



JUNE 2010

ADVICE TO GOVERNMENT

# DEALING WITH THE PAST



# **CONTENTS**

## **INTRODUCTION**

## **SUMMARY OF MAIN PROPOSALS**

## **INSIGHTS FOR DEALING WITH THE PAST**

### **1. REFLECTIONS ON THE CONSULTATIVE GROUP'S REPORT**

- 1.1. The £12,000 Recognition Payment
- 1.2. The Consultative Group's Analysis
- 1.3. Peace and Reconciliation
- 1.4. Managing a Conflicted Society
- 1.5. The Past: Facts, Interpretations and the Need for Re-assessment
- 1.6. Legacy
- 1.7. The Ingredients for Dealing with the Past
- 1.8. The Consultative Group's Strategy for Implementation

### **2. GOVERNMENT AND POLITICS**

- 2.1. The Past and Political Contention
- 2.2. New Civic Norms
- 2.3. Cross Party Engagement
- 2.4. The Two Governments
- 2.5. A Way Forward
- 2.6. Cost Benefit Analysis

### **3. VICTIMS AND SURVIVORS**

- 3.1. Recognition and Acknowledgement
- 3.2. Financial Support for the Bereaved and Seriously Injured
- 3.3. Mental Health and Well-Being
- 3.4. Inter-generational Consequences and the Impact on Children
- 3.5. The Definition of a Victim

## **4. JUSTICE AND TRUTH**

4.1. Expectations of the Criminal Justice System

4.2. Inquests

4.3. Tribunals of Inquiry

4.4. The Question of Further Inquiries

4.5. The Historical Enquiries Team

4.6. New Structures for Dealing with the Past

4.7. The Universal Challenge of Truth

4.8. Comparisons with South Africa

4.9. The Examination of Truth

## **5. CITIZENS AND COMMUNITIES**

### **Annex 1 – Outline of the Report**

## **INTRODUCTION**

The Commission for Victims and Survivors was established in June 2008 under the Victims and Survivors (Northern Ireland) Order 2006, as amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008.

The Commission is a Non-Departmental Public Body of the Office of First Minister and deputy First Minister. The principal aim of the Commission is to promote the interests of victims and survivors of the Northern Ireland conflict. This document is submitted to the Secretary of State for Northern Ireland and the First and deputy First Minister of Northern Ireland under Article 6, Section 4 of the 2006 Order which empowers the Commission to advise on matters concerning the interests of victims and survivors.

In developing our advice on the past the Commission has taken due cognisance of the report of the Consultative Group on the Past which was submitted to the Secretary of State for Northern Ireland in January 2009.

The Commission for Victims and Survivors has concluded that there is a need for the British Government, acting with the support of the Irish Government, to press the political and civic leaders of Northern Ireland to agree structures to deal with the past, beyond the current arrangements of the Historical Enquiries Team and the Police Ombudsman.

During the latter half of 2008, the Commission held a series of meetings with the members of the Consultative Group on the Past in the run up to the publication of their report in January 2009.

Over the course of 2009, Commissioners deliberated at length with each other regarding the Consultative Group Report as we developed our own thinking on the question of how to deal with the past.

On successive days of consultation with victims and with interested members of the general public over the past two years, the Commission heard a wide range of views on the past and on the Consultative Group Report.

We have held discussions with all of the political parties in Northern Ireland; with civic leaders and community activists on all sides; with public bodies and agencies, including the PSNI, the Armed Forces, the Police Ombudsman and the Historical Enquiries Team.

We have met with individuals from republican and loyalist constituencies, veterans' organisations and representatives of retired police officers.

We have held meetings with Secretaries of State, Shaun Woodward and Owen Patterson.

We commissioned a Public Opinion Survey in November 2009, as a way of measuring views across Northern Ireland about dealing with the past, in particular the issue of Tribunals of Inquiry.

Above all, between September 2009 and June 2010, we conducted lengthy discussions within the pilot Forum for Victims and Survivors and submitted various drafts of proposals to them for critical scrutiny and advice.

When the Commission responded to the Northern Ireland Office's consultation on the Consultative Group's Report in November 2009, we observed a number of gaps between their recommendations and the reality of life on the ground for our society. At that stage, we informed the Secretary of State and the First and deputy First Ministers that the Commission would take further soundings on the potential for agreement on dealing with the past and report back in due course.

In the event, we decided to withhold the presentation of our advice until after the General Election on 6 May and the publication of the Saville Report into Bloody Sunday on 15 June 2010.

Over the past two years since the Commission was established, Commissioners and staff have had almost daily contact with individuals and families who carry deep hurts and suffer debilitating conditions as a consequence of the violent conflict that dominated our society for so long. Most of these people are suffering in relative silence. Many feel hopeless about their situation and a significant number carry the

additional hurt of believing that their suffering is pointless because, at its heart, our society has not changed and is incapable of change.

The Commission firmly believes that we must deal urgently with the legacy of the conflict. Many victims and survivors have waited for many years for answers and assistance, many have died without having their needs met and for many more, their needs have been exacerbated as they age. We believe Government and society has a duty of care to these individuals, families and communities.

## **SUMMARY OF MAIN PROPOSALS**

- i. The aim of dealing with the past should be to promote peace and reconciliation in Northern Ireland.
- ii. The main ingredients for dealing with the past are reviewing historical cases with a view to holding people to account before courts and where this is not possible, recovering information for families, and examining issues arising from the conflict which have had a critical importance for our society.
- iii. The British Government should work in partnership with the Irish Government.
- iv. The British Government should engage with parties in Northern Ireland to agree terms for a process to design an approach to the past.
- v. The Design Process should run between November 2010 and April 2011 and aim to reach a cross-party agreement on arrangements for dealing with the past.
- vi. The Design Process should avail of expert advice and contributions from civic society and victims.
- vii. The Commission will advise on modalities for truth examination which are suitable for our situation in Northern Ireland.
- viii. New arrangements for the past should be in place by autumn 2011.
- ix. One option for consideration in the Design Process would be to establish a new agency to subsume the Historical Enquiries Team and part of the Police Ombudsman's Office. Such an agency would review investigations, seek to recover information for families and examine the truth behind a number of events and issues of critical importance to the unionist and nationalist traditions.
- x. The Commission will convene a Working Group to produce proposals to improve financial support to address the needs of the seriously injured and the bereaved.

- xi. The Commission will convene a Working Group to consider the impact of conflict related trauma on the mental health and wellbeing of victims and survivors.
- xii. The Commission is in discussion with the Commissioner for Children and Young People regarding a study of the inter-generational impact of the conflict.
- xiii. Government should work to the principle that all who are in need, arising from the conflict, should receive help.
- xiv. Government should promote greater awareness among the general public about the extent to which the past can be addressed by the Criminal Justice system.
- xv. If adequate, independent alternative arrangements are established, there would be no need for further Tribunals of Inquiry.
- xvi. The Justice Minister should commission a review of the Historical Enquiries Team.
- xvii. The Commission will consult with victims and survivors regarding the effectiveness of the Historical Enquiries Team and the Office of the Police Ombudsman for Northern Ireland and report in due course.
- xviii. Truth examination should be at the core of new arrangements, whereby events and issues of critical societal significance from the past, can be carefully examined.
- xix. The Office of the First Minister and deputy First Minister policy on Cohesion, Sharing and Integration should include a commitment to deal with the past as one of its core themes.
- xx. A body such as the Community Relations Council should monitor and co-ordinate strategic contributions to dealing with the past across all departments of the Executive.

