DEALING WITH THE PAST IN NORTHERN IRELAND

Implementing the Stormont House Agreement

Conference Report and Papers 2015

Amnesty International

CAJ Committee on the Administration of Justice
Promoting Justice / Protecting Rights

Queen's University Belfast
Institute for the Study of Conflict Transformation and Social Justice

Ulster University

TJI Transitional Justice Institute

DEALING WITH THE PAST IN NORTHERN IRELAND

Implementing the Stormont House Agreement

Conference Report and Papers 2015

Report of a conference held in the Conor Lecture Theatre, Ulster University, Belfast Campus, 18 May 2015

Conference organised by Amnesty International, the Committee on the Administration of Justice (CAJ), the Institute of Conflict Transformation and Social Justice (QUB) and the Transitional Justice Institute (Ulster University)

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INTRODUCTION

The Committee on the Administration of Justice (CAJ) along with Amnesty International Northern Ireland, Institute of Conflict Transformation and Social Justice (QUB) and the Transitional Justice Institute (Ulster University) organised the 'Dealing with the Past in Northern Ireland: Implementing the Stormont House Agreement' conference following the publication of the Stormont House Agreement in December 2014. This agreement, as stated on the government's website is: 'an agreement on key issues that opens the way to a more prosperous, stable and secure future for Northern Ireland.'

The Stormont House Agreement (SHA) provides for a set of new institutions to deal with the past in Northern Ireland namely:

- The Historical Investigations Unit (HIU): 'an independent body to take forward investigations into outstanding Troubles-related deaths.'
- An Independent Commission on Information Retrieval (ICIR) 'to enable victims and survivors to seek and privately receive information about the deaths of their next of kin.'
- An Oral History Archive 'to provide a central place to share experiences and narratives related to the Troubles.'
- An Implementation and Reconciliation Group 'to oversee themes, archives, and information recovery.'

It also provides recommendations for services for victims and survivors, including a Mental Trauma Service.

The implementation of the above SHA commitments will require detailed legislation. The government plan is that draft legislation will be published for consultation in summer 2015, and then introduced to Westminster in the 2015 autumn term.

This conference brings together expertise in academia, NGOs, and other practitioners to discuss, examine and provide an independent perspective on the key elements of such legislation.

The conference included presentations from members of an expert drafting group established as part of a collaborative QUB Business Alliance Project between the CAJ and QUB School of Law, led by Professor Kieran McEvoy, who have been working on shadow legislation in parallel to the official process.

Those involved in the drafting committee are: Professor Kieran McEvoy (QUB), Daniel Holder (CAJ), Professor Louise Mallinder (TJI), Brian Gormally (CAJ), Jeremy Hill (Visiting Fellow, TJI), Gemma McKeown (CAJ), Anna Bryson (QUB) and Daniel Greenberg (a barrister specialising in legislation).

Acknowledgements

A huge thank you to the four organisations involved for providing time, financial support and expertise to the conference.

Thanks also to the TJI for providing the Ulster University lecture theatre, facilities and catering on the day.

Thanks to all the panel chairs and speakers for giving their time for free to be part of this important process for dealing with the past in Northern Ireland.

Thanks to all the staff from each organisation who gave unconditional commitment to making this conference a reality particularly Emma Patterson-Bennett, Liz McAleer and the team of CAJ volunteers: Fiona Cash, Ryan McDowell, Lena Hensel and Athena Bennett who provided help on the day and to Molly Clarke, Basil Singler and Philip Kidd who helped to transcribe the speakers presentations from the panels to make sure this conference report is as accurate as possible. Thanks to Stan Nikolov for his excellent photography of the event.

Lastly thanks goes to Amnesty International UK who provided design and financial support for the publication of this report.

The text in this report is supplied by the speakers.

CONFERENCE PROGRAMME

ULSTER UNIVERSITY, BELFAST CAMPUS
18 MAY 2015

Time	Session
9.30 - 10.00	**OPENING PANEL**
	Welcome: Professor Rory O'Connell, Director, Transitional Justice Institute (TJI), Ulster University Mr David Ford, Minister of Justice for Northern Ireland
	Purpose of day: Kate Allen, Director, Amnesty International UK
10.15-11.45	**HISTORICAL INVESTIGATIONS UNIT AND LEGACY INQUESTS**
	Chair: Kate Allen, Director, Amnesty International UK Patrick Corrigan, Programme Director Northern Ireland, Amnesty International UK Daniel Holder, Deputy Director, Committee on the Administration of Justice (CAJ) Fiona Doherty QC
11.45 - 12.15	**Coffee break**
12.15-13.15	**INDEPENDENT COMMISSION ON INFORMATION RETRIEVAL**
	Chair: Mary McCallan, Advocacy Officer, WAVE Trauma Centre Professor Kieran McEvoy, School of Law, Queen's University Belfast Professor Louise Mallinder, Transitional Justice Institute, Ulster University
13.15 - 14.00	**Lunch**
14.00-15.00	**ORAL HISTORY ARCHIVE AND IMPLEMENTATION AND RECONCILIATION GROUP**
	Chair: Brian Gormally, Director, Committee on the Administration of Justice (CAJ) Dr Anna Bryson, Research Fellow, Queen's University Belfast Professor Brandon Hamber, Director, International Conflict Research Institute (INCORE), Ulster University Jeremy Hill, member of drafting group and former legal advisor to Eames Bradley
15.00-15.30	**REFLECTIONS**
	Susan McKay, Rapporteur
15.30	**CLOSE**
	Brian Gormally, Director, Committee on the Administration of Justice (CAJ)

SPEAKERS

Professor Rory O'Connell, Director, Transitional Justice Institute (TJI), Ulster University

Rory joined the Transitional Justice Institute (TJI)/ School of Law in 2013 as Professor of Human Rights and Constitutional Law. He was appointed Director of the TJI in February 2014. Rory's research and teaching interests are in the areas of human rights and equality, constitutional law and legal theory. His publications include *Legal Theory in the Crucible of Constitutional Justice* (2000) and articles in *Ratio Juris, the International Journal of Constitutional Law, European Law Journal* and other journals. Several of his research projects have been supported by grants from the British Academy, Atlantic, Nuffield Foundation and Changing Aging Partnership. Rory is a Fellow of the Higher Education Academy, and teaches at both undergraduate and postgraduate level. From 2001 to 2013 he was a member of the Human Rights Centre, School of Law at Queen's University of Belfast. Rory is on the Executive of the Committee on the Administration of Justice and is the editor of the RightsNI Blog (**www.rightsni.org**). Rory tweets **@rjjoconnell**

David Ford MLA, Minister of Justice for Northern Ireland

On 12 April 2010 David Ford was elected by the Assembly as Minister of Justice for Northern Ireland, the first local Minister in that role since the suspension of the former Parliament of Northern Ireland in 1972. A highly active politician and one of the most vociferous supporters of the principle of partnership government, David has campaigned within the Assembly and outside it for the building of a united community and has opposed actions which have reinforced divisions. He now leads a team of eight Alliance MLAs at Stormont.

Kate Allen, Director, Amnesty International UK

Kate took up her post as Director of Amnesty International UK in early 2000. Amnesty International UK is the largest section within the Amnesty International movement, with more than 476,000 engaged members, supporters and activists. Major current campaigns are Stop Torture, My Body My Rights, Individuals at Risk, and Crisis Response. Kate is also a member of the Secretary General's Global Management Team. Before joining Amnesty International, Kate was Deputy Chief Executive at the Refugee Council from 1995 to January 2000, where she was responsible for its policy and operational work and headed the UK emergency evacuation programmes for Bosnia and Kosovo.

Daniel Holder, Deputy Director, Committee on the Administration of Justice (CAJ)

Daniel Holder has been employed as the Deputy Director of CAJ since 2011 and is currently co-convener of the Equality Coalition. Prior to this he worked in the policy team of the Northern Ireland Human Rights Commission for five years, and before that he led a migrant worker equality project run by the South Tyrone Empowerment Programme NGO and Dungannon Council. He previously worked in Havana, Cuba, as a language professional for the University of Havana, press agency Prensa Latina and national broadcaster, ICRT. He has a primary degree in Spanish and sociology and an LLM in human rights law, both from Queens University.

Patrick Corrigan, Programme Director Northern Ireland, Amnesty International UK

Patrick Corrigan is Head of Nations and Regions and Northern Ireland Programme Director of Amnesty International UK. He is a founder and board member of the Human Rights Consortium and leads Amnesty's work on human rights in Northern Ireland, including on 'dealing with the past'. He has provided oral evidence to the Oireachtas Joint Committee on the Implementation of the Good Friday Agreement and the Northern Ireland Affairs Select Committee, and led a delegation to Washington to give evidence to the Foreign Relations Committee of Congress. He holds an LLM in human rights law from Queen's University, Belfast.

Fiona Doherty QC

Fiona is a QC who practises in the fields of inquests and judicial review. She is a former chairperson of CAJ and is a trustee of the Public Interest Litigation Support Project (PILS).

Mary McCallan, Advocacy Officer, Wave Trauma Centre

Mary McCallan is responsible for WAVE's Advocacy & Casework Service. WAVE is a grass-roots, cross-community, voluntary organisation formed in 1991 to support people bereaved of a spouse as a result of violence in Northern Ireland. It was later expanded to incorporate the needs of children and young people and anyone injured or traumatised through 'the Troubles'. In keeping with WAVE's holistic ethos, Mary provides support to families with outstanding legacy issues, assisting them practically and emotionally to seek information about their bereavement or injury. Mary has an LLB from Queens University Belfast and was admitted as a solicitor in England and Wales in 2005. She is currently undertaking an LLM in human rights and transitional justice with the TJI at the University of Ulster, Jordanstown.

Professor Louise Mallinder, Transitional Justice Institute (TJI) Ulster University

Louise Mallinder is a Professor in Human Rights and International Law at the Transitional Justice Institute, Ulster University. Her research focuses on transitional justice, particularly relating to questions of amnesty and accountability. Louise is also a co-chair of the American Society of International Law Interest Group on Transitional Justice and the Rule of Law and a member of an interdisciplinary committee of the Royal Irish Academy. Outside academia, Louise is Chair of the Committee for the Administration of Justice.

Professor Kieran McEvoy, School of Law, Queen's University Belfast (QUB)

Kieran McEvoy is a Professor of Law and Transitional Justice and stepped down in early 2014 as Director of Research at the School of Law, QUB. He is a Fellow of the Academy of Social Sciences and was previously employed in the NGO sector before entering academia in 1995. He has been a visiting professor at New York University, Fordham, Berkeley California, Cambridge, and the London School of Economics, and spent a year as a Fulbright Distinguished Scholar in the Human Rights Program at Harvard Law School. He has a long history of human rights and conflict transformation activism. He has served as a board member of the Committee on the Administration of Justice (CAJ) for much of the last two decades, as well as being a founding board member of Community Restorative Justice Ireland. He is also an active member of Healing Through Remembering. His areas of research interest include transitional justice, truth recovery, amnesties, ex-combatants, victims, human rights, the sociology of the legal profession, penology, restorative justice, comparative legal studies and conflict resolution. He has written or edited six books and over fifty journal articles and scholarly book chapters. His research has garnered significant international recognition including winning the British Society of Criminology book of the year award, he was named by *Arena* magazine as one of the UK's top ten 'young intellectuals' for his work on the Northern Ireland peace process.

Dr Anna Bryson, Research Fellow, Queen's University Belfast (QUB)

Anna is a Research Fellow at the School of Law at Queen's University, working on a major ESRC-funded study involving fieldwork in Cambodia, Chile, Israel, Palestine, Tunisia and South Africa. She was previously Co-Director of the Peace Process: Layers of Meaning project (**www.peaceprocesshistory.org**), a three-year initiative supported by the European Regional and Development Fund's Peace III Programme. She has considerable experience of conducting sensitive interviews for social and historical investigation – mainly in Ireland and Britain, with some further research in North America, Australia and Africa. She has published three books; the most recent (with Seán McConville) is *The Routledge Guide to Interviewing: Oral History, Social Enquiry & Investigation* (Routledge, 2014).

Professor Brandon Hamber, Director, International Conflict Research Institute (INCORE) Ulster University

Professor Brandon Hamber is Director of the International Conflict Research Institute (INCORE) and Professor of Peace and Conflict Studies at Ulster University. He is also a member of the Transitional Justice Institute at the university. He has undertaken consulting and research work, and participated in various peace and reconciliation initiatives in Liberia, South Africa, Mozambique, Northern Ireland, Bosnia, the Basque Country and Sierra Leone, among others. He has written extensively on the South African Truth and Reconciliation Commission, the psychological implications of political violence, and the process of transition and reconciliation in South Africa, Northern Ireland and abroad. He has published some 50 book chapters and scientific journal articles, and four books. In 2015, he published *Psychosocial Perspectives on Peacebuilding* (Editors:

Brandon Hamber, Elizabeth Gallagher) and *Healing and Change in the City of Gold: Case Studies of Coping and Support in Johannesburg* (Editors: Ingrid Palmary, Brandon Hamber, Lorena Núñez). Both are published by Springer.

Jeremy Hill, member of drafting group and former legal advisor to Eames Bradley

Jeremy Hill was Legal Adviser to the Consultative Group on the Past in Northern Ireland (the Eames-Bradley Group) in 2008-2009. Since October 2014, he has worked as a Visiting Scholar at the Ulster University on mechanisms relating to the past in Northern Ireland. He worked as a solicitor in private practice in London until 1982 when he joined the Foreign and Commonwealth Office (FCO) as a Legal Adviser, specialising in treaties, international cooperation, human rights and the law of armed conflict. He was Legal Counsellor on international law in the Attorney General's Office in London from 1991 to 1994 and Legal Counsellor on European law in the UK Representation to the EU in Brussels from 1995 to 1998. He worked subsequently as Head of the Southern European Department (FCO), and Ambassador to Lithuania and then to Bulgaria. Since leaving the FCO in 2007, he has worked on a range of legal and international projects, including from April to September 2014 in Odessa for the OSCE Special Monitoring Mission to Ukraine.

Susan McKay

Susan McKay is an award winning journalist and author from Derry. Her book *Bear in Mind These Dead* (Faber, 2008) is a study of the aftermath of the Northern Irish conflict for those bereaved and injured by it. It was shortlisted for the Ewart Biggs prize. She has carried out work for WAVE and the Pat Finucane Centre, interviewing victims and survivors and recently facilitated discussions by the Victims and Survivors Forum on the Stormont House Agreement. Her work has been widely praised for its integrity, even-handedness and compassion. She is a former northern editor of the *Sunday Tribune* and currently writes for the *Irish Times*, the *Guardian*, the *Observer* and other titles.

Brian Gormally, Director, Committee on the Administration of Justice

Brian Gormally is Director of the Committee on the Administration of Justice (CAJ), Northern Ireland's leading human rights NGO. For over a decade before that, he was an independent consultant working mainly in the voluntary and community sector and specialising in justice, human rights and equality issues. He was Deputy Director of NIACRO for 25 years until 2000 working with communities, alienated young people, ex-offenders and prisoners' families. He has published and presented extensively on justice, community policing and conflict resolution issues, particularly on politically motivated prisoner release, victims of terrorism, dealing with the past and restorative justice. He has been involved in international peace-related work in South Africa, Israel/Palestine, the Basque Country, Italy and, more recently, Colombia. He also worked on the Bill of Rights with the NI Human Rights Commission.

THE CONFERENCE

WELCOME

David Ford MLA
Minister of Justice for Northern Ireland

Synopsis:
David Ford talks about how the Stormont House Agreement (SHA) provides us with a once in a lifetime opportunity to address the issues surrounding our past and that the Department of Justice and the Northern Ireland Office are committed to working with the community and voluntary sector to ensure the potential that is housed there is harassed. The Executive and Northern Ireland Office are working to a deadline of autumn of 2015 to get the legislation for the Stormont House Agreement through Westminster.

Speech:
Thank you, I welcome the invitation to attend this important Conference; it provides us with a timely opportunity to discuss the elements of the (23 December 2014) Stormont House Agreement relating to 'Dealing with the Past'.

Today's conference focuses on those aspects of the Agreement relating to the Past and whilst I have been working closely with Party Leaders to agree steps to its implementation, my Department (DOJ) is only leading on its justice elements of the agreement. There is a need to strike a balance between the five parties and the needs of victims with what is practical and what is affordable.

In these areas the DOJ has a key role to play in ensuring that the issues of our past are dealt with in an effective, just, and human rights compliant manner. Delivering the required changes within the timetable of the agreement is a major challenge. Indeed it would still be a major admin and policy challenge if there was full political agreement. I am committed to meeting that challenge and ensuring in particular that victims' families are at the centre of our considerations in doing so.

The Stormont House Agreement represents if implemented properly a significant step forward in dealing with the issues of our Past. It offers us a unique opportunity to provide some resolution to the outstanding concerns of the families, victims and the wider community.

I said on 23 December 2014, what we had was a 'deal to make a deal' and the detail is to be worked through.

The years of conflict in Northern Ireland resulted in far too many deaths; and too many victims' families are still seeking truth and justice regarding the deaths of their loved ones. The Northern Ireland justice system must and will play a key role in ensuring full independent and effective investigations take place into these deaths.

At present the justice system is neither resourced nor equipped to deal effectively with the Past, put simply the resource is not there to address the past whilst simultaneously trying to provide an effective justice service to the community of today. I have long highlighted the costs associated with policing the past and the need to find a political solution to progressing those necessary developments.

I firmly believe that the SHA which certainly falls short of people's expectations provides a real and genuine opportunity to deliver truth, justice and support services for victims and survivors. Importantly the agreement also places a very significant emphasis on reconciliation.

I am confident that the cross-party commitment to addressing the past, embodied in the Agreement should provide the necessary platform to deliver progress in this challenging area. It should support a step-change in our capacity to progress historical investigations and legacy inquests.

The agreement offers us the potential of a new approach to addressing some of the most intractable and difficult issues left over from NI past. It represents the hope of a new start and a far more positive future. However a great deal of hard work still lies ahead of us to ensure that the agreement delivers on its promise.

Transforming these paper commitments into a concrete reality has already begun in earnest, at a time of continuing uncertainty regarding the issue of welfare reform; the main political parties have been meeting more or less weekly since January to progress the planning necessary to give substance to the Agreement. A lot still remains to be done although progress has been made particularly in regards to the HIU and legacy Inquests. Legislation is currently being drafted to enact the various aspects of the Agreement, and the work on the development of the new Historical

Investigations Unit is being led by my Department in association with the NIO. DOJ legacy unit has been actively engaged with victims and support groups in sharing our thinking on progressing these aspects of the agreement.

Ongoing engagement including with the organisers of this conference, is itself an indication of our commitment to work inclusively where we can. We will take on board the learning from events such as this in the course of our consultation with key stakeholders as we seek to deliver on our commitments in the agreement. We can all recognise that any outcome will need to include a degree of compromise and that there are a variety of views on dealing with the past. However the agreement represents a key opportunity to address this, and I am heartened by events such as today which promote healthy debate in this area because Healthy debate in civil society is useful but the resolution of the outstanding issues will have to be up to the five executive parties.

The legislation to give substance to elements of the agreement will be enacted through a Westminster bill. Work on this legislation has been progressing rapidly since February 2015 and the bill scheduled to be published in the summer 2015 and introduced in parliament in the autumn 2015. The decision to take the legislation through Westminster was agreed by the five party leaders reflecting our determination to expedite the necessary legislation within what is extremely challenging timeframe and to ensure that the HIU is operational at the earliest opportunity. We will have to see how NIO works with the five parties in putting legislation through Parliament. I recognise the keen interest that many of you here today have in the out workings of the agreement and know that you will be giving careful consideration to the draft legislation once it is published and I have no doubt I will be hearing from relevant stakeholders to that effect.

