

Healing Through Remembering

Response to NIO Consultation: Addressing the Legacy of Northern Ireland's Past

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Submitted
3 October 2018

A: Background to this response

1. Healing Through Remembering (HTR) is an independent initiative and organisation. It comprises a diverse membership with different political perspectives, all working on a common goal, which we have agreed is best described as “how to deal with the legacy of the past relating to the conflict in and about Northern Ireland, and in so doing, build a better future for all.”

Our membership includes people from loyalist, republican, and security force backgrounds as well as individuals from different religious and cultural backgrounds, victims/survivors groups, academics, community activists, and others.

2. This response to the public Consultation on “Addressing the Legacy of Northern Ireland’s Past” has been developed and agreed by the HTR Board (see **Section E** below) on behalf of the wider organisation.
3. The matters raised in the Consultation relate closely to issues on which HTR has worked extensively for almost 20 years. In 1999 we commenced a wide-ranging community-led discussion around how to remember events connected with the conflict in such a way as to contribute to healing the wounds of society. On the basis of this process, HTR was established in 2001.

Our consultation identified five over-arching themes that could give shape to the challenging prospect of dealing with the past in Northern Ireland: *Storytelling; Truth Recovery and Acknowledgement; Commemoration; a Living Memorial Museum; and a Day of Reflection.*

Since then, using these themes as a broad framework, HTR has conducted extensive consultation, research, and engagement around these themes including conferences, exhibitions, site visits, and other local, regional, and international networking. Over the years, the organisation has consistently found that all five strands of activity identified in 2001 remain relevant, and on this basis has produced a range of publications and resources that identify, define, and discuss the key issues in detail.

4. From 2007-2009, HTR along with many stakeholders from across society, participated in the engagement that occurred around the *Consultative Group on the Past*. We witnessed the painful and premature collapse of that process in 2009 and have followed closely subsequent developments, which have included notably: the suspension of the *Historical Enquiries Team*, the launch of the *Together: Building a United Community* strategy, the establishment of the *Stormont House Agreement* and the *Fresh Start* Implementation Plan, the Lord Chief Justice’s announcement of a feasible approach for carrying out outstanding historical inquests, and the launch of the current Consultation. At the same time, HTR has continued to engage across its networks in discussions and debates around dealing with the past that have been ongoing in different places and parts of society.

A: Background to this response

5. This body of work and experience is evidence of demand that exists across society for a better way for dealing with the past. For communities, the seriousness of this issue and the urgent importance of finding satisfactory ways to meet this demand cannot be overstated.
6. All of the materials produced by HTR over this whole period are available for download at www.healingthroughremembering.org/resources. Key items that have specific relevance to this Consultation are highlighted and enclosed with this response document (see **Annex 1 – 12** listed below).
7. This response by HTR to the public Consultation is informed by the widespread engagement, research, and documentation outlined above.
8. All of the comments included in this response are offered in a constructive, open spirit. HTR has demonstrated by its long track record of work in this area that it is committed to working constructively to enable the development of approaches to dealing with the past that truly support and meet the needs of society, both in remembering, and in healing and collectively moving towards a viable and peaceful future.
9. As the Board of HTR, we are open to and ready for further engagement in relation to any questions that may arise from this process, and remain willing to assist in whatever ways we can.

Healing Through Remembering

3 October 2018

B: Key observations

Before outlining our responses to the specific questions posed in the Consultation, we wish to register the following key observations and concerns, which have come up in our discussion of the Consultation and its associated documents. In doing so, we wish to underline the fact that as an organisation we have welcomed the steps taken by all parties to deliver the draft Bill and proposals in this Consultation.

1. **The moral imperative for action that underpins *WHY* this legislation and policy development is needed:** The Consultation documents provide a framework for dealing with some aspects of the many legacies of the conflict, with which civil society can engage and work constructively. We welcome this development, and wish to emphasise our commitment to supporting this process. In doing so, we wish to draw attention to the moral imperative that weighs on our society, and in particular our leaders, to rise to the challenge of dealing with the past.

When we speak about the conflict in and about Northern Ireland, the term 'The Past' is almost euphemistic: it collapses the complexity, weight, and importance of the different issues at stake into a neat label. This happens in normal conversation; however, it has a distancing effect: it enables us to become removed from the gravity and life-changing seriousness of the events. It softens the impact of the reality of the immense pain and hurt involved. And it blurs the detail of complicated issues such as truth, justice, acknowledgement, commemoration, reparations, storytelling, education, etc., under discussion.

Recognising that neat labels can undermine the complexity of this work underlines the importance of careful and clear terminology.

For this reason, in the context of this Consultation and any next steps, we believe it needs to be made explicitly clear – and explicitly understood – *WHY* this legislation and policy development is *required*.

In practical terms, this could be outlined in the Preamble to the Legislation.

At HTR, having worked at the grassroots level in this region and having examined and learned from international experiences, we know that dealing with past is a moral, ethical, and social responsibility. Moreover, it is inseparable from the process of building for the future.

Our society today comprises the people, places, events, beliefs, institutions, and material culture that originated in and have risen up through our past. We are building our future *with and amongst ourselves*, for our children and for the new society that is constantly emerging as new people and ideas take root in our communities. That future must be better than the destructive, divided, secretive, painful, and traumatic past we have survived.