## **INSIGHTS WHICH INFORM THE COMMISSION'S APPROACH TO THE PAST**

- (a) Northern Ireland is a society whose conflict is not yet resolved. A major task of these times is to manage our societal conflict and help it evolve towards eventual resolution in some future period that most of this generation will not live to see.
- (b) A victim-centred approach to the past will help everyone to stay sensitive to the reality of the lasting impact of violent conflict on human beings.
- (c) All who are in need arising from the conflict should receive assistance regardless of the circumstances behind their need.
- (d) No one should be exempt from accountability for the past.
- (e) Access to justice is a human right. However, the judicial system on its own cannot deliver justice to victims or resolve all the issues of the past.
- (f) Truth is potentially beneficial for victims and for all of society but truth can be complicated and requires careful examination.
- (g) The legacy of the past affects the lives of our citizens and communities in ways that are positive as well as negative. There is widely held wisdom about the nature of conflict but there are also deep wounds, damaged relationships and estrangement between whole communities, across society.
- (h) Addressing the past will strengthen peace and stability by ensuring that the future is built upon a foundation of collective awareness, inspired by truth and renewed by justice.
- (i) An effective approach to the past will be based upon a political and civic consensus; require agreed mechanisms which are independent and non-partisan and an environment in which individuals and organisations are supportive and collaborative on behalf of the Common Good.

- (j) While it is important to deal with the legacy of the past, it should be kept in correct proportion to the greater social and economic challenges facing our society. We must deal with the past without living in it.

## **1. REFLECTIONS ON THE CONSULTATIVE GROUP'S REPORT**

### **1.1. The £12,000 Recognition Payment**

1. In its report in January 2009, the Consultative Group sought to give recognition to victims and survivors in its proposal for a £12,000 payment to the next of kin of the dead of the conflict. At the time, the Commission expressed its support for that proposal. We did so with the knowledge of many bereaved individuals who have had years of struggle to make ends meet and whose circumstances have been beyond the consciousness of wider society. For that purpose, we believed that a one-off payment would be a good and useful form of recognition of their enduring struggle.
2. However, the controversy which erupted around the proposal for a recognition payment divided the community and became a scandal which inhibited the development of a fuller debate of the Consultative Group's report and its other thirty recommendations.
3. It also highlighted the plight of many of the seriously injured, whose needs were not addressed by the Consultative Group's report.
4. Given that the recommendation did not address the needs of the seriously injured and that it is now clear that to proceed with such a payment would re-ignite division and be counter-productive, we concur with the previous Secretary of State, Shaun Woodward, that it is not appropriate to introduce a Recognition Payment at this time.
5. Our Public Opinion Survey of November 2009, revealed that 67% of respondents were aware of the £12,000 payment proposal but few stated an awareness of the Group's other recommendations. Indeed, only 36% stated that they had actually heard of the Consultative Group.

## **1.2. The Consultative Group's Analysis**

6. The Commission commends Lord Eames, Denis Bradley and their colleagues in the Consultative Group for the incisive analysis of dealing with the past which is set out in their report. While many people, including the Commission for Victims and Survivors, would take issue with aspects of the Consultative Group's report, we believe that it will be an important reference document for all who would seriously examine the issues involved in dealing with the past.
7. We agree with the Consultative Group's assertion that ways have to be found to deal with the past. The alternatives are to hope that people will simply lose interest or to exhort people to 'draw a line' under the past and 'move on'. However, these are forlorn hopes because the legacy of the past is a living dynamic affecting our present times and already influencing the future.
8. A number of Tribunals of Inquiry are due to report within the next year. Information gleaned from the hitherto secret Stalker/Sampson report will soon be in the public domain in the course of a number of contentious Inquests. There is understood to be a significant amount of material in files currently in the possession of Lord Stevens, former Commissioner of the Metropolitan Police, who conducted an investigation of alleged collusion between the Police and paramilitaries.
9. Left unaddressed and unattended, the past will continue to seep into our times in poisonous and destructive ways.

## **1.3. Peace and Reconciliation**

10. The Commission believes that the Consultative Group was right to suggest that the aim of dealing with the past should be to promote peace and reconciliation.
11. However, discussions within the pilot Forum for Victims and Survivors have led us to the conclusion that the concept of 'reconciliation' is riven with difficulties for our situation.

12. The Commission believes in the importance of a civic vision in addressing the legacy of the past. A civic vision should provide society with a common sense of purpose and direction and help make sense of some of the challenges which citizens might otherwise avoid.
13. Such a vision is contained within the twin concepts of peace and reconciliation.
14. Peace is not merely the absence of violence. Nor is it simply the maintenance of order. A peaceful society is one in which there is a sense of balance and fairness in people's lives; in which people are comfortable with difference and actually make use of diversity (rather than simply 'celebrate' it). A peaceful society is one in which there is social equilibrium and citizens and communities flourish and reach their potential.
15. The Commission believes that the legacy of the past has the potential both to inhibit societal peace and to enrich its quality. Inadequate attention to the past would lead to a failure to learn its lessons and allow the negative energy of conflict to permeate the social fabric of society. Due regard for the lessons of the past would actually strengthen social cohesion.
16. In our discussions within the Victims and Survivors pilot Forum, Commissioners observed a degree of discomfort with the idea that the Government's Victims Strategy should promote reconciliation. Members questioned the propriety of promoting an expectation that victims should engage in forgiveness and the unfair pressures this can place on them.
17. The Commission is conscious of difficulties emerging from popular understandings of reconciliation. Reconciliation is commonly confused with reconcilment (a place of harmony) rather than more accurately understood as a long process which takes place within individuals, between individuals and across communities and traditions.
18. Reconciliation in a conflicted society progresses by incremental steps, or even mini-steps. It involves the management of enmity; engaging 'the other side'

and overcoming estrangement. It begins with learning to have due regard for one's erstwhile opponent rather than an unfair expectation that one should respect them. Mutual respect should not be seen as a pre-requisite for engaging one's enemy or opponent, but rather, as something which takes time to evolve, if at all.

19. If conflict results from the failure of relationships, reconciliation is the journey towards the making of new relationships between people who have been estranged from each other because of their experience of conflict.
20. However, in conflicted societies, the process of reconciliation takes generations to unfold.
21. A more nuanced understanding of reconciliation is needed; one which is expressed in a way which is truly sensitive to our society's stage of development, and indeed, reflects greater insight about reconciliation as a hard process rather than a warm slogan.

#### **1.4. Managing a Conflicted Society**

22. It should be observed that while violence has abated and political and civic institutions have taken hold, the progress of deeper, societal peace is incremental and will require a number of generations to evolve to a point where conflict is actually resolved and not just managed.
23. Northern Ireland has not yet reached the age of 'conflict resolution'. Rather, the current phase of our history is one of 'conflict management' and in a conflicted society this is a significant achievement.
24. There is a need to advance a response to the legacy of the past in a manner which is sensitive to the fact that conflict is being managed rather than resolved in Northern Ireland. Our new political dispensation is in its infancy and requires continuing work to build and develop a broad civic consensus, and cross-community confidence around contentious issues.

