicted

A public apology should commence with a clear acknowledgment of the nature, scale and duration of the harm inflicted. It should specify clearly whether the harm was inflicted deliberately, with intent, or negligently. The direct and indirect impacts of the harm on different categories of victim should be acknowledged. The gender dimensions of the harm should be clearly articulated. Under no circumstances should the apology be used as a platform to minimise or obfuscate culpability.

Truthful admission of individual, organisational or collective responsibility

Truthful apologies are necessary in order to validate the experience of victims and to restore their dignity. Establishing the truth of what occurred is almost always a prerequisite, but in some instances, an apology can effectively provoke a truth recovery process. In the light of the truth, the apology should clearly admit responsibility – individual, organisational and/or collective – and blame should be accepted for the infliction of the harm. There should be no attempt to justify, explain, rationalise or contextualise the harm. In circumstances in which the apologiser

[181] UN Special Rapporteur on Transitional Justice (2019) *Report of the Special Rapporteur on the promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence* A74/147.

believes that some elements of past harms or human rights violations were justifiable, the public apology is not the time or place to restate that belief.

Statement of remorse and regret related to the wrongful acts or omissions

The apology should include a clear statement of regret for the named harms. The language used should be carefully chosen to communicate sincere remorse. It must be unqualified and unreserved.

Delivered in a context designed to maximise the potential of the apology.

The timing and context for the delivery of the apology should be carefully considered, ideally in consultation with the victims and, when appropriate, arranged with other events. In some cases, it may be appropriate for the apology to coincide with an anniversary or other date deemed significant by the victims. In others, it would be most appropriate for an apology to be issued at the conclusion of an investigation designed to establish the truth of what occurred, such as internal organisational review, a criminal trial, a truth recovery process or a public inquiry. The setting for the apology should also be designed to maximise its impact and effectiveness.

Delivered by those with the credibility to speak for the organisation or institution

The person or persons selected to deliver the apology must have the necessary leadership and credibility to effectively represent those who inflicted the harms. The individual chosen should have the authority to speak on behalf of the State, institution or organisation responsible for the harm. It is important that both the victims and the apologising organisation or institution recognise the authority of the apologiser – an essential element for avoiding the subsequent diminution, rejection or undermining of an apology.

Delivered with due respect, dignity and sensitivity to the victimised

The manner in which an apology is delivered is centrally important. The apologiser should speak clearly, using terms that are clear and unambiguous. Insensitive terminology and language should be avoided at all costs. Victims are highly alert to overly staged or hollow apologies. Honesty, sincerity and humility are essential components of their effective delivery. In some instances, it may be appropriate for the public apology to be linked to broader political, societal, religious or communal events or rituals, to maximise the symbolic power of the public apology.

Credible promise of non-recurrence

Apologies on their own are unlikely to be effective, unless they are underpinned by a credible promise of non-recurrence. The apology should clearly indicate the practical steps that have been taken to ensure that the apologising individual, organisation or institution will not inflict the same harms again. There must be no sense of entitlement to or expectation of forgiveness, acceptance or reconciliation on the part of the apologiser.

Appropriate compensation or reparations

For state institutions in particular, apologies should be accompanied, as appropriate, by reparative measures designed to assist those who have been affected by past harms. They may include accepting legal liability, commitment to provide monetary compensation, restoration of the rights of victims and/or appropriate commemorations or acts of memorialisation. Reparative measures may also include a commitment to fulsomely and effectively pursue justice, truth and information recovery.

Non-regression

Apologies should be part of a State policy, which is sustained and reaffirmed over time, under which regressions or actions that counter the effect of the original apology are not permitted.

Apologies and reconciliation

Properly crafted and delivered public apologies may contribute to reconciliation processes, when accompanied by a comprehensive transitional justice strategy. Reconciliation, understood as the restoration of victims' trust in the State and its institutions and conditions under which individuals can trust one another as equal rights holders, and apologies adopted in that context should not be used as a substitute for criminal justice or other transitional justice measures.