B: Key observations

We must acknowledge the people that have carried the greater burden of this pain, silence, and trauma. We must agree and deliver outstanding reparations – whether via financial, symbolic, or other means – where this is due. We must consider how trust has been eroded, and the extent to which restorative actions and justice might repair vital connections and important relationships. We must ask ourselves and each other what we need, and consider honestly what can be offered to meet that need. We must reflect and locate our own actions, inaction, and responsibilities in the landscape of both our previous and current relationships with one another. We must do this for ourselves, to know what it means to be part of this society: past, present, and future. And above all, we must do this for the sake of coming generations. It is not their responsibility to resolve our conflict. We have survived, therefore we must educate our children about what has happened, how it may be resolved, and how to ensure they never have to endure what so many in our society have.

Understood in this way, while ‘dealing with the past’ may be daunting and uncertain, it is also a prospect that holds positive potential for restoration, growth, and better relationships. Engaging with this challenge requires a willingness to embrace that ambivalence and work together constructively towards the ultimate goal of a better, more secure future.

‘Dealing with the past’ therefore is a society-wide issue.

While there is a moral duty to consider and respond to survivors’ needs (see point 3 below), dealing with the past is not restricted to specific groups of people, or only those most affected or involved. We have a collective responsibility, and this should be reflected in the process as a whole: including the legislation, operations of all new mechanisms, those chosen to lead the new structures, and the spirit of the work undertaken.

2. **A dilemma exists for us between the urgent need to drive the process forward, on one hand, and the importance of designing the ‘right’ vehicle for this journey, on the other hand:** We have identified certain issues with the proposed mechanisms, and have raised these in our questions and comments below. It is our view that, for the proposed Legacy Institutions to function effectively, more time needs to be spent thinking and working through the detail of both:

- the specific founding principles, aims, design, and operations of each element, and
- how the different elements relate to and resonate with one another i.e. the inter-related working of the system as a whole.

However, while we have identified flaws and shortcomings, we have also felt conflicted: the proposals raise a dilemma between refining an approach that can include and engage with a maximum number of people and groups, and recognising that it is important for this process, which has been stalled and stuck for too long, to get moving in the right direction. We realise that it is not possible to deliver a process that will meet the expectations and needs of all parts of society right away, and that there is merit in working constructively at every stage of this process to deliver meaningful outcomes upon which the next, continuously improved, steps

can be built. On this basis, we have offered the comments and recommendations below, and reaffirm our commitment to engaging with this ongoing process.

It is important to acknowledge that while the many challenges we face will not be resolved in one stroke, progressing actions that are both feasible in practical terms and supported by agreed standards of moral probity and social ethics can build trust and momentum in the process. While all of the inter-related issues at stake are important, some are more urgent than others. Among these are the moral duty that society has to urgently attend to supporting the rights and needs of the **injured** and **bereaved** (see point 3 below).

3. **Matters of urgency:** As the Board of HTR, we wish to register our serious concern in relation to the absence of a clear resolution of the following matters in this Consultation:

- a. **A pension for the seriously injured:** We believe it is morally indefensible that the question of delivering a pension to individuals in need has not been resolved, despite the fact this was called for in the Stormont House Agreement. We recognise the serious difficulties associated with reaching political agreement on this measure; however, it is in the gift of the Northern Ireland Assembly to settle the issue and deliver the pension for the seriously injured. The fact it remains outstanding shames us all.

Many of the individuals concerned were injured in incidents that occurred several decades ago. Many have far outlived the lifespan that was projected for them at that time on the basis of their injuries. Their suffering has been compounded by deteriorating mobility, health, and wellbeing, becoming more serious as they age. Many are in severely declining health, suffer persistent pain, and require daily care and support. The impact on family and carers has been significant. Tragically, dozens have already died without the opportunity of a properly supported and dignified quality of life.

Any next steps following this Consultation must include a specific and time-bound plan to deliver the pension to the remaining small number of individuals that have been identified as being in need of this support.

- b. **Outstanding legacy inquests:** We believe it is legally and morally indefensible that 54 legacy inquests into 94 deaths related to the conflict remain outstanding at this late date. Bereaved families have a right to this due process, and the Lord Chief Justice has provided a feasible plan for its delivery within a five-year period. Any next steps following this Consultation must include a specific and time-bound plan to commence delivery of these outstanding inquests.

4. **The importance of context:** This relates to point (1) above: the importance of ensuring explicit clarity as to WHY this legislation and policy development is required.

While we understand that the Consultation document needed to be clear and succinct, it does not provide enough contextual insight or historical background to enable a full appreciation of the work that needs to be accomplished by the proposed Legacy Institutions. People will need to be provided with clarity on what specific problems each aspect of the proposed Legacy Institutions are intended to engage with and attempt to resolve, and what purpose this activity hopes to achieve. This is important for establishing the aims and logic guiding their activities, how they should operate, what their boundaries and limitations are, and on that basis, how they should set and manage the expectations of people who engage with them.