25. The Consultative Group identified the main ingredients necessary for a comprehensive treatment of the past. However, their remit did not allow them time and space to engage with respective political and civic actors to facilitate 're-assessment' or the development of shared perspectives that might transcend partisan positions about dealing with the legacy of the past.
26. Government should recognise that Dealing with the Past is not a task which can be placed too heavily upon the shoulders of local politicians at this stage in our history without imposing a dangerous burden and significant additional strain on political life here.
27. At the same time, an effective approach to dealing with the past must have a degree of challenge and critical engagement of politicians and civic actors in Northern Ireland, and must be free from undue partisan or sectional influence.
28. The Commission believes that the best approach to dealing with the past will be founded in a partnership between the British and Irish Governments. Acting jointly, the two Governments potentially have a particular authority and a collective capacity to promote reassurance and confidence among individual citizens and stakeholders in Northern Ireland, the Irish Republic and Great Britain.

#### **1.5. The Past: Facts, Interpretations and the Need for Re-assessment**

29. The members of the Consultative Group on the Past came from different traditions in Northern Ireland. In their 18 months working together they had to overcome instinctive wariness of each other, develop a level of honest dialogue and face up to their different perspectives of the facts of history.
30. In a sense, the members of the Consultative Group came to see themselves as a microcosm of wider society here.
31. In order to develop the capacity to move forward together with their task, they had to come to terms with their differing interpretations of the same facts of

history. They had to think inclusively, becoming more sensitive to each other's outlook but without compromising their own.

32. The Consultative Group concluded that now that the 'past' is over and our citizens are faced with the challenge of sharing a recovering society, there is a need to find ways for people to live together while carrying opposing views of the past and of each other. Otherwise the past will retain a toxic quality, infecting relationships between individuals, communities and the State, infusing the future with unresolved issues from an inter-generational conflict.
33. The experience of the pilot Forum for Victims and Survivors serves as an illustration of the Consultative Group's belief in the importance of 're-assessment'. The Forum consisted of 28 people who are victims of the conflict from a range of backgrounds, plus 9 individuals invited into the Forum because of their relevant professional knowledge.
34. Invited by the Commission to meet frequently together between September 2009 and June 2010, Forum members were afforded an opportunity to get to know each other at a deeper level than is normal for citizens in our context. The process of prolonged engagement within the pilot Forum has illustrated the importance of creating civic spaces in which people from different, and often opposing backgrounds, can reflect on their experiences at the sharp edge of conflict and despite their enduring differences, are enabled to develop a wider perspective. Consequently, there is greater potential for consensus about dealing with the legacy of the past.
35. The Commission agrees with the Consultative Group that to deal effectively with the past there is a need to enable citizens to take on board contradictory views of our situation in Northern Ireland.
36. We believe that such work must go on among our civic leaders and across our communities. In that regard, it is important to note the relative strength of the community and voluntary sector in Northern Ireland. However, the maintenance of good practice in Community Relations work will require sufficient funding to bodies such as the Community Relations Council and the

Northern Ireland Council for Voluntary Action who provide support to those who work on the ground within and between communities.

## **1.6. Legacy**

37. While the past is over and history cannot be un-lived or undone, there is a difference between the past and the legacy of the past. It is as if the 'Troubles' were a volcano which erupted for over 40 years and the after-effects are like trails of lava which still flow into the present and towards the future, affecting the whole of the social environment of a society which is otherwise focused on its own recovery and a widely held desire to 'move on'.
38. While people hold deep and often contradictory views about what happened in the past, the impact and reverberations on citizens and communities are still being felt, mostly in subtle ways beneath the public consciousness. There is a civic responsibility to ensure that all in our society can recognise and absorb the after-shocks of a destructive period in our history.
39. The 'legacy' of the past means that which has been handed on to this and future generations. There are many encouraging examples in the community sector of individuals who were deadly enemies in the past but who now work together in the common task of dealing with its legacy.

## **1.7. The Ingredients for Dealing with the Past**

40. The Commission believes that the Consultative Group identified the key ingredients for a comprehensive treatment of the past:
  - (a) Help society towards a shared and reconciled future through a process of engagement with community issues arising from the conflict.
  - (b) Review and investigate historical cases with a view to holding people to account before the courts.

(c) In situations where further criminal investigation or prosecution is not feasible, seek to recover information which may be of assistance to families of victims.

(d) Examine themes arising from the conflict which remain of public concern.

### **1.8. The Consultative Group's Strategy for Implementation**

41. While the Commission accepts that these are the essential ingredients, we believe that the Consultative Group's implementation strategy was wrong.

42. In proposing the creation of a Legacy Commission by the British Government, the Consultative Group failed to show due deference to the need to build consensus and commitment at all levels of our society. It was as if the proposed Legacy Commission was constructed like a super-structure which would be lowered over Northern Ireland's past. For too many stakeholders, the Legacy Commission looked like an imposed structure which they could neither trust nor approach with any degree of confidence.

43. The Commission believes strongly that arrangements and mechanisms for dealing with the past must be built from the ground up in Northern Ireland and that local people must be involved in the construction work.

## **2. GOVERNMENT AND POLITICS**

### **2.1. The Past and Political Contention**

44. The British Government needs to be sensitive to an essential feature of governance in Northern Ireland: the Executive is a coalition of opponents who must overcome their own historical and enduring differences in order to jointly manage a society still deeply affected by conflict, whilst still governing in an efficient and cost effective way.

45. In every society political differences often generate heat and controversy. In a delicate political environment such as ours, contentious issues have the potential to cause more serious instability.

46. Faced with political tension over Dealing with the Past, the temptation for many would be to deny the importance of engaging with it or in some way to minimize the political response.
47. However, and as we have previously stated, the after-effects of the past will continue to influence the lives of citizens, communities and overall society. Left unaddressed, such effects are likely to be destructive.
48. Mechanisms must be created to release the pent-up energy of the past and even put it to good use for future generations.
49. Unfortunately, the Commission does not have evidence that political and civic leaders are sufficiently confident to deal with the past in a situation where political commitment is needed.
50. Similarly, the Commission believes there is only a superficial political consensus which does not go much beyond the notion that, differences aside, victims should be looked after.
51. However, there is even a lack of consensus on who is entitled to be viewed as a victim.
52. In fairness, across the political parties there is a commonly held awareness of the dangers of handling the past badly. For many, the danger of worsening our situation seems to outweigh the opportunity of improving it.

## **2.2. New Civic Norms**

53. Engaging the past is certainly laden with political difficulties that must be taken seriously.
54. The logic of our new political arrangements in Northern Ireland is the emergence of new civic norms, by which the implicit values upon which our political institutions work, eventually become reflected by the rest of society. These values include partnership, consensus and pluralism.

55. Partnership is expressed in coalition government; in Assembly committees and at Local Government level across Northern Ireland.
56. Consensus-building is part and parcel of the work of the Assembly and of a range of public bodies.
57. Pluralism is now fundamental to Northern Ireland. There is a co-habitation between the unionist and nationalist traditions. There is a commonly held commitment to respect and integrate newcomers and ethnic minorities. There are North-South and East-West structures to give expression to the development of relationships on the island of Ireland and between Great Britain and Ireland.
58. Such are the embryonic values underpinning the operational workings of the Executive and the Assembly. They need to be brought to bear upon the emergence of a cross-party understanding of how best to deal with the past.