I am keen that my department continues to engage with key stakeholders including victims and victims groups on all relevant aspects of these developments. I am equally clear that solutions to long standing difficulties and issues must be built on cooperation and partnership. We must recognise that at the heart of these lie the families of those who died during the troubles. Any proposed solution must tale into consideration their needs and concerns, these features regularly at our weekly meetings.

Alongside the complex operational and legislative issues which arise from the agreement I appreciate that the systems we are creating needs to be fully compliant with Article 2 of ECHR. Reflecting this, the SHA specifically stipulates that the HIU will be an entirely independent body, this independence is critical in making sure it delivers Article 2 complaint investigations.

Addressing the issues of the past is crucial if we are to enable our society to move forward. I firmly believe that this is achievable through partnership working across justice agencies, other executive departments and the boarder voluntary and community sector, if the potential will that exists is carried out into practice.

The SHA provides us with a once in a lifetime opportunity to address the issues surrounding our past. It offers a bridge of hope to the families of the victims of the troubles; a bridge which may help them to achieve closure and finally to be able to look ahead. The SHA cannot undo the Past; nor can it guarantee that, suddenly justice and truth will prevail. But what it can do is provide the vehicle to resolve understanding cases, where this is possible and provide victims' families with information and hopefully many of them with a degree of closure.

Of course the agreement as a whole goes far beyond the justice field in addressing the past. Other aspects of it cover oral history, information retrieval, victims and survivors, support and reconciliation. Taken together the agreement represents a once in a generation opportunity to address the past I believe it is important that the opportunity is not lost or wasted. That is why firm commitment is needed from civil society and the five executive parties to ensure that happens.

I am confident that this conference will make a valuable contribution to our thinking on the important issues of the legacy and on human rights. I welcome the healthy debate that I am sure will be an important feature of today's proceedings and other events elsewhere.

My officials are well represented amongst the conference participants and are very happy to listen to your views on the best way forward regarding HIU and inquests. I hoping to engage constructively with civil society to make sure we get the best possible arrangements for legacy cases and inquests. In turn I look forward to hearing details of your deliberation, conclusions and recommendations.

Thank you.

PURPOSE OF THE DAY

Kate Allen
Director of Amnesty International UK

Synopsis:
Kate Allen outlines the running order of the day, introduces the speakers and discusses the mechanisms that are laid out in the Stormont House Agreement and asks the audience to feed into the discussion as much as possible so that the model implementation bill can be as useful as possible.

Speech:
We have an important day's work ahead of us but on this platform and in this room I think are gathered very many people with the right experience and the right expertise and, perhaps more importantly the sort of deep commitment to justice and peace to know that we can face that work with confidence. But it's more than a day's work; it has taken many years of false starts and failed initiatives, piecemeal mechanisms and then political manoeuvring to bring us to this day.

Eighteen months ago, I stood round the corner at the 'MAC' launching Amnesty's report on 'Dealing with the Past in Northern Ireland', detailing how and why the existing patchwork of measures was failing victims and wider society. Since then, we have seen many developments, including the inconclusive Haass-O'Sullivan talks, the end of the Historical Enquiries Team (HET) and, obviously – it's why we're here – the December 2014 Stormont House Agreement (SHA). That Agreement provides a framework for the future – on how we deal with our collective past. Ahead of everyone now lie more months and years of work in moving from that template for dealing with the past to the point of delivery of a human rights compliant approach for victims of the conflict and the whole of society.

The Stormont House Agreement provides for a set of new institutions to deal with the past in Northern Ireland namely:
- **The Historical Investigations Unit (HIU)** 'an independent body to take forward investigations into outstanding Troubles-related deaths';
- **An Independent Commission on Information Retrieval** (ICIR), 'to enable victims and survivors to seek and privately receive information about the deaths of their next of kin'
- **An Oral History Archive** 'to provide a central place ...to share experiences and narratives related to the Troubles'
- **An Implementation and Reconciliation Group** 'to oversee themes, archives, and information recovery'
- **Recommendations** for new services for victims and survivors, including a Mental Trauma Service.

While many organisations and individuals might suggest different models to deal with the past than that provided for by the Stormont House Agreement, the reality is that this model has been agreed by the two governments and the Executive Parties and is being taken forward. Today, therefore, is about working within the SHA framework and ensuring that it delivers human rights compliance, rather than outside of it by suggesting wholly new or separate models for work on the past.

Let us be clear. The implementation of the Stormont House Agreement commitments will require focused work by those gathered here today as well as detailed legislation to bring to fruition. With the agreement of the local parties, the UK Government plans that draft legislation will be published for consultation this summer (2015), with it then being introduced into Westminster in the 2015 autumn term.

This conference brings together expertise in academia, NGOs and other practitioners to discuss examine and provide an independent perspective on the key elements of such legislation, and also on the other commitments in the Agreement which may need delivery through the Northern Ireland Assembly or by the Oreachtas.

There is a broad recognition that whilst the Stormont House Agreement provides a strategic framework, the devil will be in the detail as to whether the new institutions will meet human rights requirements of independence and effectiveness and whether they will do what previous initiatives and mechanisms have failed to do adequately. Some of that detailed work is already under way and today gives us an opportunity to review that progress, consider the key questions and issues which remain outstanding and determine priorities for the time ahead.

We know that political party leaders have been meeting regularly to discuss how to take forward the Stormont House Agreement, but, so too have human rights groups, victims groups, academics, lawyers and others. The Legacy Practitioners Group, convened by CAJ, and of which Amnesty and others here today are a part, have discussed the proposals in depth.

A key collaboration between civil society and academia has been the work of the Institute of Conflict Transformation and Social Justice, Queens University Belfast (QUB), the University of Ulster Transitional Justice Institute (TJI) alongside the Committee on the Administration of Justice (CAJ) over the last year, supported by the QUB Business Alliance Fund and the QUB Collaborative Development Fund, this work has gathered pace. The first output from this collaboration was the excellent Apparatus of Impunity report in January 2015 detailing the limitations of existing mechanisms dealing with the past. The second major planned output is a 'Dealing with the Past' model implementation bill, a draft of which is being made available today.

Given the tight timetable for legislating on the past, the core group asked other expert colleagues to collaborate and a drafting committee has been working intently on the production of a Model Bill. The groups consists of Prof Kieran McEvoy, Prof Louise Mallinder, Dr Anna Bryson, Jeremy Hill, and CAJ's Brian Gormally, Gemma McKeown and Daniel Holder – most of whom we will hear from today.

This model bill is intended as a reference point for what a human rights compliant model for implementing the past-related aspects of the Stormont House Agreement might look like. It is a phenomenal piece of work and is a hugely valuable contribution to the work in this field of activists, academics and politicians in the months ahead. However, those involved in the partnership are keen to emphasise that this is a work in progress and are keen not just to present it in draft form today, but to hear your thoughts and feedback to help inform and shape it.

But, as we focus on the detail of the Bill, let us also be conscious that other initiatives in the past have unravelled and or not delivered in the way many of us would have hoped. It will be important for all of us to work together to ensure that this does not happen now and that we resist any unravelling or rollback of the present proposals. We must also be alive to the gaps or the undeveloped aspects of the Stormont House Agreement.

- When the Agreement talks about being 'victim-centred', how can that be made real?
- When the Agreement is gender blind, how can we ensure that the different experience of women in conflict is reflected in the delivery and outworking of that Agreement?
- And what about truth and justice for those who suffered torture and serious injury but appear to have vanished from the text as we moved from Haass-O'Sullivan to Stormont House?

All of that and more is ahead of us today and in the time ahead. So, let me finish this introduction and move straight to our first panel session on Historical Investigations Unit and Inquests.

HISTORICAL INVESTIGATIONS UNIT AND LEGACY INQUESTS

Patrick Corrigan
Amnesty International UK

Synopsis:
Patrick Corrigan focuses on the proposals for a new Historical Investigations Unit (HIU); sets out potential concerns around its scope, independence, timing and funding and outlines what is required to make it fully human rights compliant and fit for purpose.

Speech:
The fact that there are so many here is a reflection of the importance of the current moment and the work that awaits in the months ahead that we need to get right for dealing with the past here. Certainly the prize is great if we get it right, equally the price could be too terrible to contemplate if we get it wrong.

In September 2013, Amnesty International released a report titled 'Northern Ireland Time to Deal with the Past', which assessed the work of mechanisms put in place to investigate past human rights abuses by armed groups and violations by state actors committed during three decades of political violence in Northern Ireland. Alongside many others in civil society, our research concluded that the existing system for investigating the past was inherently deficient, failing too often to deliver truth and justice to victims and their families. There were failures in investigation: for example many people raised concerns with us that the Historical Enquiries Team (HET) investigations had become simple paper reviews lacking the required thoroughness. There were also legislative gaps that left some of the mechanisms without effective powers for thorough investigation and there were endemic delays across the board. Indeed the European Court of Human Rights, with respect to the inquest system, found that delays in investigations,

> *'seem … to make it possible for at least some agents of the State to benefit from virtual impunity as a result of the passage of time'.*

There were widespread issues concerning lack of independence, particularly around the handling and disclosure of intelligence. These repeated failures led to a loss of trust in the established mechanisms to deliver truth and justice for victims and families.

Disturbed by the lack of political will to address the past, we, alongside many others, called for a new comprehensive approach to the past that would be capable of fully and effectively investigating the abuses and violations committed by all sides. Building on the Haass-O'Sullivan talks, and after lengthy negotiations, the Stormont House Agreement (SHA) represents the possibility of a new approach to dealing with the past.

This presentation will focus on the Historical Investigations Unit (HIU), outlining the proposals and highlighting a number of concerns. Daniel Holder and Fiona Doherty discuss some of these and other concerns in further detail later in this panel session, with analysis and commentary on what any draft bill must include. Other colleagues throughout the day will speak to other aspects of the Agreement.

So what should we make of the Agreement with respect to the HIU? Firstly, the fact that we have an agreement at all should make us hopeful- we have a starting point. Secondly, and crucially, the Agreement states that any mechanism established to deal with the past should be "human rights compliant", from this important provision it is possible to build an effective investigatory mechanism. So what does it mean for an investigatory mechanism to be human rights complaint, what criteria should we be using to assess any legislation that results from the Stormont House Agreement?

For an investigation to be compliant with human rights standards they must be:

- Independent and impartial: The persons responsible for carrying out the investigation must be independent from those implicated in the events.
- Prompt: this might seem strange given the time that has passed, but it is still imperative that the investigations proceed with reasonable speed.
- Thorough: wide-ranging and rigorous. The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions.
- Effective: investigations should be capable of establishing the circumstances of the case and identifying the person(s) responsible. Investigations should serve to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in cases involving state agents or bodies, to ensure their accountability.
- Complainants must be afforded effective access to the investigatory procedure. In cases involving killings, it is imperative that the next-of-kin of the victim be involved in the procedure.

However, and this needs to be emphasised, on the basis of the Stormont Agreement, there is work to do to deliver a mechanism that is truly robust, human rights compliant and can at last deliver for victims and their families.

Though absent in the detail of the Haass/O'Sullivan proposals, the SHA states that the Historical Investigations Unit (HIU) will be a new independent body to take forward investigations of outstanding cases from the HET, and the legacy work of the Police Ombudsman of Northern Ireland (PONI).

Following an investigation, a report will be produced in each case. In its criminal investigations the HIU will have full policing powers and with respect to cases from PONI, the HIU will have equivalent powers to that body. The HIU would be overseen by the Northern Ireland Policing Board (NIPB). It should aim to conclude its work in five years.

Key concerns: The opportunity to establish, after all this time, an effective, independent and thorough investigative mechanism capable of discharging the UKs human rights obligation is one that must be grabbed. However, there are certain issues in the Stormont House Agreement that need to be flagged and resolved during the drafting process.

There are a number of issues concerning the scope/ remit of the HIU. The Stormont House Agreement uses the term 'criminal investigations' in relation to new cases and in discussing the powers it will have. There is a risk that the HIU's remit may be interpreted too narrowly to focus solely on criminality. It is important that the HIU has a broader investigative function that reflects broader human rights obligations.

This means that as well as being capable of leading to the identification and punishment of the perpetrators the investigation must also be able to ensure that the full facts of a case under investigation are brought to light.

For example, cases concerning state involvement will need to be able to identify whether the state has breached its human rights obligations and acted unlawfully, not just the criminal culpability of an individual. This would also include identifying whether past investigations or prosecutorial decisions had prevented or obstructed an effective remedy. Indeed the ability of the Office of the Police Ombudsman to make wider findings of state culpability has been crucial to the effectiveness of its investigations.

Another example, in the case of Sean Dalton, who died in the so-called 'Good Samaritan's bombing', the Police Ombudsman found that the RUC failed to uphold Mr Dalton's right to life under article 2 of the ECHR. This does not concern individual criminal culpability, but is a crucial finding with respect to the state's failure to uphold human rights.

The second issue concerns which cases the HIU will investigate. The SHA stipulates that the HIU will take forward outstanding cases from the HET process and the legacy work of PONI. Families may apply to have a case investigated if there is new evidence that was not previously before the HET which is relevant to the identification and prosecution of the perpetrator. It is however important that this provision is not interpreted narrowly. The HIU must be able to re-investigate all cases where the previous investigation has been identified as flawed. For example, in light of the HMIC report, this would include all "state-involvement" cases. It must also be possible for families to request the HIU investigate their case, not only where there is new evidence, but where the family has identified flaws in the previous investigation. For example, a number of families we spoke to during our research raised concerns they had with the thoroughness of HET reviews and failures by the HET to thoroughly and diligently follow up lines of inquiry.

The SHA states that the HIU will take forward investigations "into outstanding Troubles-related deaths", leaving a striking omission with respect to cases of those who were seriously injured and those who were tortured of ill-treated.

The UK has a duty to investigate life-threatening attacks and torture or ill-treatment by both state and non-state actors. The HIU should be given the powers to determine that an investigation in such cases is appropriate and required, for example due to failures in past investigation. In addition, the suggestion in the Haass/O'Sullivan proposals that in cases where an individual or individuals have been killed, as well as the families of the deceased receiving individual reports, those who were injured should receive a second general report about the incident. This seems eminently sensible and could help a great many families if now enacted. In addition, it should also be possible for families whose relative died as an indirect result of the conflict (for example, following injuries sustained at an earlier incident) to request that that their case be investigated by the HIU.

With respect to the process of investigations, I want to highlight two key areas. The first concerns independence. The importance of the HIU being an independent body cannot be emphasised enough. Given the lack of independence of the HET and past problems at the PONI, serious thought needs to be given to ensuring those involved in investigation are independent. This includes – and is crucial – with respect to those handling intelligence.

Indeed the HMIC raised this issue as a key failing with respect to the HET and highlighted,

> *'the importance of an independent procedure for guaranteeing all relevant intelligence in every case is transmitted for the purposes of review, to ensure compliance with article 2'.*

The process of appointing the individual who will run the HIU must also be independent, open and transparent. It is crucial that people have trust in the mechanism and without demonstrable and perceived independence of those leading and working at the HIU, this will be impossible to achieve.

A second area concerns disclosure. The Agreement states that the UK government will make full disclosure to the HIU. Importantly this obligation is not subject to an express national security caveat – save ensuring that there can be no onward disclosure of information by the HIU that would no individuals are at risk and the more ambiguous 'to keep people safe and secure'.

Given the historical failures to consistently ensure full disclosure of sensitive material to investigations, it is important that the draft legislation has express provisions placing an obligation on all public authorities (including the security services) to provide material and that it would be an offence to fail to disclose or to conceal or destroy relevant documents.

Intelligence is hugely important in a wide number of cases that will be under review by the HIU, not least in cases involving informers. For the HIU to carry out an effective and thorough investigation, it must have access to all the relevant material, even where this is highly sensitive and classified information. It addition, the final decision as to what may be disclosed (i.e. what may be in the final report) should rest with the HIU as an independent body.

A few final points are worth a mention. It is worth highlighting the importance of recognising linkages between cases. Killings often did not happen in isolation, and in some cases it is only through links between cases that the full facts of a case can be accurately established and questions concerning patterns of incidences and systemic issues that arise can be answered. Take, for example, the Glenanne series of cases which relates to a large number of incidents that took place between July 1972 and June 1978, in the area around the towns of Armagh, Portadown and Dungannon. It is important that where the HIU identify links between cases, reports reflect this in thematic sections.

Two further issues are funding and timing. There should be explicit guarantees of sufficient resources for the HIU to carry out its work effectively and promptly. The £150 million pledged by UK government may well be insufficient. If the money runs out after five years – an arbitrary date by which the HIU is to aim to conclude its work – what is to happen with cases which have not been concluded? Neither unrealistic timescales nor budgets can be allowed to obstruct this work.

Finally, we must not forget the Irish Government. The SHA states that arrangements will be put in place to ensure cooperation of relevant Irish authorities, including where required, via legislation. We must ensure that we pay close attention to the processes put in place in the Republic of Ireland to ensure that the HIU can carry out its work effectively and investigate the cross-border elements that feature in so many cases.

There are also longstanding allegations that the Irish authorities turned a blind eye to members of republican groups fleeing – after attacks had been carried out in Northern Ireland – back to the Republic of Ireland where they lived, and allegations concerning collusion by An Garda Síochána which may form part of an investigation in particular cases.

It is therefore important that in relevant cases the HIU has unimpeded access to relevant material held by public authorities in the Republic of Ireland and there is close cooperation (as stated in the SHA) between criminal investigation agencies in the two jurisdictions in securing evidence for possible use in court proceedings. Failure to do so would hinder investigations and the potential for truth and justice for a large number of families.

In conclusion, Victims and families have waited too long for effective investigatory mechanisms, and the UK government continues to fail to discharge its obligations to investigate under article 2. Therefore the opportunity presented by the Stormont House Agreement must be grasped, and crucially we need politicians to have the will to ensure that the most effective and robust mechanisms can be put in place to give families the potential for truth and justice after so many years. That is the challenge for them, but also for us as we advise, guide, lobby and campaign to ensure accountability for our shared past.

Daniel Holder
Deputy Director, CAJ

Synopsis:
Daniel presents the proposals from the drafting team for the Historical Investigations Unit (HIU), with a focus on the three main themes of its investigative remit, independence and powers (including disclosure).

Speech:
My input today focuses on the work on the proposals and issues dealt with by the drafting group in relation to the Historical Investigations Unit (HIU). Given the constraints of time, I will focus on the following three key themes:

1. **Investigative Remit of the HIU**
2. **Independence of the HIU**
3. **Disclosure and Police Powers of the HIU**

The approach we have taken as a drafting group is that, rather than promoting an alternative framework we have stuck to the framework of the SHA. For the HIU in particular we have also drawn upon the lessons from *'The Apparatus of impunity'* report. This report was the first product of the collaborative Business Alliance funded project between CAJ and the Queens University School of Law. What the report does is deal in detail with the limitations of the existing 'package of measures' for dealing with the past the UK adopted following European Court of Human Rights Judgements from 2001-2003. This enables us to seek to frame the legislation in a manner which avoids the limitations that have effectively led to the existing system becoming untenable. We are also very conscious about benchmarking our own legislation, as well as that produced in the official process, against the positive aspects of what we already have, such as the degree of independence and powers of the Police Ombudsman. We need to remain vigilant to the risk that legislation could be used to roll back existing gains. Should this current process ironically produce an HIU less independent and with fewer powers than the Ombudsman's currently enjoys then it will have failed.

In terms of timing, this draft model bill is timed to run parallel to the official process the Northern Ireland Office and Department of Justice are running that will be out for consultation in summer 2015. The legislation is envisaged to be introduced into the UK Parliament in Westminster in the autumn 2015. Officials have been as hard at work as we have in working through the detail of what will be required it is heartening to see so many policy makers here today.