In addition, the Consultation documents could have referenced previous and existing mechanisms, initiatives, and debates that already engage with various aspects of 'dealing with the past'. This is not a neutral landscape: the proposed Legacy Institutions will be introduced into a context that has already seen considerable activity with varying effectiveness, strengths, and weaknesses. It is vital that this context is reflected in the design and implementation of the proposed Legacy Institutions, showing how this new phase of activity will complement and work within the existing landscape.

HTR has produced practice-based research that explores and highlights key aspects of this landscape. A specific resource that may be helpful to review in this regard is the report *Dealing with the Past? An Overview of Legal and Political Approaches Relating to the Conflict in and about Northern Ireland* (2013), enclosed at **Annex 1**.

5. **This Consultation and any next steps are part of a wider process that cannot be neatly bound in terms of timescale or impacts:** The timescales and thematic parameters set out in the Consultation, and the implied assumption that the proposed mechanisms will resolve the issues identified in each one's remit, are problematic and unrealistic.

HTR's experience shows that dealing with the past is a dynamic and evolving challenge that involves many more issues and people than those identified in the Consultation documents; some of these are discussed in our response to **Question 14** ('Other views on the Past') below. All of these will need to be linked and included in a progressive and systematic process as time moves forward.

We appreciate fully that aspects of these proposals need to be time bound for practical, budgetary, and planning purposes, and we understand there is an urgency to support people in specific ways now; however, it is important that this Consultation and any resulting legislation and next steps include an explicit acknowledgement that these proposed mechanisms cannot be all things to all people at this time. International experience shows there will be 'unfinished' and 'unresolved' issues at the end of this phase of activity. An ongoing commitment will be needed.

B: Key observations

We cannot make assumptions about what future generations may or may not make of this undertaking. That said, we will be laying the groundwork for a more open and inclusive vision of the road ahead, if we recognise clearly at this point that dealing with the past and working towards reconciliation is a *process* and that it is the right of every generation to ask questions, and to review and advance that process as their circumstances require.

6. **Principles:** We are concerned that the six principles set out in the *Stormont House Agreement* and described as underpinning the proposed approach to dealing with the past are unhelpfully general, generic, and lack specific meaning or substance for this process. Furthermore, some of the principles need to be better correlated with the proposed function or activities of different parts of the proposed Institutions – for example, the principle of facilitating the pursuit of justice is in tension with the design of the Independent Commission on Information Retrieval.

In its extensive engagement with people from all backgrounds since 2001, HTR's experience has affirmed the truism that there is no 'one size fits all' blueprint for dealing with the past: each context is different, and while broad lessons can be shared and applied, responses must be tailored to the specific circumstances of a conflict and the society affected. It is important to grasp that this insight extends to the fundamental principles which must underpin any process to deal with the past: the importance of context, clarity, and nuance cannot be overstated.

As part of its work over the years, HTR has developed a considered framework of *Core Values and Principles for Dealing with the Past* (see **Annex 2**): we propose that these could form the basis of a revised, more appropriately tailored set of principles to underpin any next steps following this Consultation.

The HTR principles are shown in Table 1 below.

Table 1: Summary of HTR Core Values and Principles for Dealing with the Past

| THEMATIC AREA | | PRINCIPLES | |
|---------------|------------|------------|---|
| 1 | SOCIETY | 1 | Commitment to the future |
| | | 2 | Healing and hurt |
| | | 3 | Not forgetting |
| | | 4 | Realistic and hopeful goals |
| | | 5 | Right to truth |
| 2 | PROCESS | 6 | Language and terminology |
| | | 7 | Trust, transparency and engagement |
| | | 8 | Flexibility |
| | | 9 | Independence and political commitment |
| | | 10 | Structured and holistic approach |
| | | 11 | Recognition and appreciation of existing work |
| 3 | INDIVIDUAL | 12 | Inclusive, diverse, participative, and empowering |

Further to the above, we recommend that any next steps should at a minimum reflect and incorporate a considered discussion of and demonstrated commitment to the key principles affirmed by all parties to the Good Friday/Belfast Agreement, namely: democracy, non-violence, partnership, equality, and mutual respect; the protection of civil, political, social, economic and cultural rights; the freedom from discrimination for all citizens; parity of esteem; and just and equal treatment for the identity, ethos, and aspirations of the two broad communities in this region.

7. **The absence of a definition or detailed discussion of ‘reconciliation’:** We are concerned that while this Consultation refers to a guiding principle of ‘reconciliation’, and the Implementation and Reconciliation Group will be charged with promoting reconciliation, it does not provide a definition of this important concept. This is a significant omission.

Defining ‘reconciliation’ can be challenging, but it is not impossible, and experience shows that developing a multi-faceted definition offers opportunities for inclusion and participation across society. Northern Ireland has developed an expansive, ‘home-grown’ definition of reconciliation that is consistently used by practitioners and researchers, both regionally and internationally: Hamber & Kelly (2004) (see **Annex 3**) describe the process of reconciliation as involving five interwoven and related strands:

- Developing a shared vision of an interdependent and fair society
- Acknowledging and dealing with the past
- Building positive relationships
- Significant cultural and attitudinal change
- Substantial social, economic and political change

This definition also recognises the tensions inherent in any process of reconciliation (see Hamber & Kelly (FORTHCOMING) for more detail on this – see **Annex 3**). We recommend that any next steps in this process should include and be based on a carefully considered definition of reconciliation, building on the accessible materials available that have already explored the concept. The purpose of this would be twofold: first, to give more structure and purpose to the work that is to be undertaken by the proposed Institutions; and second, to create new avenues for engaging with the wide range of issues and people not specifically included in the Legacy Institutions outlined in this Consultation.