### **2.3. Cross-Party Engagement**

59. A broad political consensus is required for an approach to the past in which all sides and parties can invest confidence and provide genuine collaboration.
60. Therefore, the development of a viable approach to Dealing with the Past requires cross-party discussion and negotiation.
61. Civic leaders and other 'stakeholders' also need to contribute perspectives to such discussions.
62. While being sensitive to the predicament of Northern Ireland politics, the British Government also needs to push and stretch political and civic leaders to step up to a challenge that must not be ignored or minimized.
63. The essential objective should be to create arrangements which are above and beyond partisan agendas or the self – interest of any one section of society.

64. A viable approach to the past will seek to promote the Common Good of society.

#### **2.4. The Two Governments**

65. The British Government needs to work in partnership with the Irish Government in developing an approach to the past. The history of the Peace Process illustrates the importance of the two Governments acting together with the political parties at key stages - most recently to help resolve the question of the devolution of policing and justice. Dealing with the Past is of such significance.
66. Furthermore, 'the past' is not only a matter for Northern Ireland, it includes events and issues of significance to the citizens of the Irish Republic and Great Britain.
67. However, sections of our society view both Governments as having a conflict of interest because of their involvement or perceived involvement in controversial aspects of the past.
68. Therefore, there is a need to address such a potential difficulty so that the respective future contributions of the two Governments are viewed as credible by all concerned.

#### **2.5. A Way Forward**

69. The Commission believes there is an urgency to address the legacy of our past, not least because victims and survivors are dying before their needs have been addressed. Some have waited as long as 40 years for society to acknowledge their needs.
70. The Commission suggests that the British Government, acting with the support of the Irish Government, should consider adopting the following action steps:

- (a) Engage with the political parties in Northern Ireland to agree terms for a cross-party talks process, aimed at reaching agreement on arrangements for Dealing with the Past.
  - (b) Agree the terms of the talks process by October 2010.
  - (c) The process – perhaps usefully known as the Design Process – should start in November 2010 and conclude by April 2011.
  - (d) The efficiency and effectiveness of Government in Northern Ireland should be protected from cross-party deliberations on the past. Therefore, Executive Ministers should consider agreeing to play no formal role in the Design Process.
  - (e) The Design Process could allow for contributions from civic leaders, the community and voluntary sector and victims and survivors.
  - (f) It would also be necessary for the Design Process to commission specialist advice and hear expert opinion on, for example, legal aspects of possible new arrangements.
  - (g) The outcome of the Design Process – agreed proposals for Dealing with the Past – should be placed before the Northern Ireland Assembly, the Northern Ireland Executive, Parliament and Dáil Éireann for validation and, as appropriate, to enable the passing of legislation.
  - (h) Agreed arrangements should be in place by autumn 2011.
  - (i) They should be independent of Government and protected from undue partisan or sectional influence.
71. The two Governments should seek to maintain the supportive interest of the European Union and the United States.

## **2.6. Cost Benefit Analysis**

72. It is clear that funding will be a significant issue in these increasingly difficult economic times. The Commission believes that, in any event, the past will continue to impose a financial burden on our society: through policing and investigations; through judicial processes such as inquests and in recurring community tensions which might otherwise be ameliorated by proactive strategies.
73. Come what may, there will be an ongoing financial impact of the past. Dealing with the past in an agreed, politically and civically responsible way, may actually create the possibility of greater cost effectiveness.
74. Whilst the Commission has not attempted to provide detailed costings of possible new arrangements for Dealing with the Past; we would expect that financial costing of various options would be an important part of the Government's engagement with political and civic leaders, and be developed as part of the options appraised process.
75. However, point (j) listed on Page 9 of this document also affirms the Commission's belief that in dealing with the past we must retain a proper sense of priority about the cost of dealing with the present.

## **3. VICTIMS AND SURVIVORS**

### **3.1. Recognition and Acknowledgement**

76. Discussions within the pilot Forum for Victims and Survivors lend credence to the Consultative Group's view that victims are "a painful reminder of society's failure". Judging by the experiences of members of the pilot Forum for Victims and Survivors, many victims feel a lack of recognition and acknowledgement by the rest of society.
77. 'Recognition' occurs when someone feels that others have become able to see them as they see themselves; known for the person they are, or perhaps,

whom they have come to be. Through recognition, victims feel that they are properly known and understood by the rest of society.

78. 'Acknowledgement' occurs when the actions of others are informed by recognition of who the victim and survivor really is. Acknowledgement is the 'working out' of recognition in the everyday lives of victims. A society that truly knows and understands the victims and survivors of its own conflict develops sufficient insight to orientate services and make provision for its stricken citizens.
79. However, perceptions within the pilot Forum lend credence to the Consultative Group's view of victims:

"They exist because, as a society, we failed to develop a context in which human beings could grow and flourish together rather than sow divisions and inflict injury on one another. Victims and survivors are, therefore, painful reminders of society's failure."  
(CGP Report, p.83)
80. Members of the pilot Forum have expressed a concern that with the creation of a Commission, a Forum, and soon a Service, the rest of society (including politicians) is eager to 'move on', pushing victims and survivors to the side, rather than persisting with the cross-generational task of struggling with the challenges and opportunities which victims and survivors present to us all.
81. The Commission must warn Government of the danger of a failure of empathy with victims and survivors.
82. We would remind everyone that victims and survivors bear witness to the human impact of violent conflict. If we, as a society, keep them at the centre of our approach to dealing with the past we are more likely to address its legacy in ways that are profoundly informed by local insights about human suffering. In dealing with the past, empathy with victims and survivors will, perhaps, be the best way to ensure that our tendency towards political rivalry,

score-settling, and even sectarianism, will be tempered by a wider spirit of compassion.

83. While the Consultative Group's specific proposal to use a financial payment as a method of recognition became mired in controversy, the Commission concurs with the pilot Forum's view that it is important to give due recognition to victims. Therefore, we will promote discussion and undertake consultation about ways to enable greater recognition and acknowledgement of those who have been most deeply affected by events in the past.

### **3.2. Financial Support for the Bereaved and Seriously Injured**

84. The Commission remains deeply conscious of the precarious circumstances of many of the bereaved. Furthermore, discussions within the Pilot Forum have increased our awareness of the plight of the long-term injured. There are examples of people awarded compensation in the 1970s and 1980s who received paltry sums which did not properly reflect loss of future earnings and the impact on partners and dependants.
85. We have learned of cases in which injured people were awarded compensation based upon a pessimistic (and incorrect) view of their life expectancy. Increasing numbers of the gravely injured and maimed are now reaching pension age and find themselves facing health, welfare, mobility and social challenges which neither they nor their health professionals envisaged at the time, when they sustained life-changing injuries.
86. The pilot Forum welcomed the inclusion in the Hillsborough Agreement of monies to address the needs of former members of the UDR and police officers suffering hearing loss. Forum members also affirmed the continued commitment of funding for victims issues by Office of the First Minister and deputy First Minister and the development of a 10 Year Strategy to address their needs.
87. The Commission is anxious to ensure that when the new Victims and Survivors Service comes into operation in 2011, it will have robust and

efficient arrangements for meeting the financial needs of victims and survivors.