Worryingly last week the Secretary of State, Theresa Villiers, indicated that the SHA dealing with the past institutions budget may be dependent on the implementation of welfare reform, even though the two are not linked in the Stormont House Agreement. We seriously hope this is not the case. Victims have waited long enough. Effective and independent investigations are in any case an international obligation. Also it seems profoundly wrong to use the bereaved as leverage in a to seek implementation of a matter that is entirely unrelated except insofar as many of the recipients of social security benefits who will be detrimentally impacted on by the cuts, will also be victims of the conflict.

Structure of Model Bill
The model implementation bill first contains a section dealing with overarching matters. This includes listing the founding principles in the SHA, one of which is 'human rights compliance.' Our bill links that to Convention rights and other international human rights standards, which would include the framework of UN Security Council Resolution 1325 on, women peace and security. Elsewhere in sections of the bill, in order to make the founding principles meaningful in practice, we include provision in relevant parts of the legislation that the institutions pay regard to them in conducting their work. The first section also includes interpretation clauses on key concepts such as 'Troubles-related death'.

The next sections of our Model Bill cover the HIU and the Independent Commission on Information Retrieval (ICIR) respectively. Following the conference will also add sections into our bill to provide for the Implementation and Reconciliation Group (IRG) and the Oral History Archive (OHA). We believe that both should go into the legislation, we do not know at this stage what the official perspective is on this.

We are not minded to include legacy inquests in the SHA legislation. It would not be within the scope of the bill to provide the broad overhaul coronial law needs in general. We are of the view that most of the problems which currently beset legacy inquests are problems of disclosure and resourcing that do not require legislation to fix. We are also cognisant that going into the SHA there were those, who wanted to stop legacy inquests altogether. This position did not prevail in the SHA which not only committed to the continuation of legacy inquests but committed to the Northern Ireland Executive to appropriate steps to ensure inquests were Article 2

compliant. Whilst the argument to discontinue legacy inquests was lost I doubt this agenda has entirely gone away and having inquests within the ambit of the bill does risk that provisions will during its passage through Parliament be added with a view to rolling them back.

We are also vigilant about the contents of Agreements being 'lost in translation' into the legislation, as has happened at other times during the peace process. The Patten Report is often the most often cited example as the legislation first produced to implement it looked little like what the Commission had recommended. There are also direct examples of provisions explicitly in the Agreements dropping off when the treaty becomes legislation. Take Strand 1 of the Belfast/ Good Friday Agreement which provided for:

> An **Equality Commission to monitor a statutory obligation to promote** equality of opportunity in specified areas **and parity of esteem between the two main communities...**

The implementation legislation, the Northern Ireland Act 1998, however enacted Equality Commission overseen statutory duties to:

- s75(1) promote equality of opportunity;
- s75(2) promote 'good relations' between all ethnic groups.

The second limb of the duty had been envisaged as the duty for equality of treatment for the identity and ethos of the two main communities. This disappeared and instead a duty to promote 'good relations' not mentioned anywhere in the treaty became law. We live with the consequences of that today with issues such as flags which the *equality of treatment* duty should have at least provided a framework for 16 years ago still being heavily contested in the SHA negotiations.

This is not an entirely isolated example. In general our bill drafting project is a recognition of the complexity of putting meat on the SHA bone as to the detail of the dealing with the past institutions. However, we are also conscious of the need to benchmark what is in the SHA to mitigate against it being rolled back.

Finally, whilst the SHA is not an international treaty the Good Friday/ Belfast Agreement is and it explicitly guarantees the 'incorporation of the EHCR into Northern Ireland law.' The Conservative Government's plans to scrap the Human Rights Act 1998 and instead legislate for a British Bill of Rights that does not incorporate the ECHR would not only constitute a flagrant breach of the Belfast/Good Friday Agreement but would also have profound implications in rendering ineffective our mechanisms on dealing with the past. If public authorities are not required to act compatibly with Convention rights or there are no domesticated Article 2 or Article 3 investigative duties on the state the game changes. This also directly conflicts with the SHA principle that the mechanisms will be human rights compliant.

Investigative Remit: HIU investigative function

The first substantive issue I will deal with is the scope of the investigative function of the HIU. We have set this out on the face of our draft model bill as follows:

> Clause 9(3) The purpose of an investigation must be to
>
> (a) establish as many as possible of the relevant facts;
> (b) identify, or facilitate the identification of, the perpetrators;
> (c) establish whether any relevant action taken by a public authority was lawful (including, in particular, whether any deliberate use of force was justified in the circumstances);
> (d) establish whether any action of a perpetrator was carried out with the knowledge or encouragement of, or in collusion with, a public authority;
> (e) obtain and preserve evidence;
> (f) identify material which is or may be relevant to motive (including, in particular, racial, religious or other sectarian motive);
> (g) identify acts (including omissions; and including decisions taken be previous investigators or other public authorities) that may have prevented the death from being investigated or a perpetrator being identified or charged; and
> (h) take any other action that the HIU thinks appropriate.

The reason for codifying the purpose of an investigation is both to address concerns that the investigative function could be interpreted narrowly and also make clear what can be expected of an investigation to prevent any unnecessary ambiguity. The SHA is clear that investigations must be ECHR Article 2 compliant and what we have done is develop the above list precisely from the requirements of ECHR case law as to what Article 2 compliant investigations can be required to entail. Further detail is in the explanatory notes that go with the model bill.

As it is mentioned in ECHR case law the function includes examining questions of collusion. The HIU will need a robust working definition of the concept and the drafting group have included a provision in the bill that will oblige them to develop one, in line with the definitions previously developed by Justice Cory in his collusion inquiries and Lord Stevens in his police investigations. The second element of the HIU investigative remit the bill covers is its caseload, namely what it be allowed to investigate and what is outside its remit? The SHA explicitly refers to 'Troubles- related deaths'.

We have drawn on existing legislation such as the Victims and Survivors (Northern Ireland) Order 2006, which defines a 'conflict-related incident' as;

> ...an incident appearing to the Commission [for Victims and Survivors] to be a violent incident occurring in or after 1966 in connection with the affairs of Northern Ireland.

Our bill adopts the same start date and refers to deaths which occurred in connection with the conflict in Northern Ireland. It is important to note that there is no end cut-off date in SHA. That said it is very clear that the bulk of the HIU case load will be those cases that run until 1998 as the SHA provides that HIU's initial case list will comprise of 'outstanding' cases from the PSNI Historical Enquiries Team (HET) and the Police Ombudsman's legacy branch – both of which only have dealt with cases that occurred in or before 1998. In the SHA there is also however a provision whereby families whose cases are not on that initial list can seek an HIU investigation on the basis of new evidence. In order to ensure the SHA principle of human rights compliance this should include cases whose previous investigations have been flawed, in the case of the HET this should not be restricted to the 'Royal Military Police' (RMP) cases. The HM Inspector of Constabulary held that the HET's approach to all state involvement cases had been flawed.

In relation to the question of which HET cases are 'outstanding' it is important to note that the SHA states that it is *outstanding HET cases* and not cases which have not been completed by the PSNI's new Legacy Investigations Branch (LIB) which superseded it when the HET was stood down in December 2014. The LIB is not Article 2 compliant in relation to independence requirements. It is not just CAJ who have taken that position, the Joint Committee on Human Rights at Westminster have also been clear on this. It would therefore be problematic if the LIB was able to close off state involvement cases before they could be independently investigated by the HIU.

Our bill provides for legislative change that if the HIU is investigating a case then another body, like the Police Ombudsman, is precluded from investigating the same matter. We are keen to keep an eye to ensure that the legislation is not used to otherwise roll back the broader powers of investigation into grave or exceptional matters of the Police Ombudsman, and this seems the best formulation to ensure this. The SHA is also clear that the HIU should not affect the holding of inquests. The SHA states that the remit of the HIU is restricted to 'troubles related deaths'. However there is a problem here regarding this leaving a void in the state being able to comply with its human rights commitments under Articles 2 and 3. There are other instances where the same type of human rights obligations to independently and effectively investigate matters will apply to human rights breaches which are not deaths. This can include attempted murders, torture or other incidents inflicting very serious injuries. As things stand if such incidents involved the police they could still be investigated by the Police Ombudsman and if there was no state involvement at all they could be investigated by the PSNI. For all other cases with a level of state involvement however whether involving the army or security service directly, or through informants, there is currently a void. Such cases cannot be dealt with by the Police Ombudsman, as they are not about the police, and cannot be dealt with in an ECHR compliant way by the LIB or other units of the PSNI as they lack the requisite independence. So there seem to be two options there.

One is that you, in order to meet these obligations you set up an entirely different body with exactly the same powers as the HIU. This would be able to investigate other Article 2 and 3 violations the HIU cannot, when requested by families or otherwise when the evidence compels such investigations. The second option is that you extend the remit of the HIU to also cover such investigating violations which are likely to be a much more limited number of cases in relation to its overall remit. This latter option, which seems by far the more practical, is what we have provided for in the model bill.

Questions have been raised generally about investigations into injuries in general which are not explicitly provided for in the SHA. What we have done is replicate a provision provided for in the Haass-O'Sullivan Proposed Agreement that when the HIU produces a family report into a death it has investigated it also provides a copy of the report to any person injured in the same incident.

Also what we have considered is why not have a review mechanism whereby in its Annual Reports to the Policing Board, which is the oversight mechanism, the HIU itself can report can make recommendations for consideration, in light of the experience of having worked for a period of time, whether that would be feasible or not to extend its remit to cover those injuries (that would not constitute Article 3 breaches, and hence not otherwise be covered). We have included that within the model bill.

Independence of the HIU

Clearly, appointing a director who has the power, skills and suitable independence from all protagonists and parties, is going to be absolutely crucial to the independence of the HIU. We understand that a decision on a political level has already been taken that it will be the Office of the First Minister and deputy First Minister in consultation with the Department of Justice who will appoint the director. What we have included in the model bill, and if we could tease this out more we would be interesting to hear people's views, is at least some level of job criteria

for the appointment is on the face of the legislation to help try and ensure that the right person gets in the job.

We have also provided for the HIU Director to act as a 'Corporation Sole'. This is the model in place for the Police Ombudsman and indeed the Director of Public Prosecutions, whereby the powers of the body are vested in the individual. That seems to be the best model for preventing external interference with the role as it provides the greatest degree of independence possible from a sponsor department.

Another thing that is always crucial to prevent the independence of a body being compromised is control over the money and the budget. What we have looked at is a provision in the legislation that would maybe be equivalent to the way that judges salaries are provided for. This is namely that payments will come from the UK treasury under the consolidated fund. Funding for legacy investigations is an international obligation which falls to the state party rather than something which should be devolved down to a local institution.

We have also looked at the question of ensuring independence across the full investigative function. To date within the PSNI there has been an interpretation that somehow the disclosure duty is not part of the full investigative function, but of course it is. If you are responsible for sourcing documents, deciding which ones of them are relevant and will be passed on, for altering their content through redactions, you are engaged in the investigative process. At the moment there are very serious issues in relation to disclosure to the coroner and in relation to the PSNI's Legacy Support Unit (LSU). There have been patterns of lengthy delays and over redaction of documents and questions around some key personnel having conflicts of interest due to former RUC service.

We are of the view that the HIU should have its own disclosure unit rather than have to rely on units like the LSU. The Police Ombudsman's office does have its own confidential unit so it is not an impossible model. The HIU disclosure unit should be staffed with people with a particular disclosure and archive skills that differs from the investigator skill set.

In terms of staffing we have included, both in the name of equality but also ensuring a variety of perspectives (which is what you do when you have equality and diversity) statutory duties on the HIU, similar to those on the Parade's Commission and Human Rights Commission to try and make the composition of the bodies reflective of the whole community. A lot of people will be sourced from outside of Northern Ireland but we have also included a specific reference to trying to ensure a gender balance within that as you could otherwise risk a situation whereby virtually the entire staff of the HIU investigative team are male.

As well as the equality and diversity issue we have put in strict provisions for ensuring the prevention of conflicts of interest with investigators. We have followed the type of model that can be found in UK police forces. The Hillsborough Inquiry is an example where no one with an association with South Yorkshire and Merseyside police forces, was allowed to be employed as an investigator within the mechanism. We have also followed the position of the Police Ombudsman in relation to legacy investigation where there is a policy whereby former members of the RUC are not in normal circumstances allowed to be employed in that capacity in Article 2 work.

Firstly we have a provision whereby those involved in the investigation on a case-by-case basis cannot have any connection with the persons (which also refers to legal persons such as an institution), that will be the focus of the investigation. Again the term investigation here refers to the full investigative function:

> 'The HIU must be administered in a way that ensures that persons carrying out or involved in an investigation have no connection with persons whose behaviour is being investigated or might require to be investigated.'

Secondly we have taken the position that conflicts of interest cannot be addressed unless there is a blanket ban on former members of the RUC and broader security forces, in being employed within the HIU. Anything less would actually be to deliver a mechanism that is less independent than what we already have within the function of the Police Ombudsman's Office. Former paramilitaries are also of course ineligible.

I am conscious there are others who will oppose this approach either for reasons of not restricting employment opportunities or wanting a particular perspective to emerge or more for practical reasons of widening the pool of available investigators. Their view is likely to be that the best alternative would be to have a mixed staffing approach whereby you allow former members of the RUC and others to be involved in the HIU but you firewall them away from investigations which are state involvement cases. We have not taken that position for a number of reasons not least as there is living proof that that simply does not work. We cannot ignore the HET experience whereby ultimately it was work related to independent teams which did the damage. Also there is a very key practical question here, particularly when you are dealing with cases that involved informants or other agents of the state. If you are trying to firewall different teams into cases which have state involvement and non-state involvement, how do you tell the difference? At what point do you tell the difference? Who tells the difference? It's only really when you are really into the investigation or getting towards the end of it can you be more certain that about there not being

an agent involved in the case or that there was no other state culpability in the death or subsequent investigation. Therefore at a practical level we do not think that would work which is the reason we have brought that provision in.

Powers of the HIU

The last topic I will touch on is the powers of the HIU, firstly the policing type powers and secondly the units powers of disclosure.

The text of the SHA explicitly differentiates between the policing powers available to the HIU in cases that are transferred from the Police Ombudsman. In this instance the HIU is to have the same powers as the Ombudsman would have had. In all other cases the SHA provides that the HIU will exercise 'full police powers'. We understand the politics behind all this is likely to be trying to ensure that the HIU does not have additional powers within Ombudsman cases which the Ombudsman did not have. However, in practice, this difference is immaterial. There is very little difference Police Ombudsman staff have powers of constable and would have pretty much the full suite of PACE (Police and Criminal Evidence Order) powers that any police investigators would need. In fact, the only powers that wouldn't be granted to members of the Ombudsman, so far as I understand, are ones that investigators really would not need.

In terms of how that commitment in the agreement translates into legislation, there is not really any difference. Where there is a difference, however, is in that the Ombudsman does have different powers that are not explicitly vested within police service. An example would be the Ombudsman's powers to issue public statements in relation to their investigations. The SHA says we have to replicate the Ombudsman's powers in Ombudsman transferred cases then clearly that power to issue public statements is going to have to be replicated into the SHA legislation for the HIU. It seems to us, however, to fly in the face of the provision in the Agreement around fairness and equity that the HIU would only be able to issue public statements in relation to cases transferred from the Ombudsman. Our consideration is that there should only be a permissive power for the HIU to so across all of its caseload. Disclosure is a massive issue and there are two limbs to it. Limb number one is what comes into the HIU and limb two is what goes out of the HIU. It is extremely welcome on the face of the SHA that the UK government has given a very clear and entirely unequivocal commitment that it will make 'full disclosure' to the HIU. That is a very significant step forward and a very significant victory. There is no 'national security' caveat attached to this. We have been very critical of national security caveats in the past, given it is a concept that is not defined and therefore lacks requisite legal certainty and can be used to obstruct the disclosure of information for practically any purpose.

The next question is how do you translate that very welcome and unequivocal commitment into legislation? There are models to do this. We have looked at the Police Ombudsman's powers, but we have also looked at the Criminal Cases Review Commission that has a very strong set of powers. What is needed are legislative powers that compel the disclosure of records from all public authorities to the HIU, with sanctions for either not doing so or for concealing information. Provision for such sanctions is not uncommon.

When CAJ and other NGO's met with the PSNI command team, including the Chief Constable, in January 2015 on legacy issues we discussed the issue of disclosure. There has been a Police view that there are competing legislative obligations on them which conflict with their duties to disclose. This is not a view we necessarily share, but it in practice means that public authorities can argue that, for example, whilst the Ombudsman has clear powers to require the disclosure of documents, there are other pieces of legislation, anything from the Official Secrets Act through to the Data Protection Act, that may give contrary indications that certain things should not be disclosed. What the Chief Constable said to us was that a much better scenario would be whereby legislation makes it very clear that those particular provisions that limit disclosure are disapplied in relation to disclosure to the HIU. Therefore there would be no argument that there is competing legislation on the PSNI or other bodies not to disclose documents. That is not something that is unusual. The Criminal Cases Review Commission has provisions whereby obligations of secrecy and confidentiality do not apply in relation to disclosure to them. We have replicated that in our model bill. We have made it more explicit about which type of statutes, including the Official Secrets Act and various others, this should apply to.

There is also the issue of disclosure from the Irish Authorities to the HIU. Obviously this is Westminster legislation and clearly nothing can go in that binds the authorities in Dublin. What we have done however is looked at putting in a duty on the Secretary of State to make regulations that would be relevant to this in cooperation with the Irish Government. We have referenced this in the context of existing treaties on Police and Criminal Justice cooperation to ensure a process is put in place in order to regulate disclosure.

The second issue is then disclosure from the HIU. This is not unqualified. Within the SHA there is a provision whereby the HIU should not publish or otherwise disclose information which would put an individual's life at risk

and hence conflicts with duties to keep people safe. You can usually prevent that by excluding particular parts of information before publication or by using ciphers or code names rather than the names of individuals. It is very welcome that that this is really the only restriction on disclosure and that there is no 'national security' caveat on onward SHA disclosure. We need to keep a close eye that nothing creeps back in which resembles one.

There are already provisions on the Chief Constable, the Police Ombudsman and others that explicitly use the language of not disclosing information where it would put an individual in danger. It is these provisions we have replicated for the HIU within our model bill. We do not intend the restrictions on disclosure to apply to disclosure from the HIU to the Public Prosecution Service (PPS). We think that the days of information being withheld from prosecutors should be over. The PPS should see everything which does not mean it is disclosed into the public domain. They have a duty upon themselves to discern what should be made public. The disclosure we are referring to from the HIU is therefore are its other functions, namely reports to families, public statements, annual reports and anything else that the HIU does. We think it is crucial that the power, in terms of making these redactions or restricting disclosure, is vested in the HIU itself. The Secretary of State or any other external body redacting HIU work would have a conflict of interest and should not be able to interfere in that process. In order to do that we think there should be a unit within the HIU of suitably trained persons who can conduct those types of risk assessments. Thereby not rendering the HIU reliant on an external security body that may be making that determination on its own personnel.

This piece is a quick canter through a very detailed set of provisions we have compiled. Please give them your consideration and relay any feedback to us. As has been said, the devil will certainly be in the detail.

Fiona Doherty QC

Synopsis:

Fiona outlines the proposals in the Stormont House Agreement in relation to inquests as laid out in paragraph 31. Any legislation around inquests does not need to start from scratch and Fiona details the case for legislative reform on the topic of legacy inquests.

Speech:

Good morning everyone, I'd like to first of all thank the organisers for asking me to speak at this important and timely event. I've been asked to speak on implementing the Stormont House Agreement (SHA) as it relates to legacy inquests. In my view, it's a freestanding and discreet issue. For the reasons mentioned previously by Daniel Holder and because it relates to the application of a currently available mechanism it need not require the authorities to legislate from scratch in the same way as some of the other issues do.