8. **Language shift from “*dealing with the past*” to “*addressing the past*”:** We have noted there has been a change in the language used in the official documents relating to these issues and processes: whereas the *Consultative Group on the Past* process referred to “*Dealing with the Past in Northern Ireland*,” this Consultation interchangeably refers to ‘dealing with’ and ‘addressing’ the past.

We believe there is an important, if subtle, difference to note here: from our perspective, ‘dealing with’ implies engagement, ‘addressing’ is not necessarily a two-way process. For example, it is one thing to *address* an audience, and another thing entirely to *deal with questions in dialogue*. We hope that this shift does not mean that the necessary emphasis on

engagement which should underpin the activities and themes outlined in the Consultation is being watered down.

The Consultation Paper provides no explanation as to why it prefers the term ‘addressing’ rather than ‘dealing with,’ as used by the *Consultative Group on the Past* (and by HTR consistently since its inception). An explanation would be helpful. The term ‘addressing the past’ is used in the Consultation document 21 times but ‘dealing with the past’ is also used 5 times (pp. 18, 21, 46, 51, 70). Clearly there is an important distinction to be made. A ‘problem’, ‘issue’, or ‘challenge’ may be considered ‘addressed’ without necessarily being ‘dealt with’. This is evident in the Consultation document. It refers to ‘dealing with’ the following: ‘matters relating to deaths’ (p. 15), ‘challenges of a large caseload’ (p.17), ‘the difficulties highlighted’ (p.17), ‘complaints against HIU officers’ (p. 59), and ‘the reports’ of HIU, ICIR and Deputy Keeper to IRG’ (p. 68). It would not be appropriate to substitute ‘addressing’ in these cases. The danger is that the shift from ‘dealing with’ to ‘addressing’ signals a watering down of commitment to ‘engagement’ with all concerned parties and the achievement of positive outcomes.

9. **The leadership of the proposed Legacy Institutions will be key:** The proposed Legacy Institutions will engage directly not only with issues that create political uncertainty and controversy, but also with human complexity, pain, and confusion. The leadership of these Institutions will need to be of an exceptionally high calibre, such that it will operate with integrity and flexibility, accommodating anomalies and finding ways to incorporate and bring to the attention of the governments any important unexpected matters arising. The quality of this leadership, the trust that these individuals inspire across society, and the communication between the high-level stakeholders will be vitally important for building confidence in each aspect of this phase of activity, and for setting a credible course for the longer-term process of dealing with the past. (See response to **Question 8**, and specifically **Section 8.4** below.)
10. **The fundamental importance of effective communication and engagement:** The proposals in this Consultation describe a complicated array of mechanisms and pathways for moving forward. In the event of any next steps, we would be concerned to see the following made more explicit:
 - a. **Effective external communication** that will explain in clear terms the role and purpose of each mechanism, how to engage with it, and what to expect from the process. Clear communication and effectively managing expectations will be key to building trust and supporting engagement.

We recommend that, in any next steps, every element of the work described in the Consultation should be resourced to proactively anticipate potential confusion among members of the public, and should take steps to communicate clearly and manage expectations.

B: Key observations

The duty of the various Legacy Institutions to communicate their work to the public could helpfully be built into the legislation.

- b. **Effective internal communication** that will clarify how and ensure that these mechanisms relate to, coordinate, and work in conjunction with one another, rather than in silos.

There should be an onus on the leadership of each Legacy Institution to work in partnership and communicate and meet regularly.

We recommend that a communication strategy should include the following explicit commitments: to publish information regularly throughout the lifetime of this phase of activity; to detail key findings, statistics, themes, and patterns; and to enable public engagement with and ownership of this process.

11. **The importance of robust, constructive, and ongoing engagement with the existing infrastructure of institutions designed to protect and promote key interests and groups across society:** We recommend that any next steps should include developing formal, supportive, and accountable relationships with the relevant Commissions and bodies that can enable best practice in every area of this process. This should include at minimum:

- a. **The Commissioner for Victims and Survivors** and the **Victims and Survivors Service** to scrutinise and support the delivery of a properly victim-centred process. This must include consideration of *safe and equitable pathways* to engagement and access.
- b. Other bodies, such as the **Northern Ireland Human Rights Commission**, the **Equality Commission**, the **Commissioner for Children and Young People**, the **Commissioner for Older People**, and the **Commissioner for Public Appointments for Northern Ireland**.
- c. Appropriately skilled and experienced critical friends from the academic and community/voluntary sectors.