88. Members of the pilot Forum have expended a lot of effort in attempts to devise a formula which would improve support to the injured but the matter remains complicated by existing regulations and resists easy answers.
89. In summary, the Commission advises the First Minister and deputy First Minister that there are significant financial problems being suffered by many of the bereaved and the seriously injured. This issue will be included in the Commission's Comprehensive Needs Assessment.
90. The Commission will convene a Working Group to produce proposals to improve provision for those with financial needs which stem directly from the loss of a close relative (parent, partner or child), or from serious injury, with a view to its inclusion in the Programme for Government.

### **3.3. Mental Health and Well-Being**

91. The Commission has been professionally advised to draw attention to the health implications of examining the past.
92. On the one hand, examination of unresolved issues has enormous potential for the mental well-being of this and future generations.
93. On the other hand, for some citizens, such processes can lead to the re-emergence of dormant personal problems, and even the emergence of new difficulties.
94. The Commission will convene a Working Group to consider the impact of conflict related trauma on the mental health and well-being of victims and survivors.

### **3.4. Inter-generational Consequences and the Impact on Children**

95. A number of discussions within the pilot Forum for Victims and Survivors provided vivid illustrations of the inter-generational impact of societal conflict. Forum members told personal stories of the experiences of their children as witnesses: from actually being present at the death or injury of a parent to growing up witnessing the impact of death or serious injury on family relationships.
96. A number of pilot Forum members were moved to reflect on a kind of informal code of silence within which their children had grown up. They became anxious to begin a new kind of dialogue aimed at understanding the impact of 'witnessing'.
97. The Commission is in discussion with the Commissioner for Children and Young People regarding a study of the inter-generational consequences of the conflict.

### **3.5. The Definition of a Victim**

98. There is an ongoing dispute about the definition of a victim; about who should be entitled to be treated as a victim or survivor of the Northern Ireland conflict. The Victims and Survivors (Northern Ireland) Order, 2006, lays down a definition in the following terms:
  - (a) have been injured (physically or psychologically) as a result of a conflict-related incident;
  - (b) care for such an injured person;
  - (c) have been bereaved as a result of a conflict-related incident.
100. For some sections of society, the law is unjust because it makes no moral distinction between innocent people and members of the security forces on

the one hand and, on the other hand, members of proscribed organisations or those who suffered as a direct or indirect result of their own actions.

101. Other sections of society take exception to the creation of a 'hierarchy of victims', arguing that the conflict led to suffering across society; that victims and survivors, regardless of their personal circumstances or actions, are individuals whose suffering results from a civil conflict.
102. An alternative interpretation holds that the question of who is and who is not a legitimate victim is a problem which cannot be resolved without appearing to damage the integrity of one of more sections of our divided society. In this view it is best not to try to solve an insoluble problem. Rather, pragmatism suggests that it is best to leave the problem unresolved and concentrate instead on responding to present need, regardless of its provenance.
103. When the pilot Forum for Victims and Survivors was being established in 2009, the First and deputy First Ministers asked that the pilot Forum deliberate on this matter. The range of views outlined in the above paragraphs was expressed in the pilot Forum too. For a significant number of members, the existing definition represents an inclusive approach to dealing with the legacy of the past. For others it reflects a spurious moral equivalence between those who upheld the law or were innocent and those who broke the law and were guilty.
104. A number of pilot Forum members also took exception to the fact that the 2006 Order does not actually include the dead among its categories of victims. While Commissioners explained to them that the definition contained within the 2006 Order was worded in a manner which was relevant to the purposes of the Order (to assist living victims), a number of Forum members retained a sense of insult about the Law's apparent failure to give due recognition to those for whom they mourned.
105. Perhaps it is timely to point out that the so-called 'legal definition' contained within the Victims and Survivors (Northern Ireland) Order, 2006, has a specific purpose. It provides a description of the range of people whom the

Commission is expected to serve. Therefore, from its inception the Commission has adhered to the definition contained within the legislation which established the Commission itself.

106. Pilot Forum members retained divergent views on the question of the definition of a victim. However, the pilot Forum reached a consensus around the principle that all who are in need should receive support and assistance, regardless of the circumstances behind their need.
107. For our part, the Commission for Victims and Survivors acknowledges that 'the definition question' is a matter of deep concern to political and civic leaders and to a range of individuals and families who suffer as a result of the conflict in Northern Ireland.
108. Moreover, since any change to the legal definition will require legislation to be agreed by the Executive and passed by the Northern Ireland Assembly, there is clearly an onus on Members of the Legislative Assembly to explore the question with each other in ways that allow for the kind of reflection and careful analysis which has taken place within the pilot Forum.

#### **4. JUSTICE AND TRUTH**

##### **4.1. Expectations of the Criminal Justice System**

109. The Commission affirms that victims have a right of access to justice.
110. However, we must also acknowledge that this right equally applies to those accused of a violation.
111. We believe that no one should be exempt from accountability for the past.
112. The Commission believes it is important to establish clarity around the question of amnesty. In our view, while significant numbers of victims no longer wish to see people brought before the courts and imprisoned, the granting of amnesty would be repugnant to the vast majority of victims.

113. An amnesty for conflict-related offences would constitute a formal denial of justice to victims and survivors. Therefore, we advise against such a development now, or in the future.
114. Consideration needs to be given to the capacity and ability of the Criminal Justice System in dealing with conflict-related matters. Further discussion between the Department of Justice and the Criminal Justice System needs to take place in this respect.
115. The review of investigations into conflict-related deaths undertaken by the Historical Enquiries Team (HET) has led in only one instance to a recommendation for prosecution being made to the Public Prosecution Service (PPS) in respect of a death occurring prior to the Good Friday Agreement. In that case the PPS determined that the standard of evidence was not sufficiently met to pursue prosecution.
116. The most recent figures on the work of the HET show that by May 2010, the HET had completed 753 reviews (relating to 982 victims and 1,058 families), none of which has resulted in a conviction.
117. Case law would indicate also that proving the security of the chain of custody of physical evidence in historical cases could be a major stumbling block. In the absence of admissible or credible physical evidence or a confession, a conviction would be difficult to obtain.
118. Therefore, whilst some might question the competence of the HET or PPS, it would seem to be the case that unsolved historical murders present few evidential opportunities after so many years.
119. The European Convention on Human Rights (ECHR), which was brought into domestic law by the Human Rights Act 1998, provides a detailed right to a fair trial. This includes the presumption of innocence, the right to a public hearing before an independent and impartial tribunal within reasonable time and other minimum rights for those charged with offences.

120. The majority of ECHR violations that the European Court of Human Rights finds today, in a Europe-wide context, concern excessive delays in violation of the “reasonable time” requirement before national courts.
121. Another significant set of violations concerns the “confrontation clause” of Article 6 of the European Convention (i.e. the right to examine witnesses or have them examined). In this respect, problems of compliance with Article 6 may arise when domestic laws allow the use in evidence of testimonies of absent, anonymous, deceased and vulnerable witnesses.
122. Whilst no significant body of case law exists in a Northern Ireland context in this respect, it is possible that such challenges could be presented in prosecutions of historic cases.
123. If a conviction were to be secured, the provisions of the Good Friday Agreement state that those held responsible would not face a prison term of more than two years (and would be released on licence after that time).
124. In seeking resolution through the Criminal Justice System, the odds are stacked against victims and survivors and even if a conviction was secured in, for example, a conflict-related murder case which would otherwise attract a life sentence with a recommended minimum time to be served, the outcome might exacerbate the sense of injustice felt by victims.
125. The Commission feels bound to acknowledge that such barriers exist.
126. We are anxious to ensure that victims and survivors are aware of what is realistic and achievable.
127. At the same time, we would hope for further dialogue within our society regarding the question of justice in dealing with the past.

