Written Evidence to the Northern Ireland Affairs Committee (NIAC) Inquiry on the Government's New Approach to Addressing the Legacy of the Past in Northern Ireland April 2025 –

Information Retrieval and Acknowledgement as a means to help meet the needs of victims and survivors, build trust in the ICRIR and Facilitate an Effective Process of Reconciliation

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1. Background to the NIAC Inquiry and this submission

The Northern Ireland The Northern Ireland Affairs Committee is conducting an Inquiry into "The Government policy on the legacy of the past in Northern Ireland" and has called for written evidence. The submission below is focused on the role of information retrieval and acknowledgement in addressing the past which is most relevant to the following aspects of the terms of reference for NIAC Inquiry.

- Whether the Government's new approach meets the needs of victims, survivors and their families.
- Building Trust in the ICRIR.
- Facilitating an effective process for reconciliation.

This submission is designed to help inform the deliberations of the NIAC, the UK government and others in considering routes to information retrieval and acknowledgement as part of addressing the legacy of the conflict.[2]

2. Background to information retrieval and acknowledgement as elements of addressing the legacy of the conflict

(i) In 2024 the Irish government stated that in order for the Irish government to consider rescinding its interstate challenge against the UK at the European Court of Human Rights, the repeal and replacement of the previous governments Legacy Act would

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[2] A fuller discussion on some the themes discussed herein can be found here K. McEvoy (2025) Information Retrieval and Acknowledging the Past in Northern Ireland

require substantial reforms to the ICRIR, including an independent investigative process and information retrieval.[3]

(ii) The UK and Irish governments, and four of the five Northern Ireland political parties had previously agreed to establish separate investigative and information retrieval mechanisms in the Stormont House Agreement 2014 (SHA).[4] 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'.[5] In addition, the SHA stated that in the context of the work of the different legacy mechanisms agreed to '..the UK and Irish Governments will consider statements of acknowledgement and would expect others to do the same.'[6]

(iii) Under the SHA 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).[7] In addition, a separate information retrieval mechanism was also agreed to – the Independent Commission on Information Retrieval (ICIR).[8] Like the Independent Commission for the Location of Victims' Remains (ICLVR, the 'Disappeared Commission') the ICIR included provisions for limited immunity for the information provided to that mechanism. However, it also crucially included a proviso that investigative work would continue (via the HIU) and that if the Director of Public Prosecutions determined that sufficient evidence existed to satisfy the test for prosecutions, these could follow in the normal fashion.

(iv) In 2015 the British and Irish governments agreed a treaty committing to establish the ICIR information retrieval mechanism on a cross-border basis. The Draft Stormont House Bill (2018) contained detailed legislative proposal on how this information retrieval mechanism would operate.[9] The UK government also conducted a widespread public consultation which received over 17,000 responses with broad support for the SHA, including the mechanism designed to secure information retrieval.[10]

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[3] Irish News 17th Sept 204 'Legacy Act: Mich Legacy Act: Micheál Martin 'not yet convinced' Labour will fully repeal controversial law; Tánaiste said that there had to be a new framework to deal with legacy which included an investigative as well as an information retrieval arm

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

[5] 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.

[6] Ibid para 53.

[7] Ibid Para 30-40.

[8] It drew explicitly on the success of the cross-border body established to assist with the location of the remains of those murdered and secretly buried by republicans during the conflict - the Independent Commission on the Location of Victims Remains (ICLVR – often referred to as the 'Disappeared' Commission). To date

[9] *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. *NIO Draft Northern Ireland (Stormont House Agreement) Bill (2018).*

[10] NIO (2018) *Consultation Paper: Addressing the Legacy of Northern Ireland's Past* (May 2018)

(v) As has been much discussed, the previous government unilaterally abandoned the SHA and ultimately introduced the Northern Ireland Troubles (Legacy and Reconciliation) Bill in 2022, and this 'Legacy Act' came into effect in May 2024. That legislation 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]