12. **Gender lens:** Finally, we wish to underline that international best practise increasingly highlights the importance of a gender-sensitive analysis of conflict, including its impact on individuals, families, and communities, and the process of dealing with the past.¹ To date, the

¹ See for example:

- United States Institute for Peace: *Gender Inclusive Framework and Theory* (2018), available at: [https://www.usip.org/publications?issue_areas\[0\]=56](https://www.usip.org/publications?issue_areas[0]=56)
- Conciliation Resources: *Gender in Peacebuilding* (2014), available at: http://www.c-r.org/downloads/CR_Gender_peacebuilding.pdf
- Office of the High Commissioner for Peace, Colombia: *The Colombian Peace Agreement: The Opportunity to Build Peace* (2016), available at: http://www.altocomisionadoparalapaz.gov.co/herramientas/Documents/The_Colombian_Peace_Agreement_the_opportunity_to_build_pace.pdf

B: Key observations

steps that have been taken to deal with the past relating to the conflict in and about Northern Ireland have not taken gender into specific consideration. In 2015, the Legacy Gender Integration Group noted that:

There are clear gender patterns to victimhood and survival. The vast majority of those killed in the conflict were men. The majority of surviving family members are women. Women are a significant presence in victims' organisations in providing and receiving services. Moreover, one's experience of conflict and one's conflict legacy needs are heavily shaped by gender. Victimhood is gendered, as are coping strategies.²

The Legacy Gender Integration Group recommended 10 key *Gender Principles for Dealing with the Legacy of the Past* (see **Annex 4**): these principles are summarised in **Table 2** below.

Table 2: Summary of Gender Principles for Dealing with the Legacy of the Past

| REF | PRINCIPLE |
|-----|---|
| 1 | Gender Integration: Fully integrate gender into the processes for dealing with the past |
| 2 | Process-orientation: Understand gender and dealing with the past as a process, not an event |
| 3 | Empowerment, Participation, Ownership and Control: Prioritise victim ownership and control of process |
| 4 | Inclusivity: Be inclusive and accommodate complexity |
| 5 | Addressing Structural Obstacles: Recognize and redress structural obstacles to inclusion |
| 6 | Holistic Approach: Respond to the whole victim and survivor |
| 7 | Giving Voice and Being Heard: Honour individual stories |
| 8 | Macro Analysis: Be attentive to the bigger picture |
| 9 | Equality and Diversity: Value gender expertise and lived experience |
| 10 | Local and Global Learning: Craft bottom-up local responses that draw on international good practice |

These Gender Principles resonate with the HTR *Core Values and Principles for Dealing with the Past* discussed at point 6 above (see **Table 1** and **Annex 2**), and enlarge the HTR definition of values and principles that relate to the role of the individual: i.e. that the process to deal with the past should be inclusive, diverse, participative, and empowering. **On this basis, we recommend that any next steps to develop, design, and implement the proposed Legacy Institutions should incorporate a gender lens informed by international good practice, and by the initial work undertaken in this area by the Legacy Gender Integration Group (see Annex 4).**

² See: **Annex 4: Gender Principles for Dealing with the Legacy of the Past** (Legacy Gender Integration Group, 2015), available at: <https://caj.org.uk/2015/08/17/gender-principles-dealing-legacy-past/>

C: Structure of this document

HTR developed a Discussion Aid to facilitate community-based engagement with this Consultation (see “A Simple Aid to Responding to the NIO Public Consultation on ‘Addressing the Legacy of Northern Ireland’s Past’” at **Annex 5**). This Aid used as its template a previous discussion resource created by HTR to facilitate understanding of the *Stormont House Agreement* (see **Annex 6**): this has enabled HTR to show how concepts in the Consultation originated in the *Stormont House Agreement* and have now progressed into the draft Bill.

While these HTR resources have covered the key information, the sequence of key points and questions was adjusted to support the facilitated discussion format. In responding to the Consultation, the HTR Board has utilised these resources: for that reason, the responses we have provided below do not appear in chronological order, but reflect our facilitated process. We have, however, sought to provide a fulsome response in relation to every question.

D: List of documents appended to this response

- Annex 1: Healing Through Remembering (2013) *Dealing with the Past? An Overview of Legal and Political Approaches Relating to the Conflict in and about Northern Ireland*
- Annex 2: Healing Through Remembering (2013) *Core Values and Principles for Dealing With the Past*
- Annex 3: Reconciliation Resources:
3A Hamber, B. & Kelly, G. (2004) *A Working Definition of Reconciliation*. Belfast: Democratic Dialogue.
3B Hamber, B. and Kelly, G. (FORTHCOMING) *Challenging the Conventional: Can Post-Violence Reconciliation Succeed? A Northern Ireland Case Study*. New York: Kofi Annan Foundation & Interpeace.
Please note: this is not a public document and should not be shared outside this correspondence.
- Annex 4: Legacy Gender Integration Group (2015) *Gender Principles for Dealing with the Legacy of the Past*
- Annex 5: Healing Through Remembering (2018) *A Simple Aid to Responding to the NIO Public Consultation on "Addressing the Legacy of Northern Ireland's Past"*
- Annex 6: Healing Through Remembering (2016) *Discussion Resource on the Legacy Elements of the Stormont House Agreement*
- Annex 7: Healing Through Remembering (2019) *Ethical Principles for Storytelling and Narrative Work*
- Annex 8: The Stories Network (2015) *Briefing Paper on the Oral History Elements of the Stormont House Agreement*
- Annex 9: Healing Through Remembering (2006) *Making Peace with the Past: Options for truth recovery regarding the conflict in and about Northern Ireland*
- Annex 10: Healing Through Remembering (2006) *Acknowledgement and its Role in Preventing Future Violence*
- Annex 11: Healing Through Remembering (2014) *Are we there yet? Dealing with the Past in and about Northern Ireland*
- Annex 12: Healing Through Remembering (2006) *The Viability of Prosecution Based on Historical Enquiry*