There is not time to engage in a comprehensive discussion of the failings of the legislation that governs the inquests, or indeed the many questions that have been raised over the years regarding its adequacy and the need for reform. The bottom line of what I'm going to say to you today is that the implementation of the SHA in relation to legacy inquests should require very little by way of legislation. The extensive litigation that has taken place in recent years means that the law on inquest procedure and issues such as disclosure is now fairly clear.

The main current problem is the delay in getting inquests up and running. While delay has been endemic for years, it seems that the reason behind the current delays is different from historic causes, properly analysed in fact, the real issue is now one of resources.

Before I get into that it's perhaps useful to reflect upon why the inquest system has become inextricably linked with families' attempts to find out what happened to deceased loved ones during the conflict. Primarily, it is because inquests were and really still are the only public forum for investigation where a family can become directly involved

and have at least some measure of control over their input. A family can instruct their own legal representatives who, now, can get access to documents, can question witnesses and make submissions to the court about how a case should run and what the outcome should be.

Of course until relatively recently there were significant and, as it turns out, unlawful restrictions on the scope of inquests, which is the focus of the investigation, disclosure of documents, the witnesses who could be called and family involvement in inquests. Those problems have largely been resolved as a result of litigation over the last fifteen years or so. Now all potentially relevant material must be disclosed to the coroners by the police and all other public authorities, and the family of the deceased are entitled to see that material before the inquest begins, subject only to public interest immunity and some human rights considerations.

In addition, the scope of inquests has broadened, verdicts are now more detailed, persons suspected of causing death are now compellable witnesses and legal aid is available for representation at inquests.

Things have improved significantly in relation to what an inquest can do and in relation to the effectiveness of a procedure once an inquest gets up and running. However, those improvements have been a long time coming and the efforts made to get them have been a large part of the cause of historic delay in the system. At the minute the coroner's service has 53 legacy inquests on its books. Those relate to 86 deaths and they are cases from two different sources.

The first is where inquests were never held, and those range in vintage from eight to ten years, to around twenty to twenty-five years. So not all of them are, strictly speaking, conflict related. They are, however, all cases where a full Article 2 compliant inquest is required.

The second source of cases is the attorney general. He has a power, under Section 14 of The Coroner's Act (NI) 1959 to direct a coroner to hold an inquest if he considers it's advisable to do so. That is regardless of whether an inquest was held previously. The attorney decides to direct fresh inquests for a number of reasons, such as the discovery of significant new material or failure to properly investigate the evidence in an earlier inquest. The attorney has directed fresh inquests in 27 legacy cases involving 53 deaths. That includes many multiple death cases such as the 11 deaths in Ballymurphy in August 1971 and the ten deaths at Kingsmill in 1976. Of those I think only one was directed by the pre-devolution Attorney General, Baroness Scotland and that was the inquest into the death of Daniel Heggarty during Operation Motorman in Derry in 1972. So from the point of view of the cases directed by the attorney general, most of that has occurred in the last five years or so with the appointment of the Attorney John Larkin in 2010.

There is a single paragraph in the SHA, paragraph 31, which outlines that the problems with inquests have been identified in recent domestic and European judgements which show that the process is neither sufficiently effective, nor taking place within an acceptable timeframe. In order to see precisely what the problems are I'm going to explore with you briefly the recent case law and although the cases on which the agreement draws are not identified, I suspect what we are talking about is three recent European Court of Human Rights judgements and two judgements in the courts here.

Taking the European judgements first, they are Hemsworth v UK, a judgement in July 2013 relating to a death in 1997, McCaughey v UK, a judgement in July 2013 relating to two deaths in 1990 and McDonnell v UK a judgement in December 2014 relating to a death in prison in 1996. Those three cases all in the domestic legal system were legacy inquests, although McCaughey was really the only truly conflict related death. Hemsworth related to an assault by police and McDonnell, as I've said, was a death in prison. They were included as legacy cases because they fell within that class of case that required a full Article 2 compliant investigation and had been adjourned pending the clarification of the law on inquests through litigation. Inquests have now been held in all three cases and the outcome in the McCaughey case is under challenge. So they are the most recent European judgements relating to Northern Ireland in Article 2 'The Right to Life'.

They build on the four landmark cases in which judgement was delivered in 2001; CAJ took two of those cases and also on the McShane and Finucane cases that followed in 2002 and 2003. In each of the three recent cases, for legal reasons, the only issue decided upon by the European Court of Human Rights was investigative delay. In each case the court found that the inquest process itself was not structurally capable at the relevant time of providing the applicants with access to an effective investigation which would commence promptly and be conducted with due expedition. That conclusion was reached primarily because of the fact that the inquests had been adjourned for long periods of time to allow for the litigation I have already mentioned to allow procedures in the inquest system.

That litigation involved a series of different cases commenced in and around the mid to late 1990s, and continued through the incorporation of the European Convention of Human Rights in The Human Rights Act in 2000 and the landmark European decisions in 2001, 2002, 2003 up to the Supreme Court decision on McCaughey in 2011. The litigation related to various issues including the police's duty of disclosure to the coroner, the application of The Human Rights Act, inquests relating to deaths that took place before it came

into force, the duty of disclosure to the next of kin and the scope of the inquest. As I said, those issues now, as a result of this litigation, have been largely resolved.

The recent domestic judgements then, moving on to those it seems to me can only relate to two cases, both of which involve the inquest touching the death of Pearse Jordan and also include five other cases that relate to inquests that have not yet taken place. In four of those cases, the inquests are yet to be held and the Jordan inquest is due to start afresh as a result of a legal challenge. The judicial review taken solely by the family of Pearse Jordan was an extremely complex and extensive legal challenge in relation to the manner in which the inquest had been run. It dealt with a large number of issues, most of which related to the decisions by the particular coroner holding that inquest. In that context a lot of issues were clarified as well concerning duties of disclosure on all public authorities, not only the police, and the role of counsel to the Coroner.

For these purposes however, I'm going to focus on one area of the case that does require legislation, in my view, and that relates to the means by which a jury makes its decision on an inquest. The 1959 Coroners Act requires that when a jury is required to hear an inquest, and that doesn't happen in all cases, the jury must reach a unanimous decision. So, that means that all members of the jury must agree on all the findings reached in order for those to be findings of the inquest. Now, that's not the way juries operate in other types of cases in which a majority verdict can be accepted. What the requirement for unanimity means in practice is that the failure for one juror to agree to proposed findings of all the other jurors, could lead to the jury's failure to deliver comprehensive findings and even to the collapse of the inquest.

Although the Jordan inquest did not collapse, the jury could agree on limited findings only, and the Coroner's decision to accept that verdict rather than discharge the jury is one of the reasons why the inquest will need to be rerun. That issue can be very simply dealt with by amending Section 31 of The Coroners Act, to allow for an inquest jury to reach majority verdict. Of course, the Jordan case raised more wide ranging issues about whether the jury should be hearing these types of cases at all, due to the issues involved, the risk of bias and the risk of a perverse verdict.

However, that isn't really an issue that can be tackled by legislation. Allowing for a majority verdict however means that where a jury does hear a case, a perverse verdict dictated by one or two rogue jurors is much less likely. The Jordan case also, again, raised the issue of delay, as I've said; it eventually joined with five other cases being taken on that issue. Those were cases where the inquest was yet to take place and ranged from an army shooting to collusion cases and the deaths ranged from deaths in 1991 to 2007.

The idea of commencing a spread of cases like that was to try to show the endemic nature of the delay and to attempt to force action on the part of the relevant authorities. I'm afraid to say it hasn't worked yet and more cases are in the pipeline. Of those six cases, in all but the Jordan case, the Department of Justice accepted that there had been delay in holding the inquests. The judge found that there had, in addition been delay since 2001, since the European Judgement, in holding the Jordan inquest and he awarded damages in all cases, for breach of the Article 2 rights and specifically the Article 2 right to a prompt investigation. Now there is an appeal in the Jordan case against the award of damages only. However, the department did not appeal the awards in the other cases. So again, delay was found to be a problem.

The settlement of those cases meant that the reasons for delay weren't fully explored in court nor decided upon in court. The two main reasons found by the judge for the delay in Jordan, where a finding was made, were again the deficiencies in the system which required prolonged litigation and the failure of the police to provide documents to the family of the deceased. One of the issues arising from that was the coroner's power to compel the production of documents. The 2009 Coroners and Justice Act provides an amendment to The Coroner's Act here which gives the Coroners power to order the production of material and sets out sanctions for failure to comply. Those provisions are not yet in force.

So that is what can be gleaned from the case law, which the SHA tells us was the source of the paragraph which indicates that the problems need to be addressed. The historic reasons for delay were therefore due to litigation aimed at clarifying the law relating to inquests and the reluctance or refusal of the PSNI to provide documents by way of disclosure. While that may have been the picture historically, it seems to me that the picture has changed somewhat. Anyone, and I can see a few people here, who has spent any time in the coroner's court, will know that the same issues arise on an almost daily basis in relation to the legacy inquests which have yet to be heard, and there are two issues.

The first is provision of material to the coroner and parties to the inquest, including the next of kin, mainly by the police but also by other parties including, for example, the Ministry of Defence. There is significant delay in the provision of that material. Now, delay in the provision of material and delay in disclosure isn't a new issue, but the reasons provided for it appear to have changed. There is no longer any serious doubt

about what, legally, has to be provided. However, PSNI representatives now regularly attend inquest preliminary hearings and indicate that they cannot and will not provide timescales for the delivery of material to the Coroner. Even when timescales are set, they are often missed. They say they are overwhelmed and cannot work any faster.

The second issue is that even if that problem is resolved, there are problems at the coroners end. At present there are three full-time coroners. The senior Coroner is retiring in September 2015 and another of the coroners is sadly absent due to medical grounds at the present time. It doesn't appear that any contingency plans exist. Three inquests I'm involved in that were due to be heard this term have been cancelled. There has been no recruitment exercise to replace the senior Coroner and any replacement could not now be in post when he retires. There is some talk about bringing in judges to hear some of the cases, and I know that happened for one case recently, but no information has been available on whether there are concrete plans to deal with this issue and, if so, what they are.

If and when the disclosure issue is dealt with as material starts to flow in, there will need to be a corresponding increase at the coroners end, both in coroners and in support staff to get the cases heard in a timely manner.

So delays in the inquest system were flagged up publically by the European Court of Human Rights in 2001. We still have endemic delay 15 years later. The Attorney General's intervention and direction of inquests has added to the caseload but he has been in office and adding to the caseload since 2010, five years ago.

The reasons for delay, therefore, may have changed, but they have been well flagged up and they have not been addressed properly if at all. In my view, the current issues are issues of resources. The historical reasons for the delay have since been resolved and there is therefore no reason why the inquest system here cannot provide an Article 2 compliant means of investigating deaths, but unless steps are taken and taken soon, the Lord Chief Justice's suggestion that we could still be hearing these cases in 2040, twenty-five years from now, is a real possibility.

As we all know, as time passes and we get further from the date of death, memories fade, evidence may be lost and witnesses are lost. Perhaps most importantly, we have family members who have lived with unresolved questions and often the burden of injustice for many, many years, who won't live to see if their questions will be answered.

INDEPENDENT COMMISSION ON INFORMATION RETRIEVAL

Professor Kieran McEvoy
School of Law, Queen's University Belfast

Synopsis:
Kieran takes the audience and speakers through the many mechanisms and talks that have taken place since 1998 such as Eames-Bradley and Haass-O'Sullivan and how different many of these look compared to the Stormont House Agreement. Kieran also looks at how the work on themes have moved from once belonging to a mechanism similar to the ICIR to now being housed in the Implementation and Reconciliation Group.

Speech:
This presentation focuses on the genealogy of the ICIR, the reason for that being that details are pretty sparse, if you look at the Stormont House Agreement and I suppose, we in the drafting committee, in our version of the Model Implementation Bill as well as I suspect the civil servants who are doing the real work, what do you do? You have to go back in the historical context and the antecedence of where we got to.

Before we get into some of that historical context, a couple of marinating points. I think all of us who have been involved in this work have learnt from past experience is not to take our eyes off the ball in terms of the space between the deal and the legislation relating to the deal. I think some of us, historically got caught out for example with regard to what was in the Patten report and what ended up in the first iteration of the policing legislation, and we were keen not to make that mistake again. In working though our version, it's been a challenging and intellectually taxing piece of work. We were forced to think hard about some of the workability issues, what things are feasible or not feasible. What we are doing here is genuinely trying to help politicians, policy makers and of course civil society, to make up their minds on these complex and sensitive issues from as informed a position as possible.

The drafting group have been very self-disciplined; I want to stress very strongly what is contained in our version of the draft bill is not some utopian human rights community wish-list. Between us we worked out various mechanisms to keep our feet on the ground. In particular, we had Jeremy Hill working with us, a very experienced former government lawyer, who was our unofficially appointed credibility tsar. Every time we got a bit overly enthusiastic we pulled out the Agreement again, we looked at the relevant international standards and domestic law and we brought it back to earth with the line – what does it say in the Stormont House Agreement. We are not claiming we got everything right but we have given this our very best shot. This is a tight timeframe for everybody concerned, it is a draft, we are looking for comments and feedback from people before the end of June to assist with the final draft.

The historical context, as people know, the Stormont House Agreement (SHA) is the latest in a series of efforts to deal with the past. When I was thinking about what I would say today I went back to my folder of previous presentations on dealing with the past and the first one of these was actually 1999, it was pre-Power Point; it was on acetate, that's how long we've been talking about this.

As everybody knows, the Good Friday Agreement didn't have an over-arching mechanism for dealing with the past; rather what emerged was a piece-meal approach. We had Bloody Sunday and other inquiries such as the Desmond de Silva Review, the work at the HET, Office of the Police Ombudsman, Inquests, civil actions, and prosecutions and a range of other top down and bottom up initiatives.

This is as complex a terrain as you'll see in any policy work. There were a number of sustained efforts to pull it all together, both from below and above – each building on what has gone before. The first big serious effort to pull it all together as a piece of work done by Healing through Remembering in 2006 – Making Peace with the Past. In 2009, the Consultative Group issued their report, drawing explicitly on the work of the Healing through Remembering group. In 2013 the Haass O'Sullivan document and then in December 2014, the Stormont House Agreement.

The Healing through Remembering document proposed five options; a range of over-lapping mechanisms for dealing with the past, one of which included a Truth Commission established by legislation with investigative powers, powers to grant immunity, thematic reports, and so forth. That was 140 odd pages. The Eames- Bradley report was 190 odd pages including appendices. The key element of that relevant for current purposes was the proposed creation of a Legacy Commission, to have a five year mandate, a review and investigative units, taking over the work of the HET at the Police Ombudsman's office; a separate process of information recovery, designed primarily for the use of relatives and a capacity for this institution to examine links or thematic cases emerging from the conflict e.g. the issue of collusion or whether or not the IRA had

a strategy of ethnic cleansing along the border, these were some of the exemplars provided. It provided for limited immunity for statements given in return for truth recovery.

In the Haass-O'Sullivan conclude in December 2013 we see an effort by the local political parties to take primary responsibility for resolving these issues through a process chaired by Richard Haass and Megan O'Sullivan. The resultant document, not ultimately agreed, contained a section of 18 pages on the past.

The key elements from Haass-O'Sullivan in terms of what we're talking about today: Five over-arching, big sections in it: Support for victims and survivors, big sections on acknowledgement, discussion on the creation of the historical investigations unit, creation of independent commission for information retrieval and discussions on narratives and archives. We are now down to 18 odd pages. So you see what's happening, we started off around about 140, 190, we are now down to 19 pages in the Haass-O'Sullivan process. There's significant detail in Haass-O'Sullivan about what the ICIR should look like in terms of staffing, it suggests that it should be chaired by a high-calibre person of international standing, it suggests that the ICIR should avoid hiring anybody with previous links to anybody that might be giving information in order to avoid conflict of interest.

One interesting omission is on the issue of gender. There are no gender requirements for the staffing of the institution. A principle of voluntariness for victims and survivors being able to seek information before, during or after review by the HIU, it envisaged a process of outreach to liaise with relevant organisations, to garner that information, it talked about breadth, the opportunity for individuals, current and former paramilitaries, members of political parties, NGOs, current and former state employers to provide information, again the principle was limited immunity for the statements given i.e. any statement given to this body could not result in prosecution but if evidence was deduced from other sources that could be used in future prosecutions, a process of verification, the commission's being able to ask questions and cross-check testimony against records and mechanisms for delivery of statements being given anonymously or through an intermediary if requested by the victims and victims being provided with a private report.

Haass-O'Sullivan also had sections relating to themes, being able to investigate the causes and patterns of violence and reveal broader levels of accountability in issues involving Government or paramilitary organisations in conflict-related cases. Themes identified from the ICIR unit's analysis or from recommendations from the Implementation and Reconciliation Group (IRG). Haass-O'Sullivan provided a range of examples of types of themes. This was a non-exhaustive list, and other themes could be envisaged. These themes include collusion, ethnic cleansing again in borders or interface areas, shoot-to-kill policy, targeting off-duty security force personnel, the Republic of Ireland as a safe-haven for the IRA, inter-community violence by paramilitaries, use of lethal force in public order contexts, detention without trial, mistreatment of detainees and prisoners, policy behind the disappeared, sourcing or financing for arms and paramilitaries.

Again, in terms of the focus of the proposed thematic work of the IRG is the absence of gender based crimes, crimes of sexual violence, etc.

On this particular point, one of the things that we in the drafting group have done is to look at the historical context but also the international context. It really is quite unusual nowadays, in any kind of truth-recovery style mechanism not to see patterns of gender-based violence as a theme. If this institution does get up and running it would be quite surprising if that as an issue didn't feature in the deliberations of the Implementation and Reconciliation Group (IRG) as it is envisaged under Stormont House.

It was envisaged that the ICIR would publish collective reports on all themes and perhaps additional reports that would reflect on the degree of cooperation with the process by either state institutions or by paramilitary organisations or others. Thus there is some hint of a stick of censure there for organisations who had not played ball, who had not provided information.

In sum, despite all of the useful detail contained in Haass O'Sullivan, for reasons that are too complex to get into today, the parties failed to agree it.

The difference with the Stormont House Agreement apparently agreed in December 2014, at least from an outsider's perspective is that while we still have the local political actors front and centre, there seems to be a significant step-change in terms of the involvement of the two Governments in the process.

So the Stormont House version of the ICIR, by the way in Stormont House we are now down to 5 pages on the past, we went from 140, to 190, to 19, to 5. Maybe this is the way forward, maybe this is just keeping it all brief – needless to say for an academic this is horror, keeping it all to bullet points. The serious point however, is that in effect you have an agreement on 'Heads of Agreement', on bullet points, and this is where the legislative aspect of all this becomes all the more important. If you don't have agreement on each and every detail, then each and every detail will be teased out in the legislation. This is the process in which we are currently involved and why conversations such as those we are having today are so important.

In the Stormont House version of the ICIR there are: An independent chair again, four commissioners, two appointed by OFMDFM, one by the Irish Government, one by the British Government, again a five year mandate; again victims being encouraged to seek private information. The Stormont House Agreement refers explicitly to the disappeared legislation as a model for drawing on. It says in relation to justice that this process should be entirely separate from the justice system, no disclosure of information gleaned from the ICIR to law enforcement or intelligence agencies, this information should be inadmissible in criminal and civil proceedings. It will be granted the immunities and privileges of an international body therefore will not be subject to judicial review, freedom of information requests, data protection, archives and so-forth. It will be exempt from all of those normal requirements.