## 4.2. Inquests

128. At the time of writing there are 36 inquests into conflict-related deaths ongoing, and indeed, some applications are pending to re-open inquest proceedings in other cases.
129. Article 2 of the European Convention on Human Rights (ECHR) has been interpreted to place obligations on the State in terms of the investigation of the use of excessive force in cases of deaths. In order to meet these obligations the European Court of Human Rights has stated that:
- (a) the inquiry must be on the initiative of the State
  - (b) it must be independent
  - (c) it must be capable of leading to a determination of whether any force used was justified, and to the identification and punishment of those responsible for the death
  - (d) it must be prompt and proceed with reasonable expedition
  - (e) it must be open to public scrutiny to a degree sufficient to ensure accountability, and
  - (f) the next-of-kin of the deceased must be involved in the inquiry to the extent necessary to safeguard their legitimate interests.
130. The introduction of the Human Rights Act 2000 enshrined the rights under ECHR into domestic law, however, the judgement in *McKerr by the House of Lords, 2004* held that Article 2 rights could not be applied retrospectively in the cases of conflict-related deaths. The House of Lords gave further effect to statutory investigations under the *Human Rights Act in Middleton, 2004* which allowed for inquests can be separated into 'Article 2 inquests' and 'traditional' inquests, depending on how rigorously the investigations are carried out. Clearly, a higher standard is expected in the former.

131. If an inquest is recognised by the courts as falling within the Article 2 range, significant benefits flow for the family and relatives of the deceased, including the provision of access to legal aid applications, allowing for the scope of the inquiry to be much wider and enforcing greater disclosure standards on the state.
132. In initial research into inquest processes, the Commission has identified a number of areas of concern which will form part of ongoing discussions with the Department of Justice and the legal profession. The issues include:
- i. The process of HET reviews of conflict-related deaths and how they may impact on inquest proceedings. On the one hand, a HET review could potentially secure additional information for families and/or the Coroner although it could lead to a time delay in proceeding with the inquest. Paradoxically, there could be potential challenge of inquest proceedings for reasons of inadequacy of inquiry if they do not take account of all available information.
  - ii. The impact on families of Article 2 compliance, or the failure to achieve it, in terms of access to legal aid and any differential in levels of investigation.
  - iii. The appointment of an Attorney General for Northern Ireland following devolution of policing and justice. Issues deemed to concern national security have been retained by the UK Government as reserved matters. Therefore, the UK Attorney General is likely to continue to hold much power over decisions on the handling of controversial conflict-related deaths in Northern Ireland.
  - iv. The impact of the Coroners and Justice Act 2009, which received Royal Assent on 12<sup>th</sup> November 2009, has not been tested in the coronial courts in Northern Ireland at this time.
  - v. The pending release of the Stalker/Sampson material to Coroners may raise additional issues.

#### **4.3. Tribunals of Inquiry**

133. The Commission notes the progress of a number of inquiries in accordance with an agreement between the two Governments reached at Weston Park in 2001.
134. The effectiveness of these inquiries merits careful scrutiny in the period after their conclusion, and the Commission will seek to facilitate reflection at an appropriate time.
135. The publication of the report of the Bloody Sunday Inquiry delivered some measure of comfort to the families of the deceased and wounded. Whilst we do not yet know what further out-workings of that report may be, if any, its publication reaffirmed the need to address issues of truth and justice for all victims and survivors who seek it.

#### **4.4. The Question of Further Inquiries**

136. The issue of further inquiries has been a complex and difficult matter for the Commission to address. Our Public Opinion Survey highlighted widespread concerns about the length and cost of inquiries, yet affirmed the right of families to seek truth and justice.
137. The Commission is aware of concerns about the potential of the Inquiries Act 2005 to impinge upon the effectiveness of inquiries.
138. There is also a widespread perception that one section of the community (i.e. those who have been victims of the State) have access to a greater level of scrutiny than those who have been victims of paramilitary organisations. Whilst it is the case that Tribunals of Inquiry are designed primarily to hold the State or public bodies to account, we must acknowledge that this creates resentment and anger for those who would wish to hold paramilitary organisations similarly to account.

139. The Commission notes that in the light of the publication of the report of the Bloody Sunday Inquiry, the Prime Minister has indicated that Government will not be disposed to any further open-ended, costly Tribunals of Inquiry.
140. We believe that the Prime Minister's sentiments reflect widespread public opinion, especially in difficult economic times.
141. It is our view that with creativity and imagination, an alternative to costly tribunals can and should be found.

#### **4.5. The Historical Enquiries Team**

142. In the Commission's view, the Historical Enquiries Team (HET) has been more effective in providing information to families than delivering justice in terms of court proceedings. While some families appear disappointed by the HET's inability to bring people to justice, others have had no such aspirations beyond learning more about the circumstances of their loved one's death.
143. The HET was established to review previous investigations into conflict-related deaths to establish if all the facts and evidence were pursued, and to examine whether further evidential opportunities exist. The primary driver for its establishment was for the United Kingdom to meet its obligations to deliver Article 2 compliant investigations, and whilst the European Council of Ministers in monitoring the HET's role has stated that it is sufficiently independent to be Article 2 compliant, the Council continues to monitor the processes of HET reviews to ensure they meet the prescribed standards.
144. In terms of delivering justice, the process has limitations as described above. We acknowledge that a significant percentage of the community have difficulties with the HET's status, given that it reports to the Chief Constable of the PSNI, and the process by which reviews are undertaken, substantially by former police officers, including former RUC and PSNI personnel.
145. The Commission's own casework with individual victims and families, as well as dialogue undertaken with various stakeholders, indicates a number of

problems with the HET's operation. This includes issues around clarity of what the review process can deliver and frustrations developing as a result, the apparent slowness of cases and a lack of support throughout the process for families who engage with the review process. There is also a disparity in how families who engage the help of advocates, and those who do not, are served by the HET.

146. The HET's mission is stated as being; "to give families the maximum possible disclosure in the least traumatic way." There is some way to go to achieve this.

147. In the context of this advice to Government, the Commission takes the pragmatic view that since the Consultative Group's recommendations regarding the creation of a Legacy Commission and therefore a new approach to investigation and information recovery has not received sufficient consensus, existing structures designed to meet the needs of victims and survivors will continue to operate in the medium term, at least. Given that this will be the case, we believe such structures must be as robust as possible.

148. The Commission believes that there is much room for improvement regarding the operation of the HET and the development of a more victim-centred approach to service delivery. This includes how the process is understood by victims and survivors; how their expectations of the potential outcome are managed and inconsistency of treatment in terms of those who avail of the support of advocacy services to assist them with the process and those who do not.

149. However, we recognise that in terms of information recovery, the HET has delivered a measure of comfort to a number of families.

150. The Commission is concerned at recent comments by the Chief Constable which indicated an expectation that the HET should be wound up by 2013. We must advise the new Secretary of State, and for that matter the Chief Constable, that dealing with the past in our society will defy those who might hope to establish 'closure' in so short a period of time.