E: Current Board of Healing Through Remembering

Hedley Abernethy grew up in Belfast during the height of the Troubles. A trained youth worker, he has worked with church and para-church youth organisations in Northern Ireland developing and promoting peacebuilding programmes. In 2006, Hedley graduated with an MA in Conflict Transformation from Eastern Mennonite University in Virginia, before going on to work with Catholic Relief Services at its headquarters in Baltimore, Maryland as a Peacebuilding Education Officer. He is currently a PhD student at Ulster University in Belfast; his PhD study on reparations for victims of the political conflict in Northern Ireland is a direct consequence of five years with WAVE Trauma Centre, an organisation supporting victims of that violence.

Alex Bunting MBE was seriously injured during the conflict following a car bomb which resulted in Alex losing one of his legs. On his own journey to recovery Alex got involved in trying to access support and help for those severely injured during the conflict. Alex was part of the first Victims and Survivors Forum where he continued to fight for support for all victims, with a particular interest in the needs of those with serious and permanent injuries. In March 2017 Alex received an MBE from the Queen for the role he has played in campaigning for all victims, Alex continues to fight for a pension for those seriously injured who have been left struggling to support themselves as they age and their needs change.

Philip Dean has been involved in community development since 1993 to include projects centred around young men's training and women's engagement programmes as part of EU peacebuilding measures. Philip has also been involved in local politics, holding office of General Secretary of the Ulster Democratic Party, during which time he completed leadership training at University of Maryland. Philip is dedicated to working towards safer communities, holding Chair of the Welcome BME Project in Lisburn and is a member of the Lisburn PCSP, having held office of Vice Chair. Philip has been a Director of several community based organisations, focusing on disadvantaged areas and has more recently been a driving force in community regeneration through linking social enterprise where he manages community projects and social enterprises. This has led him to becoming a founding Director of The Resurgam Trust which he chairs and which is aiming to create regeneration within disadvantaged areas of Lisburn and encourage social enterprise. Philip assists with our Lisburn Peoples Support Project, a community and youth development organisation concentrating on areas such as youth provision, peace-building, training and community safety.

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 was a Mellon Distinguished Visiting Scholar at the African Centre for Migration and Society at the University of the Witwatersrand in Johannesburg (2010-2013), and remains an associate. He is a Board member of Netherlands-based, Impunity Watch. He has undertaken consulting and research work, and participated in various peace and reconciliation initiatives in Liberia, Mozambique, 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 4 books.

Claire Hackett is the manager of Falls Community Council's digital oral history archive *Dúchas* which records personal experiences of the conflict. She has developed conflict resolution work through oral history, working with nationalist and unionist working class communities across Belfast which resulted in the publication in 2014 of a book called *Living Through The Conflict – Belfast Oral Histories*. Claire has been involved in work to ensure that women's experiences of the conflict are recognised through the publication of a policy document on Gender Principles for Dealing With The Past.

Conor Keenan works as a Political Manager in Sinn Féin. He is a Governor and Trustee of Scoil an Droichid, Belfast and Director of the Short Strand Partnership. Conor was a steering group member of the Belfast Conflict Resolution Consortium.

Brian Lambkin was the founding Director of the Mellon Centre for Migration Studies at the Ulster-American Folk Park, Omagh until his retirement in April 2018, and was previously Principal of Lagan College, Belfast. He is the author of *Opposite Religions Still? Interpreting Northern Ireland After the Conflict* (Avebury, 1996) and joint author with Patrick Fitzgerald of *Migration in Irish History, 1607-2007* (Palgrave Macmillan, 2008). His latest book, *Calming Conflict: Northern Ireland, Metaphor, and Migration*, is due to be published in November 2018 by the Mellon Centre for Migration Studies and the Ulster Historical Foundation.