In terms of access to information the body will be free to seek information from other jurisdictions and both Governments undertake to support such requests. This speaks directly to the point that was raised earlier about the need for a cross-border approach to dealing with the past. Operating principles are spelt out: Independence, rigour, fairness, balance, transparency and proportionality.

There are no examples provided in the Stormont House Agreement on themes.

What has happened is that the responsibility for the themes has shifted now to the IRG, again the details are sparse on the IRG but broadly it is a body where there will be 11 political nominees, individuals who are not members of political parties but nominated by the political parties on a proportionate basis so three for DUP, two for Sinn Fein etc. and one by each Government. It is therefore a politically appointed body where responsibility has now shifted in terms of the thematic work and it is envisaged that the thematic work would be done by academics answerable to this Implementation and Reconciliation Group.

In Conclusion the historical context is obviously very useful as that is where we had to go in terms of having to tease out what we thought the ICIR would look like and that's what others involved in the real work, I suspect, have had to do as well.

But, the Stormont House Agreement and the law are the real sources for the hard information as to what goes into this body, what's in the Agreement? What are the relevant domestic and international legal standards? That is where you find the detail and the over-arching principles.

There are separate principles on the ICIR and there are over-arching principles at the start of the five pages of text in the Stormont House Agreement, amongst those over-arching principles are: Human rights compliance and the rule of law.

So that's where you fill in the detail. Again as I have stressed throughout, the silence on the gendered aspects of this mechanism is quite stark and we have therefore attempted to address some of those issues, again looking to the relevant international standards, both about the personnel and make-up of this body but also about the focus of its work.

The key issues as to whether this thing will succeed or fail, I think from my own perspective is (a) the robustness of the guarantees given regarding non-prosecution, (b) the capacity to verify information, and (c) the relationship with other bodies.

On the robustness question, one of the reasons why, broadly speaking, the disappeared legislation has worked is because the guarantees that were given about non-prosecution under that legislation have proved effective and as a result of the effectiveness of those guarantees of non-prosecution. I've been in several conferences where the staff involved in that work have talked about the development of real relationships of trust between the Commission for the disappeared and in particular the Republican Movement. Such relationships of trust can only be developed if the guarantees in the legislation are watertight both for former paramilitaries and state actors if we are to get the information that victims rightly deserve about the past.

As I said the thematic reports are now to purview of the IRG and after more than a decade of talking it is now time to take action in this context, which means getting the legislation right.

Professor Louise Mallinder
Transitional Justice Institute, Ulster University

Synopsis:
Louise talks about the drafting group's proposals for the ICIR, outlining the methodology and then focusing on the key issues such as independence, where the information will then be held and appointments to the Commission.

Speech:
The methodology to the drafting group process: as a group we chose to work with what is in the Stormont House Agreement (SHA) so we are not making recommendations that contradict any aspect of that Agreement but as you've heard the Agreement is not very detailed in particular with respect to the Independent Commission on Information Retrieval (ICIR). So as a result, in many places our recommendations go quite far beyond what is in the Agreement, either providing more substantive detail on what is contained in the Agreement itself or perhaps by raising some issues that aren't explicitly mentioned. In relation to the ICIR, I think it has been one of the most challenging parts for us to think about as a group for a number of reasons.

First the ICIR is very different from anything we have had in Northern Ireland on dealing with the past previously and from any other truth recovery mechanism in any other part of the world. Those differences come both from the ICIR's own mandate, but also how this body will interact with the other proposed elements or existing processes here in Northern Ireland. Having said that, I do think it's useful for us to bear in mind what proposals have been made in the past and to look at international best practice. Therefore in coming up with our recommendations we looked at the powers and experiences of previous institutions here in Northern Ireland such as the Independent Commission for the Location of Victims' Remains because the Agreement proposed that as an important model. We also looked for example at how the Bloody Sunday Inquiry described its own methodology in its report, how it talked about working with people who provided information, for example. We also looked at previous proposals on the past in Northern Ireland and we looked at international standards on truth recovery, as well as experiences in addressing the legacies of past crimes in other parts of the world. So that's one reason why this body is challenging to think about, its sheer uniqueness.

The other reason why it's challenging is its legal complexity. This body is different from other bodies in the Stormont House Agreement, the Agreement says, first that it should be established by a Treaty between the United Kingdom and the Republic of Ireland, that it should be then implemented in legislation in both jurisdictions, and usually that legislation would be accompanied by explanatory guidance, and would be implemented through regulations, which in our proposals would be issued by the Northern Ireland Secretary of State. We are also proposing that at the beginning of its operations the ICIR adopt a code of practice which outlines how this body intends to exercise its own powers. So far in our efforts of drafting these various legal texts we have a model Treaty, the UK legislation and a draft of the explanatory guidance.

I think throughout the process of looking at these various legal documents one challenge we've had is for particular issues that we think are important, is trying to work out which document they belong in, asking with respect to particular issues whether this is something that should be addressed in the legislation or the Treaty, or whether this is something which the ICIR itself should be deciding upon in its code of practice. That is a question that we are still grappling with in places and I'll raise that in a few points later.

Drafting group proposals: with respect to the duration of this body, the Stormont House Agreement provides that it will run for no longer than five years. Now, as a group when we were discussing this we had a number of concerns about it. First, as Kieran McEvoy mentioned, learning from the experiences of the Independent Commission for the Location of Victims' Remains, the key to that body being able to work effectively was building a relationship of confidence with information providers. I think it is also important that this body takes time to establish confidence among the various groups of victims and survivors here in Northern Ireland. We can't expect people to be knocking on the door as soon as this body starts, wanting to engage with it. It is going to take time to build that trust up.

Secondly, and this isn't what our group is proposing but, in the Consultative Group on the Past's report and in some discussions about how this body will operate there have been debates about the sequencing of cases between the Historical Investigations Unit (HIU) and the ICIR. There are some proposals that, to prevent the immunity provisions for the ICIR undermining the possibility of prosecutions, that cases should be sequenced so that the ICIR can only open an investigation after the HIU has completed its work.

This perhaps poses some challenges when you think that both bodies are looking at similar cases over a five-year time period with the result that if the ICIR could not look at cases that the HIU is looking at until the HIU closes its investigations; that could result in the ICIR waiting until somewhere in its fourth year to open a case into a particular issue. So for that reason we haven't recommended it.

We think there's also an ambiguity about what happens to the information that's been gathered at the end of the five years. Is it going to be shredded? Is it going to be stored confidentially somewhere? So in terms of how we have thought about this in our proposals, there are two aspects to it.

First, we've provided that the Secretary of State could have the powers to extend the ICIR mandate by regulation, or adopt other measures that he or she feels to be appropriate such as perhaps proposing some sort of residual mechanism to maintain the archives securely. We have also proposed the code of practice established by the ICIR should address the fate of the information retrieved at the outset. If information providers are going to have confidence in this process and be willing to come forward a key question they're going to ask is: What's going to happen to the testimony I give you? Who's going to see it? Where's it going to be kept? So it's important that's thought through from the beginning.

Composition and Appointments of this body: the SHA provides detail on who gets to appoint Commissioners and how many Commissioners there should be. It has one eligibility requirement saying that the chair of the Commission should be of 'independent standing' but that's it. So, in our proposals we tried to supplement this in various ways. First, we said that all Commissioners should have the qualities and experience to command the respect and confidence of different stakeholders in Northern Irish society and across the UK and Ireland since this body can work across different jurisdictions. We also think there should be a requirement that the commissioners be, and be perceived to be, independent and impartial, and that they have experience and skills in handling sensitive information and there are no conflicts of interest between their own backgrounds and the subject matter that this body will be investigating. We have also tried to add provisions saying that the appointing body should aim to ensure that at least two Commissioners are women, so that it is in line with international best practice in truth recovery bodies but of course the recommendation has to be compliant with equality legislation in both jurisdictions. We have also highlighted the need to appoint a secretariat to support the Commissioners and have said that the secretariat should have the necessary skills and experience to help the Commission perform its functions, and that as appropriate, those staff members should adhere to all the eligibility criteria listed above.

Turning to independence, this is a crucial issue for any mechanisms for dealing with the past in Northern Ireland, and particularly for this body it is important that it is noted in the title of the institution, the 'Independent' Commission for Information Retrieval, and in the supplementary principles in the SHA that underpin this body's work, independence is mentioned particularly. So our proposals tried to think of a number of concrete ways in which this body could ensure its independence.

First, we have a very strong articulation of the principle of independence including operational autonomy in the draft Treaty. We also talk about the independence of Commissioners and the secretariat with respec to the eligibility criteria I mentioned above, but also recommendations around security of tenure and under what circumstances and what bodies could remove Commissioners should various problems arise.

We also thought about financial independence for this body and have recommended that measures be taken to ensure that it is appropriately resourced to enable it to fulfil its functions and that resourcing should enable autonomous functioning. Lastly as per the recommendations in the Stormont House Agreement we have emphasized this body should be independent from the criminal justice institutions including the HIU.

Now, turning to what this body will actually do: In the SHA only one objective is mentioned, that this body should, 'enable victims and survivors to seek and privately receive information relating to conflict related deaths.' In our proposed model implementation bill, we come up with a number of activities we think this committee should engage in to help it fulfil this objective, to help it adhere to independence, rigour etc. and also fulfil various aspects of the terms of the SHA.

It is quite a long list of activities, some of them are quite self-explanatory, for example it should recommend themes to the implementation and reconciliation group. What I'm going to mention now are activities that perhaps aren't explicitly mentioned in the Agreement. First, I think importantly, there needs to be some thought given to how this body will engage with the victims' groups. This is something that, with respect to the ICIR the Agreement is silent on. The only aspect of the Agreement that could talk to this is the paragraph on inquests that has a line that states all processes should victim-centred, so that could be read as applying to this institution.

Our proposals in the model implementation bill include stipulations that all engagement by victims with this process is voluntary and the victim should be able to withdraw at any time; that engagement with the information retrieval process should be preceded by informed consent,

meaning that at the outset of any process victims should be in a position where they are informed about what the legal consequences of engaging with this process are; that they should be able to ask questions and engage in a discussion about what this means if they take part; that the Commission should be appropriately staffed and resourced to be able to provide support to victims who do engage with this process during the process of information retrieval and if appropriate afterwards.

That level of support could include people for example with experience in counselling but also experience in handling gender sensitive issues for example. We also said that where requested the commission should provide victims with private reports outlining any new information received. This information obviously would not identify individuals, who provide information to the commission due to the confidentiality proposals for the commission, but it might be possible to identify organisations or institutions believed to be responsible, and we think these reports should outline the steps that have been taken in order to verify the information that has been received.

We also intend, beyond what has been put into the treaty currently that there more detailed provision on engagement with victims be included in the code of practice and this for example should talk about the importance of outreach and engagement with this sector from the outset of the commission's work.

Information retrieval: the Stormont House Agreement doesn't give us any information on how or when the Commission would start an information retrieval process, what sort of instances would trigger the commission doing this work. It does not provide any detail on how information retrieval would be conducted and it does not specify whether or not information should be verified. We think that the Commission should be given the resources and staffing to enable it to conduct its own independent research, in order to identify those individuals or organisations who might potentially have information and be able to verify the information received.

We believe there should be duties on public bodies to provide evidence in the Treaty and legislation, and that is in the Agreement that those duties be there. We also believe there should be provisions on inadmissibility and confidentiality and again, that's taken from the Agreement. Beyond this there are a number of issues in terms of how the ICIR would operate that we're think the ICIR should put into its code of practice. That includes, thinking about the triggers of when this Commission could begin a process of information retrieval and in line with the proposals in Haass-O'Sullivan draft agreement, we're suggesting that it could be triggered either by a request from a victim, or by an information provider coming forward.

We have also said that the principle of rigour that's been specifically applied to this body in the SHA needs to be interpreted to require information verification and so we think the code of practice should give details about how that should work. We have already done some preliminary thinking as a group about this which was summarised in a blog published on the Rights NI website.

Moving to penalties, this is something we have been grappling with quite a lot, at the moment our draft Treaty proposes three different types of possible penalties. We think there should be penalties for people who provide false information to the commission or people who otherwise obstruct the commission's work perhaps by destroying documents. There could be a penalty for people working within the Commission itself who unlawfully disclose information. At present we think there are advantages to including these various types of penalties in terms of the legitimacy and credibility of the institution but there is also some uncertainty around their feasibility, particularly given that there could be circumstances where people are providing information confidentially and that information should or could be inadmissible.

To conclude, the ICIR really has the potential to make an important contribution to the debate here on the past, it offers a mechanism that could give victims access to information which they can't get from other sources and it can provide an avenue for those who do have information to contribute to efforts to address the past here in Northern Ireland. But the provisions in the Stormont House Agreement on this body are very, very brief and so if it's going to be able to contribute to its full potential, we think it's important that it operates in accordance with the over-arching principles within the Agreement, plus with independence, rigour and being victim centred that are also mentioned in the Agreement. To ensure that the Commission can adhere to these principles the technical aspects of how it's going to work need to be thought through in detail as this stage.

ORAL HISTORY ARCHIVE AND IMPLEMENTATION AND RECONCILIATION GROUP

Dr Anna Bryson
Research Fellow,
Queen's University Belfast

Synopsis:
Dr Anna Bryson outlines the drafting group's thoughts on how the Oral History Archive (OHA) should progress in legislation and how it might collect and retain accounts in a manner that is 'independent and free from political interference'. Anna suggests that consultation, sensitivity and creativity are crucially important at the design stage, and that we must also consider how the OHA will integrate with the other mechanisms.

Speech:

Introduction
The drafting group understands that the Oral History Archive (OHA) will be included in the legislation currently being drafted and we welcome this. We would like to have been in a position to circulate draft clauses today (as has been done for the HIU and the ICIR) but we acknowledge that there is a wealth of experience out there – many groups and networks are already engaged in relevant oral history work – and so we feel it is particularly important that we take this opportunity to widen and deepen our consultation before advancing to draft clauses for our model Bill.

The Stormont House Agreement states:

> 'The Executive will, by 2016, establish an *Oral History Archive* to provide a central place for people from all backgrounds (and from throughout the UK and Ireland) to share experiences and narratives related to the Troubles. As well as collecting new material, this archive will attempt to draw together and work with existing oral history projects.'

The drafting group has also used the guiding principles as a back drop. Particularly relevant here are the clauses committing us to: promoting reconciliation; upholding a balanced, proportionate, transparent, fair and equitable approach; and acknowledging and addressing the suffering of victims and survivors.

Opportunities
Before getting into the challenges arising we want at the outset to emphasise the positive role that this Archive can and should play – and also to acknowledge the monumental challenge of reaching political agreement on these vexed issues.

The inclusion of the OHA as a central 'Dealing With the Past' mechanism holds out a number of important opportunities. It can help us to broaden the canvas on the past and in particular to look beyond the remit of some of the other mechanisms. There is an opportunity, for example, to explore in detail the gender dimension of past conflict, and to balance rural and urban perspectives. Indeed one of the issues that often attracts people to this methodology is the fact that it can help to 'democratise' history. Piecing together the accounts of a wide range of individuals it can serve to plug gaps in the official record and to include the perspective of those who would otherwise remain 'hidden from history'.

Columbia University's working guide on documenting past conflict through oral history draws attention to the potential for reimagining the future based on new understandings of the complexities of the past. It suggests that:

> 'It is one of the most acutely sensitive instruments we have to understand the complex causes and consequences, of human conflicts. As it is attuned to the creation and transmission of memory and meaning, it can evoke new ways of hearing and provide us with the potential to reimagine the future based on new understandings of the past.'

This Archive can and should acknowledge that the conflict was not confined to Northern Ireland, and by taking a broad and layered interpretation of 'experiences and narratives of the Troubles' it can help to extend the process of Dealing with the Past beyond the narrow confines of high politics.

There is of course a vast literature on the potentially therapeutic dimensions of oral history. This arises not because we function as counsellors (we do not) but because of the pride, satisfaction and enjoyment that individuals derive from the interview process - from accessing opportunities for mature and measured reflection – and from ensuring that their story, and that of their community, will be preserved for generations to come.

I know at first-hand how powerful those narratives and that process can be – both from the perspective of someone who has collected oral narratives and as someone who has accessed them as a researcher – someone who sat in an archive in Armagh as a nineteen year old student, put on a set of head phones, and listened as the Irish civil war of the 1920s in all its messy and layered complexity came to life.

Another critically important dimension of this Archive is the fact that it can recognise and give meaning to the fact that reconciliation is not generally something that can be captured in a moment (that is I think one of the enduring lessons from the South Africa Truth and Reconciliation Commission). So whilst the other Dealing with the Past mechanisms are time-bound (and are by their nature limited in terms of their scope) this Archive can and should continue to deliver in the medium to long term. It can acknowledge that what we are engaged in must continue for generations to come, and more specifically that individuals must be allowed to engage with their past at a time and place that is right for them. They may indeed wish to revisit memories as circumstances unfold. These are issues that need to be thought through at the design stage.

Collecting New Material

When setting out to collect new material, first impressions are critical and second chances hard to come by. The impulse in a post-conflict society is often to label, to self-exclude, to self-censor and to withhold judgment (say nothing). The idea that tens of thousands of people from across Britain and Ireland, representing a wide and diverse variety of perspectives, are going to form an orderly queue outside the OHA and volunteer to record their stories is we think naïve. Those of us who have attempted to collect oral narratives across and beyond borders of many kinds know just how challenging and time-consuming this preparatory work can be. In my experience the time that it takes to build up trust across divided communities is often grossly underestimated (by funders and others).

In the *Peace Process: Layers of Meaning* project we thought long and hard about what we meant by peace and conflict, and indeed reconciliation. Having done so, we worked hard to ensure that both our archive and our training programme engaged individuals and communities from Ireland, North and South and Britain. In particular we attempted to counterbalance accounts from politicians and senior officials with those of 'ordinary' people. This meant reaching across to Fermanagh up into North Antrim and into rural communities around the border. We tried to look at peace and conflict from fresh angles – from the perspective of those in the farming community, those running small to medium enterprises, teachers, pupils, and those in the arts. We reflected on gender and questioned whether our interviews with women's groups, homemakers, gay activists, with the wives and partners of well-known politicians and community activists, adequately captured gender perspectives.

We know from both national and international experience how quickly mechanisms of this nature, be they truth and reconciliation commissions or oral history archives, can get labelled as elitist or otherwise exclusionary. Brandon Hamper will know this from his work in South Africa where some people were quick to label the TRC as a 'perpetrators' commission'. Others argued that there was an excessive emphasis on and pressure to 'forgive'. And in the long-term it has become apparent that many voices and constituencies were left behind. Recent interviews that Kieran McEvoy and I conducted in South Africa brought home this point. Several interviewees expressed considerable frustration with regard to the legacy and impact of the Truth and Reconciliation Commission and suggested that critically important dimensions of the past, such as domestic violence, had been overlooked. One of the lessons we heard again and again as people reflected on who and what had been left behind, and the opportunities that had been missed, was that there had not been adequate meaningful consultation with potential witnesses and stakeholders at the design stage. Consultation, outreach, imagination and creativity are all key to our OHA working effectively.

This is I think a cause for concern as we have detected from talking to various networks and community groups in the last several weeks a sense that processes are running ahead of stakeholder engagement. All focus at present seems to be on drafting legal and legislative instructions, but the precise nature of those instructions is of course contingent on the vision for the OHA, and the likely level and nature of stakeholder engagement and partnership. Buy-in cannot and should not be taken for granted.

There are also understandable concerns as to what the creation of this Archive might mean for existing community oral history projects. It has been stated that they will not be in any way diluted or diminished by a central body and that instead they stand to benefit. But without meaningful engagement and consultation fears and apprehensions naturally abound. That consultation needs to happen now, not after legal parameters have been set in stone.