151. We believe that 5 years since it was established, it is time for the Justice Minister to commission an independent review of the HET.
152. The outcome of the review could be:
- (a) to improve the operational effectiveness of the HET
  - and
  - (b) to contribute to a possible talks process aimed at reaching cross-party agreement on future arrangements for dealing with the past.
153. For our part, the Commission will survey victims and survivors to gauge their views on how effective the HET and OPONI are in meeting their needs.
154. We intend to examine what barriers exist to the HET process meeting the needs of victims and survivors, and how an approach which is victim-centred and looks at meeting parallel needs, such as advocacy and health-care support, can improve the outcomes of information recovery and investigation.
155. We will release the findings of our survey in the autumn.

#### **4.6. A New Agency for Dealing with the Past**

156. As we have described in Section 2.5 above, a government-led cross party Design Process needs to explore options for structures and mechanisms for dealing with the past and reach agreement.
157. The Commission would seek to facilitate a victim perspective to that process.
158. However, the Commission believes that the Design Process should include among its options the creation of a new agency for investigation, the recovery of information for families and the examination of events or issues from the past which have had a critical impact on society.
159. Such an agency would need to be independent and capable of withstanding political or civic pressures.

160. If such an agency was established, it could address issues which might otherwise have been the subject of a Tribunal of Inquiry.
161. The Commission will bring forward advice to Government on the development of formal and informal modalities for the examination of truth. These should be culturally sensitive to the unionist and nationalist traditions and be sufficiently flexible to adapt to the circumstances of a particular event or issue.

#### **4.7. The Universal Challenge of Truth**

162. The Bloody Sunday Inquiry and the Prime Minister's apology have been very significant developments, the full impact of which will take some time to become apparent. However, it is already clear that they have served truth, assisted healing and promoted reconciliation, especially with regard to the nationalist community.
163. Meanwhile, a range of other events and issues which have a particular significance for the nationalist community, such as the Ballymurphy killings of 1971 and allegations of State collusion with paramilitary organisations, remain unresolved and sit like open sores on the body of our society.
164. Among nationalists there is a widely held perception that unionists are in denial about State violence and misdemeanours in the course of the Troubles. There is also a belief that many unionists fail to appreciate how the behaviour of some members of the security forces contributed to the cycle of violence.
165. There is a significant degree of scepticism across the nationalist community that the State will allow itself to be held accountable for its actions.
166. Clearly longer term arrangements for dealing with the past must establish greater confidence that such issues will be given serious treatment.
167. However, the Commission is deeply concerned that there is a serious and profound confidence deficit in the unionist community concerning the concept of truth recovery.

168. Unionist reactions to the Consultative Group Report and ongoing commentary since then, indicate a deep suspicion that truth recovery is a flag of convenience for those whose real agenda is to deconstruct the integrity of the State and of the unionist/protestant tradition; to re-package terror and violence as a noble conflict and to re-write the history of the troubles.
169. Many people believe that republicans will block any serious attempts to hold them to account for their past.
170. While republicans and others from the broad nationalist community may view such suspicion as unfounded, and even insulting, it is a fact that the past cannot be dealt with if arrangements are such that only the State is accountable.
171. Therefore, mechanisms for the examination of truth must be capable of considering a range of atrocities and issues which retain iconic significance for the unionist community.
172. Examples might include: the attacks on Tullyvallen Orange Hall and Darkley Gospel Hall; the Teebane bus bombing; the La Mon House Hotel incendiary bombing; the Enniskillen Cenotaph bombing; allegations of ethnic cleansing of Protestants from border areas and of collusion by the Irish State with paramilitary organisations.
173. As with issues from the past which require examination for the nationalist community, it will be important to clarify the questions which demand answers for the unionist community.
174. There would appear to be an appetite across the nationalist community for a comprehensive attempt to engage with the past. However, without the participation of the unionist tradition, any approach to the past will be ineffective, distorted and ultimately a threat to peace.

#### **4.8. Comparisons with South Africa**

175. It is unhelpful and inappropriate to invoke processes from other parts of the world as a benchmark for Northern Ireland. References to a 'South African style Truth Commission', and indeed, the whole concept of a Truth Commission are perceived by many as uninformed and even naïve.
176. Arrangements for the Northern Ireland situation must have the confidence of all sides and traditions and be designed to fit the needs of our situation.

#### **4.9. The Examination of Truth**

177. Truth is complex. The examination of truth must go beyond the recovery of mere facts. It must also seek an analysis of context, causes and motivation. It must compare competing moral narratives and ultimately, enable citizens and communities to benefit from wider perspectives of our recent history and its legacy.
178. One of the factors inhibiting the development of a political, civic and communal commitment to dealing with the past, is a deep suspicion that opponents only want to excavate a truth which they can manufacture into ammunition with which to continue the conflict.
179. Such an approach to the past is unsustainable.
180. Another factor is a concern on all sides that truth recovery could be used as a means to conduct a "witch hunt" against individuals for their particular role in the conflict. While the Commission affirms the right of victims to seek justice and repudiates any suggestion of an amnesty, we also believe that a judicial approach to the past is not likely to satisfy the needs of the majority of victims, nor of society as a whole.
181. Rather, we believe that the greater potential lies within the work of recovering information for families about individual cases and examining the truth behind issues of wider concern.

182. For this reason, the Commission for Victims and Survivors urges the British Government to seek to establish a consensus about dealing with the past in ways which actually promote peace and reconciliation rather than facilitate the continuation of conflict.

183. For our part, working with a victim and survivor perspective, the Commission will contribute ideas for methodologies which are appropriate to our times.

## **5. CITIZENS AND COMMUNITIES**

184. The Commission for Victims and Survivors does not wish to suggest that responsibility for engaging the past rests with Government and politicians alone. Rather, active contributions from civic society will be important if a collaborative climate is to evolve and the full resources of communities are to be deployed in support of arrangements negotiated politically.

185. Similarly, at ground level, community sector organisations can play an important role in enabling ordinary people to add their voice and their ears to the recovery of information and the examination of truth.

186. Dealing with the Past must be a central theme of the new OFMDFM policy on Cohesion, Sharing and Integration, which is long overdue.

187. The Commission believes that there should be a commitment across all Government departments to contribute to Dealing with the Past.

188. A body such as the Community Relations Council should be given the task of developing strategies to assist citizens and communities to deal with the past.

189. Such a body should also be tasked to monitor and co-ordinate departmental commitment and report to the First and deputy First Minister and the OFMDFM Committee of the Assembly on a regular basis.

## **Annex 1 – Outline of the Report**

### **Reflections on the Consultative Group's Report**

1. The Recognition Payment divided the community and caused a scandal that prevented more serious consideration of the whole report. It would be inappropriate to introduce it at this time.
2. The Commission commend the Consultative Group for their analysis of the issues involved in dealing with the past. The report is a 'must read' on the subject.
3. It is important to find ways of dealing with the past. Otherwise, it will seep out like poison.
4. A civic vision is important for any treatment of the past. We agree with the aim being to promote peace and reconciliation.
5. 'Reconciliation' is a problematic concept, requiring careful handling.
6. Northern Ireland is still a conflicted society. We are in the age of 'conflict management' not of conflict resolution.
7. The Consultative Group identified the main ingredients for Dealing with the Past: review investigations; recover information; examine thematic cases and issues.
8. They did not pay enough attention to the need for a political and civic consensus in Northern Ireland.
9. It is important to create civic spaces in which people from different backgrounds can reflect on their experiences and develop a wider perspective. This is essential for the eventual development of consensus.
10. The legacy of the past is that which has been handed on to this and future generations.
11. It has positive and negative elements and potential.