Louise Purbrick is an academic and activist interested in the material culture of conflict, political struggle and everyday life. Principal Lecturer in the History of Art and Design at the University of Brighton (<http://arts.brighton.ac.uk/staff/louise-purbrick>) she is author of books and articles on materiality and history. Louise works with archaeologists, artists, former prisoners, photographers, and communities on meanings of spaces and sites, people and things. She has published a number of works on sites of exploitation and imprisonment. She is an editor with Jim Aulich and Graham Dawson of *Contested Spaces: Sites, Histories and Representations* (Palgrave, 2007). Of a series of essays and articles on Long Kesh/Maze prison in Northern Ireland, 'The Architecture of Containment' in Donovan Wylie's *The Maze* (Granta, 2004) is the most frequently cited. With Xavier Ribas and Ignacio Acosta, she is part *Traces of Nitrate* (www.tracesofnitrate.org), which examines legacies of mining colonialism through exhibitions in Barcelona, London, Liverpool and Santiago. With Maude Casey, Megha Rajguru and Nicola Ashmore, she is part of the Re-Making Picasso's *Guernica* Collective (<https://remakingpicassosguernica.wordpress.com/>). Louise curated *Rattling the Cage*, an exhibition of the materials of an anti-Guantanamo campaign in which she played a part (<http://www.phoenixbrighton.org/archive/2009-2/rattling-the-cage/>)

Dawn Purvis was a Member of the Northern Ireland Assembly from March 2007-May 2011, representing the East Belfast constituency, first as a member of the Progressive Unionist Party and subsequently as an independent. Dawn was involved with various rounds of peace process negotiations before, during and after the Good Friday Agreement. Dawn left politics in 2011 and became Northern Ireland Programme Director with Marie Stopes International (MSI). She opened the first integrated sexual and reproductive healthcare centre in Belfast. The first of its kind on the island of Ireland offering a range of services including advice on contraception, STI & HIV screening and early medical abortion within the law. She is currently CEO of a housing charity. Dawn continues to devote much of her spare time to community and voluntary initiatives aimed at tackling socio-economic disadvantage and exclusion.

Geraldine Smyth O.P. is former Head of the Irish School of Ecumenics, Trinity College Dublin, where she is now Adjunct Associate Professor. She holds a Ph.D. in theology from Trinity College Dublin (1993) and an honorary doctorate from Queens University Belfast (2003) for service to reconciliation and public life. She is interested in the intersections of theology and psychology, faith and politics, and particularly as relating to churches, post-conflict justice, and the role of memory in peace building. She has written and lectured widely on these topics in academic, civic and faith community contexts.

Irwin Turbitt retired as an Assistant Chief Constable from the PSNI having over 30 years in the RUC and PSNI. He has been involved in voluntary peace-building work for a number of years and has now developed a second successful career combining academic and consulting work in the areas of leadership, innovation, and governance at Warwick Business School, Leeds University Business School, The Said Business School at Oxford and the Harvard Kennedy School. He teaches and coaches, mainly public sector managers, across the UK and beyond and seeks to use these experiences in his ongoing peace work at home.

Oliver Wilkinson is semi-retired having previously worked as CEO of two local charities. Currently, he is Chair of the Victims and Survivors Service and sits as a Board member of the Police Rehabilitation and Retraining Trust. He also acts as a Registered Intermediary working with vulnerable individuals who come into contact with the criminal justice system.

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Question 1: Current system

Question 1: Current system for addressing the past

Do you consider that maintaining the current system for dealing with the issues of the past through legacy inquests, PSNI and OPONI investigations is the right approach, or do you think there is a need for reform?

- 1.1 There is definitely a need for an improved, coordinated approach to dealing with the past in relation to the conflict in and about Northern Ireland. We agree with this recognition, stated the Consultation document (page 17).
- 1.2 It could be said that for a *system* to operate, a designer and a coordinated team of builders is required. A system is designed for a specific purpose, and built in such a way as to feasibly achieve that objective or deliver that purpose. That is not what is currently in place: the current 'system' is a collection of individual initiatives that have grown in a haphazard way; the different initiatives are not correlated or designed to relate to one another but function as silos, if at all.
- 1.3 The way in which the current lack of a coherent system is viewed by people across society is important. We are aware that:
 - a. Many people are suspicious that this is a deliberate tactic fostered by high-level reluctance to engage with a difficult process. Current official approaches to dealing with the past are viewed by some as being intentionally disconnected, slow, and prohibitively costly, with the ultimate purpose of deferring meaningful action, to the extent that a generation of people may die before their needs are met.
 - b. There is a sense of inequity and, for some, bitterness in relation to the fact that some people seem to obtain what they need and seek in this haphazard approach, whereas others do not.
 - c. Some people, however, have found certain attempts to deal with issues related to the past to work and be helpful. For example: information recovery, both via *ad hoc* requests and per the activity of the Independent Commission for the Location of Victims' Remains, has been shown to deliver meaningful outcomes for families, demonstrating that obtaining information 'works', but that the process needs to be comprehensively coordinated and overseen. Similarly, informal and community-led oral history processes have been helpful. Their benefits, however, are currently accrued in a piecemeal way, according to the disjointed delivery of the various initiatives.
- 1.4 A significant problem in the current landscape is the fact there is no incentive for anyone to 'do the right thing' in terms of bringing forward information about past events, because there is no mechanism for this to happen without people concerned exposing themselves to risk.

- 1.5 Perhaps the clearest indication that the current 'system' is not working, is the fact that even the people involved in leadership positions across the relevant institutions have made public statements outlining why they believe the situation is unsatisfactory: the Police Ombudsman, Chief Constable, and Lord Chief Justice have all made statements to this effect in recent months and years. It is reasonable to suggest that no society that has experienced the complex conflict and loss that has occurred here could "move on" in these circumstances.