None of this is to suggest that we wish to rewrite the Stormont House Agreement, or to row back on that which has been agreed. Rather we want to call attention to the underlying principles of the Agreements – such as those affirming that approaches to dealing with the past will be transparent, fair and equitable, and that they will advance the cause of reconciliation.

Drawing Together and Working With Existing Groups

Drawing together and working with existing groups is a key challenge, not least because of the level of expertise and capacity already in existence. We have a range of community projects who approach this work in different ways – some collect life narratives; others focus on community narratives or cultural memories. A plethora of academic projects have engaged in relevant oral history work. And there are of course networks such as Healing through Remembering's Storytelling Network, the Oral

History Network or Ireland and the Oral History Society. Digital hubs include first and foremost INCORE's impressive central database 'Accounts of the Conflict' - and other initiatives such as the Digital Repository Ireland.

These organisations are spread across Ireland, North and South, and the UK and they embrace a range of diverse communities. Establishing contact and building trust and capacity across the range will be critically important. Here we will look to a comprehensive code of conduct for the Archive, a system of central accredited training on the very complex legal and ethical issues arising, and a model of governance that reflects a spirit of shared authority.

The principle of making material available digitally is to be welcomed as it will help to address the challenge of working with and providing for individuals from a wide geographic area (people can access online stories anywhere). A digital archive will also enable links with existing collections such as those held by INCORE, the British Sound Archive, and other digital hubs. Online archives such as CAIN and the Northern Ireland Political Collection at the Linen Hall library (which is now being digitised) can all be linked together as can new and existing oral archives (for example, the Linen Hall library is currently exploring an ambitious intergenerational oral history reminiscence project).

How the OHA draws together existing oral history collections is something that requires detailed consideration. What will be the fate of existing non-digital material, existing confidential material, and related documentation? What can and should the role of the ICIR be? And how will we attend to the considerable logistical challenges of renegotiating consent with the original interviewees?

I have a concern about the volume of oral history material that is out there and at risk of becoming obsolete. More than a decade ago a former colleague I sent out questionnaires to community groups, archives and academic departments in Ireland, North and South, to ascertain and categorise the scope of oral history projects in existence. Grainne Kelly has since completed a comprehensive storytelling audit on behalf of Healing through Remembering. What we know is that the country is awash with oral history material. One of the criticisms I have of funding mechanisms for oral history projects is that they have tended to satisfy the impulse to collect without due regard for long-term storage and preservation. INCORE recently addressed this yawning gap and have done tremendous work in taking in and making available in a central digitised repository existing oral history collections. But there is yet a wealth of non-digitised material out there. Some of it may yet be diverted to the Accounts of the Conflict project but the process of digitising analogue material is costly and time-consuming. There is also the issue of existing collections that contain sensitive or confidential information. Here we might look at the opportunity that now arises to preserve some of that material for future generations. We recognise that it is not yet clear if material accruing to the ICIR is to be destroyed. If it is to be preserved, there may be a way of diverting some existing confidential and/or non-digital collections (which donors are highly unlikely to entrust to the OHA) through the ICIR route – for ultimate long-term preservation.

Legal and Ethical Issues

There are a number of important legal and ethical issues arising – some overlapping and some competing. We have been grappling in the drafting group on how best to deal with these. They include defamation, copyright (informed consent with regard to use of recordings, photographs, ephemera etc.), privacy (including related data protection and breach of confidence issues), criminal liability (e.g. the limits of confidentiality), civil liability, ECHR Article 2 (right to life), ECHR Article 8 (right to respect for private and family life, home and correspondence) as well as the more general moral and ethical imperatives associated with improper or insensitive disclosure of information. These issues are critical to deliberations on the circumstances and timing of contributions to the Archive being made public. Looming in the background to all of this is, of course, the Boston College project.

We have spent a lot of time debating whether and to what extent new accounts collected by the Oral History Archive should be protected. We think it makes sense to signpost individuals with information relating to past crimes to the ICIR but at the same time we have to be realistic about references to low-level illegality which may well underscore 'tales of the Troubles'. We want therefore to take all reasonable steps to protect contributors, collectors and the Archive itself without compromising the work of the other mechanisms. The drafting group anticipates, for example, disapplying FOI and Data Protection legislation at least until accounts have been reviewed and finalised. We are also considering some protection against defamation. Legislating to ensure that information contained within accounts is not admissible in criminal investigations would undoubtedly provide reassurance for some contributors but we recognise the difficulties and challenges that this could present. In terms of the collection of new material we will look to the code of conduct and to the type of training that I have been involved in in the past – whereby interviewers are trained to take steps to ensure that information relating to crimes that have not been processed and duly determined is not recorded.

Beyond Boston

The chill factor associated with the Boston College controversy is a reality that must be confronted. It is nonetheless important to keep it in proportion and to consider that only material relating to a named crime or criminal act must be disclosed to the authorities. Legal obligations to disclose material (whether deemed confidential or not) may include court orders or mandatory obligations of disclosure arising from statutory legislation but sensitive or confidential material which does not relate specifically to a criminal act may be closed and/or restricted (in spite of requests under the Freedom of Information and Data Protection Acts).

Role of the Archive

How the Archive will manage the circumstances and timing of contributions – both new and old - being made public requires some further consideration. Some have suggested that existing collections might simply deposit a 'closed copy' with the new Archive but this does not solve the problem. The moment that the Archive takes custody of a recording or transcript it assumes responsibilities in the eyes of the law (this is one of the enduring lesson of the Boston project – you can have all the agreements in the world but what matters is how the Archive interprets its obligations under the law – and this is not necessarily straightforward). Donor agreements will thus require careful scrutiny to ensure that there is not an unfair transfer of risk to depositors and/or interviewees. If we are to take the view (as suggested by another group of stakeholders with whom I consulted) that the Archive should only be allowed to receive a catalogue of existing community-based oral history collections (which local oral history archives can themselves post online) then what is the logic for investing millions of pounds in this initiative?

There is also a grave need for proportionality in deciding that which can be made public and that which should be withheld. On the one hand if our approach to access is too prescriptive – if we overlay the stories with curatorial and legal issues – then we will lose the opportunity to hear each other's voice and we will potentially flatten and suffocate the creative and reconciliation potential. On the other hand – without due regard for the sensitivities – and in particular without recourse to detailed local knowledge – we may do more harm than good. Decisions around access are complex and difficult. They call for mature and measured judgement on legal and other matters.

'Independent and Free From Political Interference'

This brings me onto how we can ensure that this archive is 'independent and free from political interference'. Here perceptions are absolutely critical. It has been clear from the outset that DCAL would be tasked with the establishment of the Archive and it now seems clear that the Party Leaders have agreed – at least in principle – that the Archive will be established within the Public Records Office of Northern Ireland. A challenge for the drafting group has been to temper idealism with realism, and in particular to attempt to keep up to speed with that which has been agreed so as not to suggest solutions that are politically unworkable.

We are not suggesting that PRONI should not have a role to play in the creation of this Archive – or that the Archive should operate outside the remit of a government department – but on the basis of our consultation with a range of archives, oral history groups, politicians, NGOs and others – we feel that meaningful consultation and co-operation with a wide range of stakeholders (archivists, existing projects, academics and others) is key to long-term success. We are thus exploring models that might deliver the necessary safeguards whilst reflecting a spirit of inclusive partnership.

This is we believe essential if the Archive is to be seen to be independent and free from political control. As noted, buy-in and participation from the necessary range of stakeholders (that includes potential participants, service providers and users) cannot and should not be taken for granted.

It may well be that the process can to an extent be disaggregated – that collection may be out-sourced – and that existing oral history groups are not threatened or diluted, but rather served by a central repository that can preserve their collections without compromising their right to control access in the short-medium term. And it may be that digital solutions can facilitate universal access and magnify the potential for learning – and ultimately reconciliation. But if and how this might work in practice is a centrally important and as yet unanswered question.

Most importantly it must be borne in mind that – whilst collection, curation and preservation may to an extent be disaggregated – they are part of the same ecosystem. The fundamentals of an ethical approach to oral history include considering the first questions that an interviewee will ask. These include: Why do you want to interview me? Why should I trust you? What risks might there be? What are the benefits? And what will happen to my account in the short, medium and long-term? If this Archive is to succeed as a 'central place' for the collection and preservation of stories key issues concerning its independence and its ability to gather and retain the trust of a wide variety of individuals from across Ireland, North and South, and Britain must be addressed. We have, as I have said, detected a concern that processes are proceeding ahead of consultation. And, in the race to prepare a Bill by the autumn, there is a risk that we could repeat mistakes that bedevilled previous international truth recovery and oral history mechanisms – mistakes borne of a top-down, state-centric and less than fully transparent approach.

Integration

Last but not least I want to mention integration. How might the ICIR or the IRG be involved with the work of the OHA? Will the role of the IRG be complementary but not prescriptive? Is there a potential oversight function? The challenges that arise have been highlighted by previous speakers – we need to consider how these various mechanisms might speak to each other and integrate. On this we need your feedback. There is certainly a danger that the work of the OHA could progress in silo. It can play a discrete and distinctive role in helping to deal with the past but in many ways its success – and indeed that of the other mechanisms – will be measured by the extent to which they are harnessed to work together.

Professor Brandon Hamber
Director, International Conflict Research Institute (INCORE), Ulster University

Synopsis:

Brandon talks about the IRG, how it links with the other mechanisms and how the themes will emerge. Brandon also draws on learning from South Africa that should be taken on board so as not to make similar mistakes.

Speech:

Thank you for giving me the time to speak today. I am going to be wearing multiple hats. I work at INCORE at Ulster University and as Dr Anna Bryson mentioned we have been very involved in a project called Accounts of the Conflict which has been trying to create a digital collection of collections, so we have a lot of thoughts about the Oral History Archive (OHA). We have learned a lot of over the last two years of building Accounts of the Conflict. I won't speak extensively about that but am happy to answer questions.

I am also a board member of Healing through Remembering who have been working on dealing with the past for many years now, so some of my thoughts will echo with some that we have discussed at the board, particularly the issue of how big or how small lens we use to look at the Stormont House Agreement (SHA).

The third hat is that I'm bringing my experience of similar processes in South Africa. As I stand here, I remember a meeting 20 years ago, where NGO's including ours in South Africa discussed what our process of reconciliation should look like, and to feed that into the draft legislation to go to the Minister of Justice. There are elements of that which come flooding back to me as we sit here today having this discussion.

In terms of what I want to talk about today, reconciliation, I'm going to make one point about that in terms of South Africa, that is that the discussion in South Africa was mainly about the amnesty legislation. How would that work? What would the intricacies of that be? There were

a lot of big legal questions about that. At some point reconciliation came up and it was a tilt towards saying 'yeah, victim stuff, that'd all fit within the reconciliation ambit'. Slowly, the word reconciliation found its way into the legislation which formed the South African Truth and Reconciliation Commission. Actually, when I look back at it and at what is going on in South Africa today, that is probably the part that we have least developed even 20 years down the line. It was actually a bit of an afterthought at the time. If you ask people today what the Truth Commission was about they will discuss with you whether it made a difference in society. They might voice some concerns about the amnesty legislation, but 20 years later it is the broader social ramifications which I would argue we didn't really think through that carefully at the time. So that is my core message.

What I am going to do now is raise three big issues and then focus on the Implementation and Reconciliation Group (IRG) as it stands in the SHA and raise a couple of questions which I'm then going to leave to Jeremy Hill to address from a legal perspective.

My first general point by introduction was to tell you part of the South Africa story but also to say that I think reconciliation is an important concept here. If we think of a number of things which have fallen down in different ways, they are often about what people mean these things are about rather than what is actually happening. The Maze/Long Kesh discussion is an example of that, it was really about what people thought was going to happen on the site, whether it was going to create contested histories or communal narratives, that is what undid it, the politics of it. Equally if you think of something like the flags dispute, to some degree it is about an interpretation of what equality means, whether legislatively or in practice, and we could talk about the HET in the same way.

So, to the three big questions: the first big question before I get on to the legislation specifically is 'what is the overall aim of the SHA?' I know in the introduction there is a set of principles, but a set of principles is something that is actually quite different to what an overall aim is. I know from a legislative perspective that may be something that is quite difficult to think about. However this is one of my big issues because to me it's not really clear. Although it mentions reconciliation and it mentions justice, it raises big questions about how these concepts relate to each other and what type of society do we want on the other end of this? At the same time I am quite conscious that from a legislative perspective that is quite complicated. The South African Truth Commission Act, for example, clearly states that one of the objectives is reconciliation. In fact, it goes on to say that one of the aims is to grant amnesty as a road to reconciliation. This is a great essay question to give students because I am not quite sure exactly how the two relate to each other. So there are problems in stating those types of aims in legislation but I want to step back and at least ask what this is all about, something I know we have also been debating at Healing through Remembering.

The second big issue for me is about how the components relate to each other. What comes first? What comes second? The sequencing in the SHA starts with the Oral History Archive (OHA), then the Historical Investigations Unit (HIU), Independent Commission on Information retrieval (ICIR), then the Implementation and Reconciliation Group (IRG). Do we have to stick to that sequence in the way that we think about it? We have stuck to that in the course of today, but I'm not sure if that's completely right in terms of the big questions.

The third big question is in regards to what happens after these miraculous five years that's written all over the place in the SHA. It is very hard for us to think about that but I do think it's a very serious question and my experience from the South African Commission, for example, was that everything was tied into the Commission. When it ended everyone was scratching their heads, saying, 'Oh civil society will do reconciliation and this group will do that', but nobody really thought about it at the beginning. I wanted therefore to throw that out by way of my 'big issues'.

So moving on to the legislation itself as it pertains to the IRG, I'm going to raise six points and hopefully that will stimulate discussion.

The first of these concerns is the overseeing role and the selection of members. In the SHA there is a line that says 'the IRG will oversee themes, archives and information recovery'. It's not really clear to me, and maybe from the legislative perspective people can have a look at that, what has been agreed. I understand in relation to themes, in terms of commissioning a report to talk about themes, and I possibly get it in terms of the archive. However I am not quite sure what information recovery actually means alongside the other concepts, so I think there is something which might need to be thought through in relation to that.

The bigger question in relation to my first point is really about the selection process. What is very clear in the SHA is that there will be people appointed by the government and by the political parties to make up this IRG. I think what's interesting about that is that it is actually an international practice. Certainly in the selection of members for Truth Commissions around the globe it is increasingly what people are doing. So to avoid having direct political appointments on these bodies, they get the political parties to agree who these people are. So there is some sort of precedent there, but at the same time we need to make no mistake in terms of the reconciliation dimension of all of this, that this is going to be a massively political process. So the idea of reconciliation

and the politics of 'who did what to whom, when, how and why?' are going to become quite intertwined when we go through that sort of a selection process. I think there are things that we might need to think about in relation to that.

Themes, process, delivery and timing: under IRG it says 'after five years, a report of themes will be commissioned'; I think the big question there is concerning how that will work in practice. Does this mean that all this work is going to go on within HIU, ICIR, and the OHA and then after five years we are going to say 'alright, some group of very smart academics are going to review some of this information, and some of which may be restricted, and come up with an analysis of that?' To me, it means that we need to be thinking right from the start of what that appointment process looks like and when we can actually start that. To me it seems logical that people working in the IRG should be appointed towards the beginning of the process rather than the end. I think to do it at the end would simply undermine the ability of what it is we can practically do.

Evidence and selecting the themes: very clearly, Professor Kieran McEvoy gave an outline that in the Haass-O'Sullivan process the issue of themes were dealt with, it gave some sense of what these themes might be. My reading of this was that clearly that was an area of contention within the debates around the SHA, I assume. As such they have erred on the side of very little information in the SHA. I think the key issue for me is there is not any clear indication what these themes may be. Are they meant to emerge from the 'evidence' that is gathered, either through HIU, ICIR or the OHA, or are these themes something which these clever academics are going to superimpose onto what they know about these situations? Those are two very different types of approaches when we start to talk about how we set this process up and make it run.

If the theme is to emerge from the evidence, maybe the legislative group have thought a lot about this, I am not sure how that emerges and where, and who has access to what. We clearly know within ICIR that there is going to be limited access to that information, but is the information coming out of cases going to form part of how those thematic issues are going to be looked at? Furthermore, is the OHA going to be linked to that as well? Now on a complementary level that is quite important because what the archive could do, which the other mechanisms could not do, is to perhaps look at some of the wider themes such as poverty, gender issues, etcetera. It has the potential for people to tell, if it is done correctly, much wider stories.

However this is all predicated on the fact that this is where the evidence is going to come from. Maybe someone knows the answer to that, I didn't know the answer to that when I was trying to understand this issue. I think there is a conceptual problem at the heart of this which is that when we are not looking at the wider thematic issues, as they emerge from wider ranges of testimony there is a risk that the way we write the themes is very violation-centric. That has been a criticism of many truth commissions around the world that they focus on murder, attempted murder, disappearances and those types of issues. Thus it is very hard to actually try and create the wider context. So if we are using our existing evidence, such are the archive and other information then we are limited, but it may be more helpful than just using a violation-centric issue. Thus there is a whole range of questions which I think need to be asked.

Promoting reconciliation as an aim: It is clearly stated in the SHA that 'promoting reconciliation will underlie the work of the IRG, it will encourage and support other initiatives that contribute to reconciliation to better understand the past and end sectarianism'.

Again, I don't know how one legislates any of that. I think there are two parts to that which are really interesting. One is that it says promoting reconciliation will underlie the IRG rather than the whole process, which I think is interesting, it might just have been an accident.

Secondly, it suggests that at some point this is about linkages and resources. You can imagine this body saying 'we don't really deal with sectarianism between young people so that organisation can do that or this ongoing community work can focus on these kinds of issues'. To me it's decidedly vague and it also smacks of exactly what we have seen in the South African process; during the life of the Commission. The Commission was the centre of reconciliation and afterwards the message was projected that it was now a social thing, a community issue which everybody else had to take on. However there were no resources to follow that, no process to follow that and everything was put into a downwards funnel. So I do think there needs to be some more thinking that needs to go into that.

Acknowledgement and its value and limits: In the SHA it says 'In the context of the work of the IRG, the UK and Irish Governments will consider statements of acknowledgement and would expect others to do the same'. Despite the odd grammar, I think this means that they would consider giving statements of acknowledgement, which I think is interesting. Healing through Remembering with Kieran have done a lot of work on this, about what actually makes for a good form of acknowledgement, the wording, authenticity, and a whole range of different issues. But the main issue and I think that this was raised by Healing through Remembering more than 10 years ago, is whether this comes before or after the process.

This has been an ongoing debate for ten years concerning whether this should be evidence based – in other words, once we have been through this process then people,

governments, non-state actors, or whomever acknowledges their role once the evidence has been put forward, or are different statements of acknowledgement actually needed to encourage some engagement with the different types of bodies prior to the process, or both? I think there is something to think about there. When you read it as a whole it fits with my previous point about the 'five years and then we commission this report', it does feel like it is all a little bit 'afterwards'. I think that the issue needs to be discussed.

The sixth and final point, I'm not sure where it is meant to be but it is under the IRG and says, 'The UK and Irish governments recognise that there are outstanding investigations and allegations' and basically says that they will cooperate with these bodies. I'm not sure why it sits under the IRG specifically, but it is there. To my mind, at a wider social level it links to the issue of acknowledgement or at least a statement of cooperation and I think that as we move into this process that might be something worth thinking about, though it's more of a social issue than a legislative issue and perhaps when it is signed into a law it's a commitment to that. But I think that from the governments and other parties, some statement of cooperation before it starts might help smooth the road in terms of not only the practicalities, but also these much larger social questions around reconciliation.