(vi) The Labour party committed in its manifesto to 'repeal and replace' the Legacy Act if elected, and to return 'the principles' of the SHA.[12] Following a Belfast High Court decision that the amnesty provisions of the Legacy Act were unlawful,[13] the Secretary of State for Northern Ireland (SOSNI) announced that the government would drop an appeal planned by the previous government against the amnesty. However, the Labour government continued to defend an appeal brought by families concerning the independence and effectiveness of the ICRIR. The Northern Ireland Court of Appeal subsequently upheld the high court ruling that elements of the Legacy Act were unlawful and a further appeal by the government to the Supreme Court is scheduled to be heard later in 2025.[14]

(vii) 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'.[15] 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.[16] 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'[17] [my emphasis]. 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

[11] See e.g. NIO (2021) *Addressing the Legacy of Northern Ireland's Past.* Cmnd Paper 498.
[12] Labour Party (2024) The Labour Party Manifesto: Our Plan to Change Britain, p. 117-118.
[13] Re Dillon and Others [2024] NIKB 11.
[14] Re Dillon and Others [2024] NICA 59
[15] BBC News Northern Ireland 7th September 2024 'Starmer Visit Moment for Reset of UK-Ireland Relations.
[16] SOSNI (4th December 2024) *Oral Statement to Parliament: Secretary of State Oral Statement on Northern Ireland Legacy*.
[17] Ibid.

the two governments 'will be able to agree a way forward that is underpinned by the principles set out in the Stormont House Agreement.'[18]

3. **Whether the Government's new approach meets the needs of victims, survivors and their families; addressing the legacy of the past requires both investigations and information retrieval**

   The current UK government approach appears to comprise of reintroducing civil actions and at least some legacy inquests, strengthening the independence and investigative powers of the ICRIR as well as addressing concerns regarding the onward disclosure of sensitive information.

   However, I would argue that such an approach is not enough. In particular, as envisaged in the SHA and as argued by the Irish government, I believe that effectively addressing the legacy of the past for victims and survivors requires both investigations and information retrieval. I presented a synopsis of the arguments below on this point to the Forum for Victims and Survivors earlier in April 2025 and there was universal agreement amongst those present – that victims and survivors should have the choice to engage with investigations, information retrieval, or both.

4. **What is the difference between investigations and information retrieval?**

   An ECHR Article 2 compliant *investigation* places a series of legal obligations on the state that such investigations 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.

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

   As per the SHA, 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 SHA 2014, the Draft SHA Act (2018), as well as the Independent Commission for Location of Victims Remain Act (1999), any new Legacy Act which is designed to facilitate information retrieval should include provisions to ensure that the information provided cannot be used in a legal proceeding. i.e. the legislation should include the phrase no information from

[18] Ibid.

or engagement with the information retrieval process can be used directly or indirectly for any legal process.

6. 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), there are a number of important differences between immunity under the Legacy Act and that which was envisaged in the SHA. The differences are as follows:

(i) Under the SHA, the limited immunity was designed to be self-contained within the information retrieval mechanism while the investigative obligations were satisfied elsewhere in a separate investigative mechanism. In the case of the Legacy Act, the immunity scheme directly interfered with the investigative obligations with both being discharged in the same mechanism and the latter having an explicit emphasis on reviews rather than investigations.

(ii) 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 instead to create a bespoke information retrieval mechanism with which victims could choose to engage (or not), while investigations were conducted elsewhere.

(iii) 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' [my emphasis].[19] In contrast, 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.

(iv) Under the Legacy Act the immunity applied to individuals, whereas in the SHA the limited immunity was applied to information provided rather than people. Indeed, the relevant section in the SHA draft bill made clear that the limited immunity applied to information and did not constitute an amnesty – the relevant section was entitled 'Information Provided to the Commission [ICIR]: No Amnesty, Information Inadmissible [my emphasis].[20]

[19] Re Dillon and Others [2024] NIKB 11, para 187
[20] Draft Northern Ireland (Stormont House Agreement) Bill s 45.