12. The Consultative Group's strategy was wrong: proposing a Legacy Commission as a fait accompli. They did not show due deference to the need to build mechanisms from the ground up in Northern Ireland.

### **Government and Politics**

13. The British Government needs to be sensitive to the task of the Executive and the Assembly: managing a society still deeply affected by conflict. This can be taken for granted, including by citizens in Northern Ireland.

14. At the same time, the Government also needs to press and stretch Northern Ireland's political and civic leaders to take responsibility.

15. There is only a superficial consensus which does not go beyond an agreement that victims should be looked after.

16. However, there is even a lack of consensus on who is entitled to be viewed as a victim.

17. The British Government needs to work in partnership with the Irish Government.

18. There needs to be cross-party engagement.

19. The viability of our new political order requires the emergence of new civic norms such as partnership, consensus and pluralism. These civic norms are essential for an approach to the past in which all sides and parties invest their confidence and provide their collaboration.

20. The Commission does not have evidence that political and civic leaders are sufficiently committed to deal with the past. Commitment is essential.

21. The two Governments need to work with the political parties to agree the terms of a process aimed at reaching all-party consensus on arrangements for Dealing with the Past.

22. The terms of the process should be agreed by October 2010.
23. Members of the Northern Ireland Executive should stay outside this process.
24. The Design Process should start by November 2010 and conclude by September 2011.
25. The process should allow for contributions from civic leaders, the community and voluntary sector and victims and survivors.
26. Proposals for dealing with the past should be placed before the Northern Ireland Assembly, Parliament and the Dáil for validation.
27. New arrangements should be in place by April 2012.
28. They should be independent of Government and protected from undue partisan or sectional influence.
29. The two Governments should seek to maintain the supportive interest of the E.U. and the U.S.A.

### **Victims and Survivors**

30. Victims have a fundamental need of 'recognition': being understood by others and recognising oneself in the story that is told of the past.
31. They also have a need for 'acknowledgement' – which is the acting out of recognition.
32. The Office for the First Minister and deputy First Minister Ten Year Strategy for Victims has been an important development, with its three key areas of Dealing with the Past, Serving Present Need and Building for the Future.
33. The creation of the Commission, the pilot Forum, the Forum, and the Service demonstrates commitment by the devolved administration.

34. The Commission has been advancing a programme of work with the approval of the First and deputy First Ministers.
35. We believe that political undertones, controversy and conflict are chill factors dissuading many victims from engaging or finding their voice.
36. The pilot Forum has given the Commissioners important critical scrutiny and advice.
37. There has been a range of divergent views in the pilot Forum concerning the Definition of a Victim.
38. However, there has been an overwhelming consensus for the principle that all who are in need should receive assistance.
39. The Commission will establish a Working Group to bring forward proposals for improving financial assistance to the seriously injured and the bereaved in time for inclusion in the next Programme for Government by June 2011.
40. The Commission will convene a Working Group to consider the impact of conflict related trauma on the mental health and well-being of victims and survivors.
41. The Commission is in discussion with the Commissioner for Children and Young People regarding a study of the inter-generational impact of the conflict.

### **Justice and Truth**

42. Victims have a right of access to justice; so do suspects.
43. Arrangements for Dealing with the Past must be in accordance with the European Convention on Human Rights and International Law.
44. No one should be exempt from accountability for the past.
45. There should be no amnesty for conflict-related crimes.

46. The Criminal Justice System on its own cannot deliver justice to victims or resolve all issues from the past.
47. We have a number of concerns regarding the conduct of inquests, principally: potential delays due to HET investigations; Article 2 compliance; the impact of the Coroners and Justice Act 2009 and legal aid for families.
48. The Commission will review the effectiveness of Tribunals of Inquiry from a victim perspective.
49. It is the Commission's view that with creativity and imagination, an alternative to costly tribunals can and should be found.
50. The Commission is concerned about the effectiveness of the HET and believe that the Justice Minister should commission an independent review.
51. For our part, the Commission will survey victims and survivors to gauge their views on how effective the HET and OPONI are in meeting their needs.
52. The Commission will release findings in the autumn.
53. A government-led cross-party Design Process needs to explore options for structures and mechanisms for Dealing with the Past and reach agreement.
54. The Commission will seek to facilitate a victim perspective to that process.
55. The Commission believes that the Design Process should include among its options the creation of a new agency for investigation; the recovery of information for families and the examination of events or issues from the past which have had a critical impact on our society.
56. Such an agency would need to be independent and capable of withstanding political or civic pressures.
57. If such an agency was established, it could address issues which might otherwise have been the subject of a Tribunal of Inquiry.

58. The Commission will bring forward advice to Government on the development of formal and informal modalities for the examination of truth.
59. The Bloody Sunday Inquiry and the Prime Minister's apology have been very significant developments, the full impact of which will take some time to become apparent. However, it is already clear that they have served truth, assisted healing and promoted reconciliation.
60. A range of other events and issues which have a particular significance for the nationalist community remain unresolved. Many nationalists perceive unionists as in denial about State violence and are sceptical that the State will allow itself to be held to account. The Commission is deeply concerned that there is a serious and profound confidence deficit in the unionist community concerning the concept of truth recovery.
61. Unionist reactions to the Consultative Group report, and ongoing commentary since then, indicate a deep suspicion that truth recovery is a flag of convenience for those whose real agenda is to deconstruct the integrity of the State and of the unionist/protestant tradition; to re-package terror and violence as a noble conflict and to re-write the history of the "Troubles."
62. Many people believe that republicans will block any serious attempts to hold them to account for their past.
63. The past cannot be dealt with if arrangements are such that only the State is accountable.
64. Without the participation of the unionist tradition any approach to the past will be ineffective, distorted and ultimately a threat to peace.
65. It is unhelpful and inappropriate to invoke processes from other parts of the world as a benchmark for Northern Ireland.
66. Arrangements for the Northern Ireland situation must have the confidence of all sides and traditions and be designed to fit the needs of our situation.

67. Truth is complex. The examination of truth must go beyond the recovery of mere facts. It must also seek an analysis of context, causes and motivation. It must compare competing moral narratives, and ultimately, enable citizens and communities to benefit from wider perspectives of our recent history and its legacy.

### **Citizens and Communities**

69. Civic society needs to be engaged.

70. Communities need to be engaged.

71. Dealing with the Past must be a central issue in the new Office of the First Minister and deputy First Minister policy on Cohesion, Sharing and Integration.

72. There should be cross-departmental commitment to Dealing with the Past.

73. A body such as the Community Relations Council should be given the task of developing strategies for assisting citizens and communities to deal with the past.

74. A body such as the Community Relations Council should be tasked to monitor and co-ordinate departmental commitment to Dealing with the Past.





**Commission for Victims and Survivors  
Windsor House  
9-15 Bedford Street  
Belfast BT2 7EG  
T : 028 9031 1000  
F : 028 9060 7424  
Text Phone: 028 9060 7400  
E-mail: [commission@cvsni.org](mailto:commission@cvsni.org)**