Jeremy Hill
Member of drafting group and former legal advisor to Eames-Bradley

Synopsis:
The Implementation and Reconciliation Group (IRG)'s remit is to oversee themes, archives and information recovery, commission a report after five years and to 'promote reconciliation.' The drafting group believe it would be better to put the IRG on a statutory footing as it would give it more weight and force and not leave it subject only to political agreement.

Speech:
The Implementation and Reconciliation Group (IRG) is covered by paragraphs 51 to 54 of the Stormont House Agreement. Whereas the Historical Investigations Unit (HIU) commands 11 paragraphs and the Independent Commission on Information Retrieval (ICIR) 10 pages, the IRG commands only four. This perhaps indicates it raises less complex legal issues and is a less complex mechanism but it is an important mechanism and there are substantive issues to be discussed.

There are essentially three parts to the IRG's mandate:
- To oversee themes, archives and information recovery
- After five years to commission a report on themes from independent academic experts
- To promote reconciliation. This includes encouraging and supporting 'other initiatives that contribute to reconciliation, better understanding of the past and reducing sectarianism'.

The IRG's work also provides the context in which the UK and Irish governments will consider statements of acknowledgement and would expect others to do so. So there is perhaps also a specific remit on the part of the IRG to encourage such statements of acknowledgement.

I won't go into detail into its composition. This is explained in paragraph 54 of the Stormont House Agreement. Suffice it to say that:

- It will have 11 members
- Publicly elected representatives will not be eligible for appointment
- The chair will be a person of independent and international standing, appointed by the First Minister and Deputy First Minister
- The other members will be appointed in various proportions by the political parties and the UK and Irish governments. This perhaps gives the IRG a more political backdrop than in the case of the other legacy mechanisms.

In this presentation, I will focus on just a few questions which have been raised within our own drafting group.

First, should provisions on the IRG be included in legislation? Is the Stormont House Agreement a sufficient basis for the IRG or should you/do you need a statutory basis? In my view, you could establish the IRG without legislation but it would be better to include it within the statute. Better to have all four institutions – the HIU, ICIR, the OHA and the IRG – given a statutory basis. Why?

It should be included in legislation because:

- It would make the IRG's tasks a matter of statutory duty, giving them more weight and force. The IRG's existence would be a matter of statutory obligation, not just a matter of political agreement. A statutory basis would not unravel, a political agreement might.
- It would anchor within the legislation certain key principles such as independence, sensitivity, rigorous intellectual integrity, and the duty to follow the Founding Principles.
- It would provide impetus to the IRG's work, particularly on reconciliation and acknowledgement.
- Legislation could lay down duties both on the IRG and other bodies including the government to cooperate with each other. The IRG particularly needs cooperation from the other legacy mechanisms, particularly on thematic work.
- It could define the ambit of the IRG's oversight duties which are only briefly mentioned in the Stormont House Agreement.

So I am in favour of including the IRG in legislation. In fact, I believe there to be a **strong case** for its inclusion.

Second, what is to be the nature of the IRG's oversight? What relationship will it have with other bodies? Should the relationship be a loose one or a more controlling one?

As I have said, the IRG is established to oversee themes, archives and information recovery. Without wanting to read too much into what may be an accident of drafting, it is interesting that, in respect of archives and information recovery, the Stormont House Agreement refers to oversight of the processes, not the institutions charged with those processes. It doesn't say that it will oversee the Oral History Archive (OHA) or the ICIR as such. Whether intended or not, it is consistent with my own view – perhaps the overall view of the drafting group – that the IRG's task is mainly to oversee the effectiveness of the processes, rather than have a more controlling relationship over those two particular bodies.

In the drafting group's view, this also fits better with the concept of the Archive and the ICIR, particularly the ICIR. The ICIR's work is particularly sensitive, its independence particularly important. It might be better if by and large it is left to get on with its work without too much intervention. The IRG will, however, need some powers to ensure the effectiveness of the OHA's and ICIR's processes. We suggest, for example, that the OHA and ICIR might submit Annual Reports to the IRG. And that the IRG would have the power to make recommendations to these bodies for their future activities.

There should also be cooperation in respect of themes, which is the subject of my third question. *How should the IRG implement its remit in respect of themes?*

As I have said, the Stormont House Agreement states that after five years the IRG will commission a report on themes from independent academic experts. The Stormont House Agreement also states that –

> 'any potential evidence base for patterns and themes should be referred to the IRG from any of the legacy mechanisms, who may comment on the level of co-operation received, for the IRG's analysis and assessment.'

So we have a number of sub-questions. First, that of timing. *When should the IRG start its work on themes? And how should it do so?*

The other bodies like the HIU exist for five years and yet the report on themes is commissioned *after* five years. The natural conclusion is, and common sense demands, that actually the IRG should be preparing its evidence base on themes and patterns *from the moment of its establishment*, preparing the ground for the commissioning of the actual report which happens after five years.

So in the first five years, the IRG should develop its own analytical capacity and should be liaising with all the legacy mechanisms, not just on ideas for themes but on creating an evidence base. Put simply, if it is to cooperate and collect

ideas and evidence from other bodies, it needs to do so while those bodies exist. Doing this would also ensure that the academic experts don't start from scratch at the end of the five year period. In my view, the preparation of the evidence base is as important and substantial as the report.

There is then a second sub-question: *How long should the academic experts have to report and whom they should report to? And how does this fit into the reconciliation and acknowledgment processes?*

The Stormont House Agreement is broadly silent on this. Everyone will have their own ideas. But just to put something on the table, I suggest the academic experts should have three years for their report and that publication should be within one year thereafter. I suggest that the academic experts should submit their report to the IRG and that the IRG be responsible for overseeing its publication meaning the IRG will exists after year five which is constituent with the SHA.

Although the IRG will do, and should do, other work on reconciliation and acknowledgement throughout its mandate, the timing of the publication of the report on themes may be a particularly appropriate moment for public or other bodies to consider acknowledgements. In terms of the legacy processes started by the Stormont House Agreement, apart from the archives, the Report on Themes will probably mark the end of them, the final stage. So that would be a time to take stock overall on the legacy of the past.

My final question is: *What might be the themes? Who decides? Should legislation set down criteria?*

I think it is implicit in the Stormont House Agreement, though not expressed, that the IRG not only commissions the report on themes but also decides the themes. Under paragraph 51, the other legacy mechanisms refer any potential evidence base for patterns and themes to the IRG, but it is the IRG which does the analysis and assessment prior to commissioning the report.

I have three observations here. First, I think it is important, and the Stormont House Agreement implies this, that, even if the IRG takes the decision on themes, in practice they emerge from a collaborative and consultative process. Hence perhaps the other legacy mechanisms have the right to comment on the level of cooperation received from the IRG.

Second, I come back to whether the IRG should be in legislation. Basically, evidence on themes from other bodies is its lifeblood. Without that, it will be ineffective. So it is best to make sure that the other bodies are under a duty to provide the evidence it requires.

Third, should the IRG be left a complete discretion on themes, or should there be some statutory criteria? It is notable that Haass-O'Sullivan included criteria but the Stormont House Agreement is silent. My view is that it will save problems down the line if the legislation includes criteria.

The IRG might in some ways appear to be the least demanding and least substantial of the four legacy mechanisms established by the Stormont House Agreement but it is still important, and important therefore to get it right.

REFLECTIONS

Susan McKay (Rapporteur) Award-winning author and journalist

Synopsis:
Susan sums up all she has heard today from speakers and the attendees, reminding everyone not only from her own award-winning work but also from the work of many in the room, why we are pushing for a robust mechanism for dealing with the past. Susan also left the drafting group and audience with new questions, what she felt were gaps, areas that had not been touched on.

Speech:
I want to say to start off with that I do think that one of the very heartening things about today's conference is the hugely honourable gathering of people who are here with expertise in the subjects we have been discussing. People have been talking about these issues for many years and thinking over many aspects of the questions tackled within the Stormont House Agreement.

Patrick Corrigan, when he asked me to do this, asked me to broaden it out as well as looking at some of the issues that have come up today in a more technical sense. So I want to talk about some of the people who have talked about these issues in the wider world and obviously one of the people who has written most movingly about the aftermath of conflict is the Italian writer Primo Levi who survived a Nazi concentration camp. I'm sure some of you have read his work, but there is one particular thing that always comes back to me whenever we are discussing these issues, and it's what he wrote about a dream that he used to repeatedly have while in Auschwitz.

He was back amongst his family and friends, and he was beginning to tell them about his horrific experiences and he was feeling intensely happy and relieved at the prospect of being able to tell these terrible stories and share them and somehow stop being so isolated with them. But he begins to realise that those around him are not paying attention, that they are in fact indifferent to what he is telling them. Primo Levi writes; 'a desolating grief is now born in me' and he writes of what he calls 'the pain of an untold story'.

Of course Levi was to learn that this dream was a common one among other people who were victims of the camps and tragically like many dreams of course its roots are actually in a deep perception that there is a high level of indifference to suffering among those who have not experienced it.

That experience of indifference and unwillingness to listen is one that many survivors of the conflict here in Northern Ireland have experienced. Patrick Corrigan in his opening remarks said that there is a history of good reasons to be distrustful, but he went on to say 'now the time for eternal vigilance is upon us'. This is very true and that's why this discussion here today is very important because it's trying to make sure that the opportunities for bad faith are minimised.

The Good Friday Agreement asked a lot of the families of victims and of the survivors of the conflict. They had to deal with the fact that the murderers of their loved ones who had been jailed were released. Some had to accept that if those who were responsible were ever prosecuted that they would be released within two years and the overwhelming majority are still waiting 17 years later for there to be any kind of mechanism to deal with the past.

We also must acknowledge that the past to the many survivors of the conflict is still very much a painful part of their present lives. Lots of people in this room know there are hugely divergent needs among the victims and survivors. Some people want some form of justice, though people have very different views of what that is. Some want truth, some want information, some want closure, some want to be left in peace, some want revenge, some are simply waiting to die to join the person who was taken from them so brutally. Some people thought they got what they needed only to discover it wasn't going to soothe their grief at all.

The initial euphoria after the Saville enquiry, for example, has been followed by some fairly acrimonious public confrontations between different families of the victims of Bloody Sunday over, for example, whether there should be prosecutions of individual soldiers. Moreover there exists anger amongst some that the people in the upper echelons of the then British Government were not made accountable for what happened and that only individual soldiers seem to be have been held responsible.

The Northern Irish poet Michael Longley has written that 'peace is not the absence of violence but the presence of civilisation'. I think that is a good benchmark against which to measure the SHA and the various measures that have been put in place in order to deal with the past and to honour that agreement.

It is not civilised that people have been waiting since the Good Friday Agreement back in 1998 for this matter of

dealing with the past to be addressed. People have been talking about these things for so long and with such intensity yet we are still trying to grapple with these issues. Brandon spoke about having had these discussions ten years ago and discussing the same things. That is not a reason to succumb to despair over them obviously. Indeed, there are some people in this community who have been seriously injured as a result of the conflict, meaning they can't work or participate in ordinary life, yet are still waiting for a pension to be provided – it is not civilised that this is allowed to continue.

Kate Allen mentioned that the seriously injured had 'seemed to vanish' between the Haass-O'Sullivan process and the SHA. She also spoke about 'gender blindness' referred to by most speakers, if you look at the photos of the people who negotiated the SHA, there is a serious absence of women among the people who made the decisions about that agreement and that may have something to do with its ability to ignore the gender issue.

I was one of the founding members of the Belfast Rape Crisis Centre in the early 1980's and I'm very well aware that there is a huge untold story about the use of domestic and sexual violence by people who were involved in aspects of the conflict. One of the things that used to strike us in the centre is that you would have journalists coming from elsewhere in search of stories, but they would think that they knew the story before they began. They would come in to us as if we were some sort of mail-order service and say 'could you provide us with a protestant woman who was raped by an IRA man?' or 'could you provide us with a catholic woman who was raped by a British soldier?' But, of course, the reality was that a protestant woman was much more likely to be raped by a protestant man. A republican woman was much more likely to have been domestically abused or raped by someone from within her own community.

That is a story which needs to be told and which is not capable of being addressed simply as an 'add-on'. It is a serious and huge issue. I know that there are women here who were involved in the UN resolution 1325 process for a National Action Plan, which occurred in the Republic of Ireland several years ago. I was the CEO of the National Women's Council at the time and we were advised the Irish government on this. One of the things I am very proud to say we achieved is that we got the Irish government to recognise that women who were victims of gender based violence in the North during the conflict have needs under a measure like UN resolution 1325. I think that there are measures the NAP which have potential to be used. The protections offered by a NAP need to be developed further in Northern Ireland and I know that there are people in this room who have been involved in taking that work on.

I'm now going to read you a piece I wrote last year in relation to the experience those needs we are talking about here today. This piece was published in the Observer and is about a particular time and situation but it's useful as a snapshot. We know that in the papers in Northern Ireland, almost every day, there is a story about conflict-related tragedy and the absence of justice for its victims.

> 'On a winter night a few years ago, in a hospital in the North of Ireland, a hail shower briefly clattered against the windows. People looked up, remarked on its sudden fierceness. But one man, 75 and dying, became so distraught that nurses rushed to his bedside to calm him. After his death, a nurse told his daughter that the man had thought the hail was gunfire.
>
> Forty years earlier, that man had witnessed the murder of one of his children in a gun and bomb attack on the family's home and business. In the weeks that followed, the man's daughter told me, her father used to walk for miles barefoot in the middle of the night to return to the ruins. He would clamber up into the blackened wreckage and there he would sob and shout and implore his son to come back.
>
> The arrest of Sinn Féin president, Gerry Adams, for questioning in connection with the IRA's abduction and murder of Jean McConville in 1972 has plunged us back into contemplation of the horrors of a collective past that many were well on the way to forgetting. We accepted the release of prisoners and the destruction of weapons (and therefore forensic evidence) as part of the Agreement in 1998.
>
> We had entered gladly into the phase of wonderfully symbolic ceremonies: Queen Elizabeth in Dublin three years ago, laying a wreath in the garden where Irish republicans who died fighting Britain are commemorated; Martin McGuinness attending the dinner at Windsor Castle to celebrate the state visit to London by the Irish president, Michael Higgins, last month.
>
> However, the raw pain evident in the voices of Jean McConville's son and daughter as they spoke last week about their need for the truth to be told, justice to be done, and recompense made, is something with which thousands of people in this place struggle, day and night. The McConvilles have fought long and hard to have Gerry Adams questioned, yet when they spoke, they still also sounded like the terrified children who clung to their mother's legs as she was dragged away. (Unionists who relish republican shame over her murder should remember that the McConvilles had been forcibly evicted from a Protestant area because Jean was Protestant, her husband Catholic.)
>
> Sometimes in the North of Ireland you see people who seem like ghosts. It is as if they have stayed faithfully in the past waiting for a loved one to return who can never return. I spoke recently at a meeting about storytelling and the Troubles in Belfast, and

afterwards a woman came up to talk to me. Her eyes were full of hurt and anger. She wore her dark hair in the high, back-combed style of a young woman going out to a country dance in the early 1970s, but the hair was streaked with grey and her pale, gaunt face told that she was middle aged. She said that she could never forgive the killers of her husband or accept that they are now in the government of the country.

The world's media gathered last week around the fortified concrete bunker of a police station where Adams was being held. Northern Ireland was a story that was meant to be over. But for local journalists, stories from the Troubles erupt almost every day. Last week, they included news that there is to be no inquiry into the massacre of 11 civilians by the British army in Ballymurphy in 1971, nor into the burning to death by the IRA of 12 civilians at the La Mon hotel in 1978. It was briefly reported on Thursday that Adams had been released without charge, but that turned out to be another man in his 60s, who had been arrested in connection with the killing of 15 civilians in the loyalist bombing of McGurk's Bar in 1971.

In his purgatorial *Station Island* sequence, Seamus Heaney wrote a moving poem about a man he knew who was murdered, describing him as 'the perfect, clean, unthinkable victim'. The gang that killed that man included policemen and soldiers. Today, unionists wound Catholic victims by insisting that only some victims deserve the designation 'innocent'.

Republicans rub salt in the wounds of Protestants, too. During a heated radio discussion a couple of weeks ago, a senior Sinn Féin politician aggressively insisted that the young IRA man who died planting the Shankill Road bomb in 1994 was as much a victim as the nine civilians who were also killed. The discussion included a man whose child was among the dead.

There is a dignified Victims and Survivors Forum and there are many fine support organisations, but there are those who use the dead to fight old battles. Some victims and survivors trade outrageous insults in skirmishes on Twitter and Facebook. During the most violent years of the Troubles, the early 1970s, suicide rates in Northern Ireland were strikingly low. Today, in contrast to trends elsewhere in the UK and Ireland, they are rising relentlessly, and the greatest increase is among those who lived through those times, particularly in areas that were the most afflicted.

Sinn Féin has reacted with fury to the detention of its leader. Adams played a central role in the peace process, and it is one of the bleak ironies of the present crisis that some of those most loudly denouncing him over the murder of Jean McConville opposed that process and cannot forgive him for stopping the 'armed struggle'. Sinn Féin claims that the arrest represents 'political policing' by 'dark forces', though it sits on the board that monitors the police.

Certainly, the failure of the politicians to agree on a mechanism to deal with the north's past has left the Police Service of Northern Ireland with a completely inappropriate level of responsibility. A year ago, in the midst of disturbances about flags and commemorations, the first and deputy first ministers initiated the Haass process. This January, the unionist parties irresponsibly refused to support the proposals that emerged. The credibility of Sinn Féin's support for a truth process is fatally undermined by Adams's insistence that he was never in the IRA. The British and Irish government have stood nervously back.

The North of Ireland is not the first post-conflict society to find that its peace is haunted. Nor will it be the first to try and fail to silence its ghosts. On his way to London last month, President Higgins said that the legacy of the past must be addressed. 'Affecting a kind of amnesia is of no value to you, you are better to honestly deal with the facts that are standing behind you as shadows,' he said. 'How could I say to any family whose family member might be in a wheelchair or somebody who is dead, you must put it behind you?'

So, I wrote in that piece about the two governments apparently 'standing nervously back' but I think that one of the things that has come across from the discussions today and from the team responsible for the project that we are talking about today is that they seem to be heartened by the apparent re-engagement of the two governments in the SHA and in monitoring its implementation.

However, Daniel Holder from the CAJ earlier spoke about how the secretary of state Theresa Villiers had warned that the SHA may not be able to proceed if Welfare Reform was not agreed. Daniel very properly pointed out that this was a very bad example of the use of the bereaved as leverage on an unrelated matter. Though, as he also pointed out, welfare cuts will impact particularly on the poorest communities, within which the majority of the families of victims and survivors reside.

It's interesting, I was talking during the break to Mark Thompson, from Relatives for Justice and he was talking about how the authorities consistently talk about lack of funding when it comes to people seeking the truth about their loved ones. He talked about people who have waited four years for legal aid to enable them to begin their processes, when in fact state agencies hire the best and most expensive lawyers when it comes to defending their own interests.

One of the very poignant things that I am sure many of you have noticed over the years is the way a gap opens up between people who were once contemporaries of the dead, but they've grown old whereas the photographs of the dead remain the same. That was very striking in

the case brought to the High Court recently by Edward Barnard. He spoke of his little brother, Patrick, who when he died was a 13 year old, only a few years younger than Eddie. There was Eddie in the court, a dignified man in his late fifties, yet in the photo supplied to the Irish Times his brother was still a cheeky, smiling little 13 year old.

That case, Mr Barnard's call for a judicial review of the failure of the authorities to complete a report into the activities of the 'Glenanne Gang' is another example of the way cases currently end up having to be taken through the forums like the high court. They should be being dealt with under the type of measures envisaged by the SHA. Some of the questions that were raised in the review of the Glenanne Case will be very pertinent to the process that we are now engaged in. For example, the narrow focus on the prospect of criminal prosecutions which is not necessarily appropriate and not necessarily realistic.