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

Elsewhere I have detailed and reflected upon the previous positive and negative experiences of loyalist and republican engagement with a range of 'top down' and 'bottom up' legacy processes.[21]

(i) *Ballymurphy and UVF Witness X*

In the Ballymurphy Inquest into the killing of eleven civilians by the army in 1972, the presiding coroner McKeegan J. permitted evidence from Witness X who was a self-described interlocutor with 'UVF veterans'. That evidence was ultimately written into the record and considered by the Coroner. However, having cross-checked the evidence from Witness X against forensics and other factors, Keegan J ultimately concluded that that there was 'no evidence of value' to the witness's suggestion that the UVF were responsible for some of the deaths.[22] 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.[23]

(ii) UVF Engagement in the John Crawford Process

A more positive experience with loyalists was that of Paul Crawford, a victim who engaged via an interlocutor with the UVF who murdered his father in 1974. After a complex series of engagements between Mr Crawford and the interlocutor over an 18-month period involving dozens of meetings, the process ultimately saw the Crawford family receiving a statement of acknowledgement from the UVF taking responsibility for the killing (long denied as the organisation was on ceasefire at the time), detailed information requested by Mr Crawford and apology from that organisation. Mr Crawford concluding that the process had been a success which 'had gone much further than he had expected'.[24]

(iii) 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.[25] The Tribunal

[21] K. McEvoy (2025) *Information Retrieval and Acknowledging the Past in Northern Ireland*

[22] *In the Matter of a Series of Deaths that Occurred in August 1971 at Ballymurphy West Belfast*, [2021] NI Coroner 6.

[23] Irish News, 3rd May 2018, 'Ballymurphy Massacre Campaigners Sceptical About UVF Claims.'

[24] K. McEvoy (2023) *The Killing of John Crawford: A Victim-Centred and Co-Designed Truth Recovery Process.*

[25] 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

operated under the Tribunal of Inquiry (Evidence) (Amendment) Act 2002 which provides that that no statement made before a Tribunal is admissible in any criminal proceedings and an analogous guarantee from the UK Attorney General regarding prosecutions in the UK. IRA engagement with the Tribunal took a number of forms.

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 negotiations, 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 murders), all in the presence of intermediaries.[26] Similar to Witness X in the Ballymurphy Inquests, none of the individuals gave in person evidence but Smithwick J. decided to include a thirteen page detailed account of the exchanges in full in his findings as a 'valuable resource' for the Tribunal rather than evidence per se.[27] 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.'[28] They also provided a detailed account of the lengthy surveillance operation on the two police 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 the 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.'[29] Smithwick J, ultimately decided 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.[30]

[26] Ibid.
[27] Ibid Para 22.1.2
[28] 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.
[29] Ibid para 22.7.7
[30] Ibid para 23.2.2

(iv) *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.[31] Noting the success of the Commission, Geoff paid tribute to the fortitude and forbearance of the families of the disappeared. He argued that the success of the Commission was due in part to the 'absolutely inspired' way in which the legislation was drafted which facilitated engagement with the Republican Movement.[32] 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:

> 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.[33]

(v) *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.[34] 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.[35] The Inquest made extensive use of forensic evidence which linked many of

[31] Mr. Knupfer was also a former detective Chief Superintendent in the Greater Manchester Police Service.
[32] 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
[33] ibid
[34] *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.
[35] 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.

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.[36]

(vi) *IRA engagement with the Stack family*

In 1983 Brian Stack, Chief Officer at Portlaoise Prison in 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 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'[37]

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. [38] 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.[39]

8. Lessons learned from past experiences of republican and loyalist engagement with information retrieval and acknowledgement processes

Drawing from the above and other experiences, a number of themes of broader applicability can be drawn.

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[36] Ibid. para 318.
[37] 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.'
[38] Ibid.
[39] 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.'

(i) 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 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,[40] the requirement to attend a public hearing may itself present a disincentive for engagement by information providers.

(ii) 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 it must be rigorously cross checked against other sources of information. As noted, in the case of the Ballymurphy 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.

(iii) 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.

(iv) 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, 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.

9. Information retrieval on a cross-border basis

I believe that, in a similar fashion to the ICLVR (and as envisaged in the SHA), any information retrieval mechanism should be established on a cross-border basis, underpinned by enabling legislation in either jurisdiction and an international treaty. I would also suggest 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.

[40] *The Coroners (Practice and Procedure) Rules* op cit, Article 9.

10. How would the accuracy of information retrieval be verified?

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 to cross-check the information provided. 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. Such a process could draw upon the previous experience on how sensitive information was managed by analogous international mechanisms such as ICLVR or the Independent International Commission on Decommissioning (IICD).

11. Commentary on the level of cooperation by information holders

As per the SHA Draft Bill, legislation to establish an information retrieval mechanism should include provision that the mechanism has the powers to comment publicly on the level of cooperation received from information holders.

12. Information retrieval and national security

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. That provision could apply to both investigative and information retrieval processes. 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.

13. 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.

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

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.

15. Sequencing between investigations and information retrieval

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.

16. Sanctions for undisclosed 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.

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

Similar to the ICLVR and the Draft SHA Bill, detailed provisions on information retrieval should be contained in primary legislation in both jurisdictions.

18 Different models of information retrieval

There are three possible models for 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.

(i) *Option One: Attaching Information Retrieval to 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, this was part of the logic of the last government in establishing the ICRIR -combining investigative and information retrieval processes in the one body.[41] 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. 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.[42]

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. 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.

[41] Northern Ireland Office (2021) Addressing the Legacy of Northern Ireland's Past. Command Paper 498, p.11
[42] SOSNI (2024) Hilary Benn, Written Ministerial Statement – Legacy Northern Ireland. 7th October 2024.

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.

(iv) *Option Two: Expanding the Remit of the ICLVR to include information retrieval for all conflict related deaths*

Another possible option for information retrieval would be to repurpose the ICLVR, expanding its remit to include information retrieval for all deaths related to the conflict in Northern Ireland. The advantages of such an approach would be that the ICLVR already exists and has the capacity to operate on both sides of the border. 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 PSNI and of course 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 and damage 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 would dimmish the focus on their cases. 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 versus bespoke legislation and a new treaty for a new institution might be quite a marginal gain.

(iii) *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 and formed part of an extensive public consultation. As noted, 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 which included 'justice and information recovery' and 'acknowledging and addressing the suffering of victims' are amongst the

six principles of the SHA.[43] 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.

Second, a significant amount of work has already been done on how this option would work including a treaty between the two governments in 2015 and the preparation of draft legislation in 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... 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 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…. [44]

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 practice, amongst the loyalist groups it is the UVF who have been most prominently involved in such information and acknowledgement 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.[45]

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

[43] The Stormont House Agreement op cit.
[44] 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
[45] Crawford report op cit.

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

19. Work related to themes and patterns

The body that was proposed for work on themes and patterns by the SHA was excised from the previous Legacy Act. 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 and the information retrieval mechanism should inform that process.

20. Statements of acknowledgement and apology

Elsewhere I have traced 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.[46]

Acknowledgement may be defined 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).

A public **apology is**: 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./

Elsewhere I have discussed 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. Shankill bomb, Stakeknife) as well as apologies by loyalists (e.g. CLMC statement).[47] Drawing these and other statements of acknowledgement and apology, a number of themes below speak to how to maximise effective statements of apology and acknowledgement.

[46] K. McEvoy (2025) Information Retrieval and Acknowledging the Past in Northern Ireland
[47] K. McEvoy (2025) Information Retrieval and Acknowledging the Past in Northern Ireland

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.