Listening to David Ford, he sounded quite sceptical about the likelihood of these things coming to pass. He talked about whether the SHA, if implemented, would deliver. He did however say that if it was implemented it would be a very effective new set of measures. He talked of the emphasis on reconciliation which I felt was very appropriate.

Patrick Corrigan talked about the risk that the HIU could be interpreted too narrowly and about the need for a transparent process of appointments. I noted here that I hadn't heard reference to the Commissioner for Public Appointments in any of the references to appointments processes. I wondered if that would be addressed by those drafting the various pieces of legislation and I believe it should. Independence can only be assured if those heading investigative bodies are appointed by a fair and transparent public appointment process.

Patrick also spoke the concern about unrealistic time scales and unrealistic budgets, and that we needed to keep an eye on those, and that we needed to recognise linkages.

Daniel Holder from the CAJ talked about the very real concern which exists about the Conservative Party reneging on its commitments to Human Rights and that this would be seriously undermining and in contravention of the Good Friday/Belfast Agreement. Kate Allen reaffirmed for us that Amnesty UK is very strongly opposing those proposals.

I recently produced a film about the late Human Rights activist Inez McCormack. She said that when they were drafting the legislation that arose out of the GFA, on one occasion they went through thirty meetings where they insisted that the word 'Due' should be in the legislation (relating to section 75 of the NI Act 1998), yet when they came back the Civil Servants would have removed the word again, and this went on until Inez had a word with Bill or Hillary Clinton, who had a word with Tony Blair and the word was finally kept in.

Again, it is that gap which can open up between an agreement and the legislation which flows from it. Daniel referred to the gaps, that, for example, torture and serious injuries are not covered. However he talked about there being a significant victory in the sense that the UK government has not put any caveats on its commitment to make full disclosure to the HIU, that there won't be a national security issue thrown up to stop information. Fiona Doherty spoke about inquests and rather shockingly about how endemic delays still persist 13 years after they were flagged up by the European Convention of Human Rights Inspectors and that they have not been addressed. She has actually quoted the Lord Chief Justice saying that it was,

> *'quite possible that unless something radical was done, some of the cases that are currently in queues to be heard would not have been heard by 2040.'*

Clearly that would be absolutely outrageous. Even now we are seeing the older generations of parents who lost their children in the 1970's would be dead before their case was dealt with but for some, their sons, daughters and even grandchildren are going to be dead by the time these cases are dealt with.

An official from the Department of Justice, Mr Lavery, did come forward and say that these issues are being attended to. David Bolton raised the question of the injured and the huge caseload that working with their needs with entail, and that that is something that needs to be considered. William Fraser talked about the need for new local knowledge, and how would that fit in with the idea put forward by the drafters of this shadow legislation, that investigators had to not have been involved in state run organisations like the police, or in paramilitary organisations which had been involved in the conflict.

Kieran McEvoy talked again about gaps and on the absence of a gender lens to all of these mechanisms. Louise Mallinder talked about what 'victim-centred' meant, which is clearly very important to this whole process. It is easy to say that something should be victim centred, but what does that actually mean? Can it be defined? Can it be given a legal meaning? Louise talked about the principle of rigour, that information had to be verified, that stories couldn't be retold without evidence that they were actually based in fact.

It is my experience as a writer that people and communities can become very attached to versions of things that happened during the Northern Ireland Troubles which may be fundamentally flawed or, indeed, based deliberately on wrong information. They can sometimes be very resistant to learning that this information is incorrect, so clearly

there is a need for rigour in dealing with these matters. There can also be people who are out to get revenge and who will deliberately malign other innocent people.

I noted that no one seemed to refer to the Historic Abuse Inquiry which is going on in Banbridge at the moment and perhaps there are some aspects of that that might provide some guidance. Kieran McEvoy talked about not overselling prosecution as a potential outcome and about the moral impulse to come forward and there is some further discussion needed about that. Mark Thompson talked about how people want to engage and how we all want this to work.

This afternoon we heard from Anna Bryson who used the very telling phrase 'second chances are hard to come by' and discussed the sense that some people felt that events were rushing ahead outside of consultation. Again that was an experience in relation to the UNSCR 1325 process that if you don't consult you don't get a good process. There is still room for consultation with regard to this work, even though I think that the organisers today very wisely decided to focus on things that were agreed within the SHA, rather than reiterating their desire for things which had not been agreed.

Anna talked about the possibility of training and referred to the looming background issue of the Boston College 'debacle', something I'm sure many here are very conscious of. I think it brought out how poorly thought out that particular project was, and many people believe the fallout from it has created quite a 'chill-factor' in terms of people being willing to talk openly about their experience or, indeed, things that they have done.

Brandon Hamber based his talk, very usefully, on his experience in the international field, particularly in South Africa. He spoke about the fact that we have so many years of talking about these issues. He also made a very profound point when he said 'debates here aren't necessarily about what they seem to be about' and that it's important to identify the underlying issues, that the rages and despairs that people evince about, even if they don't seem to outsiders to be particularly important. He also raised the question of what happens to the Implementation and Reconciliation Group after the 'miraculous five years'.

Having warned that this is going to be a massively political process, Brandon said that it followed that the appointments made to various bodies are going to be massively important and people will need to see when appointments are made that there have been appropriate, transparent, accountable processes. Brandon talked about the imperative of promoting reconciliation, that it mustn't be simply passed from body to body, that it is a responsibility for everybody. He referred to the work of Healing through Remembering over the years in relation to these issues.

Jeremy Hills' very rigorously technical talk about the legislation reminded us, as referred to also by Daniel Greenberg, that this is in many ways a technical process that has been engaged upon here, and that its very important that people recognise that. One can talk about the broader issues but when it comes down to it, it is important to get the technical aspects right, because these are the aspects from which success or failure will be measured.

Jeremy talked about the duty of collaboration on the thematic work and asked how we tie all these different bases of information together. These are all areas of work which have yet to be explored. He raised the question of resourcing and public funding. I can add myself that having recently spoken with members of the victims and survivors forum about their work on the SHA, I know that they have raised concerns about the limited budget which seems to have been envisaged for the whole of this work. Looking at the huge needs that are out there, that is something that is very concerning indeed.

A member of the conference audience raised the fundamental question as to whether we can guarantee that the British government won't renege on its responsibilities on this, given that this is going to be Westminster legislation. Clearly the answer to that is not really, however as Patrick said at the beginning, the time for eternal vigilance is upon us. Daniel Greenberg said that you 'can't future-proof anything' and Brandon spoke of the role of legislation in building credibility for the new bodies. Obviously credibility is core; people will not take part in processes that they don't believe are credible.

To conclude I will read to you to remind you what the fundamental principles of the SHA are.

- The cause of reconciliation should be promoted
- The rule of law should be upheld
- The suffering of victims and survivors should be acknowledged and addressed
- That it is right to facilitate the pursuit of justice and the recovery of information
- That fundamental rights, including the convention rights within the meaning of section one of the Human Rights Acts 1988 and other international standards must be protected
- The approach to addressing issues arising from the past of Northern Ireland should be balanced, proportionate, transparent, fair and equitable

To return to Primo Levi, he reminds us that these things are not black and white, that there is a grey zone. We are all operating to a degree from the grey zone but from this we must get the black and white of legislation.

Finally, the work that has gone into the material for today's conference is excellent, meticulous and hugely

important and it was really good that officials from the department are here, and that one senior figure in the drafting of the actual legislation talked about how useful this exercise has been to those engaged in that work.

It is a very hopeful sign that finally we are seeing civic society linking in with the officials at the executive in terms of getting this right. I will give the last word to Roisin McGlone, who said to me earlier today, that with the new will that seems to be behind this work, you never know, we could finally surprise ourselves.

Thank you.

CLOSE

Brian Gormally
Director, CAJ

Thank you to everyone who worked behind the scenes to make this conference possible. I want to thank all the sponsoring organisations, as well as the speakers, each of whom has managed to condense their thoughts into relatively digestible parts. I would also like to thank our disciplined audience for staying to the end. I hope it wasn't a bitter end, let me just say that not all of this conference has been based around the activities of the drafting group that you've heard so much about. This is the beginning, in our view, of a public consultation amongst civil and political society that is designed to precede and inform the actual formal drafting of the legislation.

Any feedback that people would like to make would be extremely welcome in the next couple of weeks, as the timetable is very short. You can find contact details on the CAJ website or through contact with the various academics through their respective universities.

Let me conclude by saying we have spoken today about four interconnected institutions that together have the capacity, in our view, to mark an effective way of dealing with the past. The existence of that possibility was one of the reasons people involved in the drafting group decided that, as well as to criticise and critique; which is especially important from a Human Rights perspective, it was our responsibility to propose solutions, as we are a part of this society whose success will be measured by the extent to which it incorporates Human Rights principles in its institutions.

This is one of the reasons that in the past we at CAJ and others have been very vociferous with the plan to do away with the Human Rights Act and maybe even the European Convention itself. This is also the reason why we are very insistent that, just as the minister said this morning, and indeed the quote from the basic principles of the SHA made clear – these institutions must be based on Human Rights principles. One of the most important of these is independence. This is why we are proposing ways in which the institutions can be Human Rights compliant, you can be very sure, that if the proposals that come out are not, then we will make that very clear within public sphere as well.

Thank you all very much for your attendance today and as Patrick Corrigan has said, 'this is the beginning of the hard work of eternal vigilance.' Our job tasks are laid out in some detail for the next few months, so it is shoulder to the wheel and let us all hope for, and work for, a successful outcome. Thank you very much.

Amnesty International UK

Amnesty International UK is a national section of over 200,000 members, part of a global movement of more than seven million people who take injustice personally.

Amnesty International is the world's largest grassroots human rights organisation. Amnesty works to protect men, women and children wherever justice, freedom, truth and dignity are denied. It campaigns for a world where human rights are enjoyed by all. It is independent of any political ideology, economic interest or religion. No government is beyond scrutiny.

Amnesty investigates and exposes abuses, educates and mobilises the public, and helps transform societies to create a safer, more just world. It lobbies governments and other powerful groups such as companies, making sure they keep their promises and respect international law. By telling the powerful stories of the people with whom Amnesty works, it mobilises millions of supporters around the world to campaign for change and to stand in defence of activists on the frontline.

Amnesty received the Nobel Peace Prize for its life-saving work and is funded by members and people like you.

The Committee on the Administration of Justice (CAJ)

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community. The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include – publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

Over the years CAJ would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Esmee Fairbairn, Henry Smith Foundation, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Institute of Conflict Transformation and Social Justice, Queens University Belfast (QUB)

The Institute was established in August 2012 with a director, two senior fellows, five research fellows and an administrative and clerical team who together with a number of affiliated staff will be responsible for shaping the Institute's research directions and managing delivery of its programme of activities.

A core aim of the Institute is to foster strong interdisciplinary research collaborations among the best scholars working on conflict transformation and social justice at Queen's and to develop international partnerships with leading researchers and organisations working on issues of related concern.

Our approach is interdisciplinary and comparative. Given the unique history of conflict and reconciliation in Northern Ireland, researchers at Queen's are well-placed to offer a unique perspective on many of today's difficult research challenges, both in Ireland and across the globe.

A broad range of disciplines across all faculties within the university offer significant research expertise on the cultural, political, economic, structural, spatial, policy, health-related and other dimensions of conflict transformation in both historical and contemporary Ireland. At the same time, our research expertise in the study of conflict elsewhere – across Europe as well as in South Asia, the Middle East, South-East Asia and Latin America – expertise which our recent appointments have consolidated and extended, advance the Institute's ambition to develop truly comparative perspectives on conflict transformation and social justice.

These research strengths and this comparative approach will form the bedrock of a graduate programme open to the best students worldwide, a programme which we aim to make of global significance and attractive to students seeking to undertake taught post-graduate and research degrees in areas such as peace-building, transition, human rights and the area of conflict amelioration generally.

University of Ulster's Transitional Justice Institute (TJI)

The Transitional Justice Institute (TJI), established in 2003, has rapidly become internationally recognised as a leading centre in developing the field of transitional justice broadly, the study of law in societies emerging from conflict. It has placed research emanating from Northern Ireland at the forefront of both local and global academic, legal and policy debates.

The TJI is dedicated to examining how law and legal institutions assist (or not) the move from conflict to peace. A central assumption of the research agenda of the TJI is that the role of law in situations of transition is different from that in other times. In contrast to commonly held understandings of the law as underpinning order, stability and community, the role of law in transitional situations is a less understood role of assisting in the transition from a situation of conflict to one of 'peace' (perhaps better understood as non-violent conflict). The Institute has established authoritative analyses of rapidly developing legal controversies in Northern Ireland for the benefit of a global audience.

It also brings comparative experiences and international influences into the Northern Irish debate. TJI espouses an 'active research' model, wherein engagement with institutions, policy-makers and communities (internationally and locally) generates research, and research generates engagement.

ANNEX 1: DELEGATES LIST

Name	Organisation
Abernethy, Hedley	Ulster University
Abernethy-Barkley, Jonathan	
Ahmed, Yasmine	Rights Watch (UK)
Allen, Kate	Amnesty International
Alvarez, Amaia	Transitional Justice Institute
Archbold, Claire	Dept Finance and Personnel
Auld, Jim	Conflict Resolution Services Ireland
Banks, Victoria	Office of the Police Ombudsman NI
Beggs, John	Commission for Victims and Survivors
Bennett, Athena	CAJ Volunteer
Bergin, Colm	Amnesty International
Bolton, David	Initiative for Conflict Related Trauma
Brecknell, Alan	Pat Finucane Centre
Bryson, Anna	Queen's University, Belfast
Bunting, Mairead	Office of the Attorney General for Northern Ireland
Burne, Anna	Northern Ireland Office
Butler, Paul	Relatives for Justice
Cariddi, Chiara	
Cash, Fiona	CAJ Volunteer
Cassidy, Fiona	Jones Cassidy Brett Solicitors
Chapman, Mark	Community Dialogue
Corrigan, Patrick	Amnesty International UK
Corry, Geoffrey	Glencree Centre
Coughlan, Thomas	University of Limerick
Coyle, Patricia	Harte Coyle Collins (sols)
de Brún, Bairbre	Sinn Féin
De Burke, Ruarhi	
Dempster, Lauren	Queen's University, Belfast
Dickson, Brice	Queen's University, Belfast
Doherty, Fiona	QC
Doherty, Tony	Police Ombudsman
Drinan, Padraigin	BL
Drudy, Aoife	Northern Ireland Office
Dudai, Ron	
Dudley, Rebecca	
Dwyer, Dr. Clare	Queen's University, Belfast
Farrell, Ellie	Anglo Irish Division, Dept of Foreign Affairs & Trade

Name	Organisation
Ferguson, Amanda	Freelance Journalist
Flynn, Aine	Armagh Women's Project
Ford, David	Minister of Justice
Fraser, Willie	FAIR Research and Policy Unit
Gormally, Brian	CAJ
Graham, Nikki	OFMDFM
Greenberg, Daniel	Barrister specialising in legislation
Grzymek, Brian	Dept of Justice
Guelke, Adrian	Queen's University, Belfast
Hainsworth, Paul	CAJ Member
Hamber, Brandon	International Conflict Research Institute
Harper, Irene	South Belfast Seniors Forum
Hensel, Lena	CAJ Eirene Volunteer
Hill, Jeremy	Lawyer, drafting group member
Hinan, Tamara	The University of Western Ontario
Holder, Daniel	CAJ
Holmes, Paul	Police Ombudsman NI
Johnston, Rosalind	Coroners Service NI
Jones, Charmain	Rural Community Network
Kearney, Ciarán	Ulster University
Kelly, Elaine	British Irish and NI Division Taoiseach's Dept
Kelly, Gráinne	International Conflict Research Institute
Kerr, Lauren	Ulster Unionist Party
Kilpatrick, Alyson	Bar Library
Lavery, David	Department of Justice
Lawther, Dr Cheryl	Queen's University Belfast
Logan, Amanda	Police Ombudsman NI
Loughran, John	INTERCOMM
Lundy, Dr Patricia	Ulster University
Lydon, Conor	University of Limerick
Mac Eoin, Gemma	
MacAirt, Ciarán	Paper Trail (Legacy Archive Research)
Madill, Norma	Armagh Women's Project
Magee, Aine	
Magee, Seamus	Victims and Survivors Service
Maguire, Tara	Bar Library/OPNI
Mairs Dyer, Jolene	Ulster University
Mallinder, Dr Louise	Transitional Justice Institute
Manion, Megan	University of Minnesota

Name	Organisation
Matthews, Marie	Equality and Strategy Directorate OFMDFM
McAdams, Jonathan	Northern Ireland Office
McAleer, Liz	CAJ
McCafferty, Mairéad	NICCY
McCallan, Mary	Wave Trauma Centre
McCartan, Michael	Bar Library
McDowell, Ryan	CAJ Volunteer
McEvoy, Kieran	Queen's University, Belfast
McFetridge, Paula	Kabosh
McGlade, Dympna	Community Relations Council
McGlone, Róisín	
McGrann, Cathy	Coroners Service NI
McIllroy, Chloe	
McIlroy, Seamus	Police Ombudsman NI
McIntyre, Patricia	OFMDFM Victims and Survivors Unit
McKay, Susan	Conference Rapporteur
McKenna, Eoghan	MSM Law
McKeown, Gemma	CAJ
McNamee, Adrian	Commission for Victims and Survivors
Miller, Ryan	Nick Garbutt PR
Mitchell, William	
Moffett, Luke	Queens University Belfast School of Law
Moore, Clare	Irish Congress of Trade Unions
Morris, Daniel	NI Human Rights Commission
Morris, Dervla	Public Interest Litigation Support Project
Mulholland, Michael	Police Ombudsman NI
Murphy, Prof Pauline	Ulster University
Murphy, Alan	Legacy Group Northern Ireland Office
Murphy, Andree	Relatives for Justice
Murphy, Jason	PSNI
Murphy, Niall	KRW Law
Murray, Sean	Sinn Féin
Nikolov, Stanilov	Photographer
Ó hAdhmaill, Dr. Féilim	University College Cork
Ó Murchú, Níall	KRW Law
O'Boyle, Sean	Red Cross
O'Neill, Laura	Police Ombudsman NI
O'Rawe, Dr Mary	BL

Name	Organisation
O'Rourke, Catherine	Transitional Justice Institute
O'Connell, Rory	Transitional Justice Institute
Patterson- Bennett, Emma	CAJ
Patterson, Ruth	Armagh Women's Project
Potter, Michael	NI Assembly Researcher
Ringland, Trevor	
Ritchie, Angela	Department of Justice
Robert, Campbell	EPIC
Robinson, Peter	OFMDFM
Rolston, Bill	Transitional Justice Institute
Ruddy, Gerry	Conflict Resolution Services Ireland
Rusk, Stephen	Legacy Group Northern Ireland Office
Ryan, Pat	Amnesty International UK
Simms, Dr Jane	Victims and Survivors Service, Psychologist
Slow, Shanan	
Stage, Maria	Queen's University, Belfast
Stewart, Dorothy	Armagh Women's Project
Stewart, Jonathan	British Council NI
Sullivan, Paul	Bar Library
Taylor, Katie	Department of Justice
Thompson, Mark	Relatives for Justice
Toland, Charlene	Armagh Women's Project
Topp, Heiko	Amnesty International UK
Turner, Kate	Healing Through Remembering
Vasiliauskaite, Egle	Queen's University, Belfast
Walsh, Seanna	Coiste na nIarchimí
Wilkinson, Oliver	Victims and Survivors Service
Wright, Joseph Patrick	Amnesty International UK
Wright, Kristie	
Wright, Terry	
Wyss, Alice	Amnesty International UK

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