Question 15: Current system – Impact**Question 15: Impact of the current system**

What are your views on the impact of the current system for addressing the past (as outlined in Part one) for different groups as described by Section 75 of the Northern Ireland Act 1998?*

- 15.1 At a formal level, because it is not a ‘system’, but rather a collection of *ad hoc* initiatives, the “Current System” has not been subject to a comprehensive equality impact assessment. It is therefore both not possible to say for sure what the impacts might be, and almost certain that there are significant questions to be asked about it in this regard.
- 15.2 The failure to deliver a pension for the severely injured amounts to inequitable and unequal treatment of older people injured and living with disabilities as a result of the conflict.
- 15.3 Access to the existing mechanisms for dealing with the past is haphazard and unequal. This view is based on the following observations:
 - a. Currently, the access enjoyed by individuals varies greatly depending on the organisations or people with whom they are already engaged, their history and patterns of engagement with existing networks, and whether they have the capacity to articulate their needs clearly and in a forthright way.
 - b. Through the various processes that have occurred to date – ranging from public inquiries to individual Historical Enquiries Team cases, etc. – some events and cases have been inquired into or even resolved to a greater extent than others. As a result some people have accessed more information, truth, justice, and in some cases even closure, than others. Such outcomes, therefore, have not been delivered equally for all. And whereas delivering equal outcomes may not ever be possible, the principle of *seeking* outcomes on an equitable basis should be affirmed.
- 15.4 Since it is not possible to conduct a holistic assessment of the current *ad hoc* initiatives, it is likely there are differentials in terms of how people with disabilities, of different age groups, of different genders, LGBTQ+ people, and from other backgrounds access this system or have their intersecting needs recognised as linked to the conflict and the past in different ways.
- 15.5 Perhaps most importantly: the current approach to dealing with the past is not only haphazard and unequal, but it causes harm to individuals and families. This harm is caused and felt in many ways, for example: in shortcomings and failures of the previous Historical Enquiries Team process that have caused confusion and hurt to bereaved families, and limitations on truth recovery that have left some individuals isolated in their attempts to resolve questions and ambiguity around life-changing events.

Question 2: Principles

Question 2: Stormont House Agreement proposals - engagement with legacy institutions

Does the proposed approach help to ensure all groups of people can effectively engage with the legacy institutions?

YES

NO

If no, please suggest additional measures that would improve this for specific groups:

Any further comments:

2.1 As stated at point **B6** above, we are concerned that these principles are unhelpfully general, generic, and without specific meaning or substance for this process. This is a view that has been emphasised to separate HTR Board members in different contexts, as well as being discussed at length by the Board itself.

2.2 'Principles' in this context should be designed to:

- Reflect a clear purpose,
- Provide focus and direction, and
- Enable the maximum number of people to participate.

As they stand, however, the proposed principles are abstract. Different people and communities will interpret these principles in their own ways, coloured by their experience of life in general and of the conflict specifically. For example, terms such as 'reconciliation', 'justice', or 'victim-centred' may mean different things to different people.

2.3 Taking this into account, we believe that people will need, as a minimum, information to help them interpret these principles *in the context of this Consultation and its detailed purpose*. Failing to deliver this information in a way that is accessible and can be understood by everyone will fail individuals and groups of people across society who have a right to participate fully in this process of dealing with the past, including victims and survivors.

2.4 As part of its work over the years, HTR has developed a considered framework of *Core Values and Principles for Dealing with the Past* (see **Annex 2**): these have been carefully developed to inform, deepen, broaden, and revitalise public engagement with the challenge of dealing with the past.

The HTR principles are shown in Table 2 below.

Table 2: Summary of HTR Core Values and Principles for Dealing with the Past

| THEMATIC AREA | | PRINCIPLES | |
|---------------|------------|------------|---|
| 1 | SOCIETY | 1 | Commitment to the future |
| | | 2 | Healing and hurt |
| | | 3 | Not forgetting |
| | | 4 | Realistic and hopeful goals |
| | | 5 | Right to truth |
| 2 | PROCESS | 6 | Language and terminology |
| | | 7 | Trust, transparency and engagement |
| | | 8 | Flexibility |
| | | 9 | Independence and political commitment |
| | | 10 | Structured and holistic approach |
| | | 11 | Recognition and appreciation of existing work |
| 3 | INDIVIDUAL | 12 | Inclusive, diverse, participative, and empowering |

These principles and values have been widely disseminated and accepted. We therefore propose that this framework could form the basis of a revised, more appropriately tailored set of principles to underpin any next steps following this Consultation.

Question 11: IRG – Commissioning the academic report

General comment on the proposed IRG:

- 11.1 We believe there is value in the concept of the IRG and that the activities it aims to deliver are important and worthwhile.
- 11.2 We are, however, concerned that there is a critical ‘design flaw’ in this Legacy Institution insofar as it appears to be responsible for at least three distinct streams of activity:

- To **review and assess the implementation** of the *Stormont House Agreement* proposals, which deal with the past; this includes HIU, ICIR, OHA and potentially other projects, such as for example considering statements of acknowledgement (see point 12.6 below).
- To **promote reconciliation** in Northern Ireland, i.e. monitor and promote the coherence and effectiveness of the whole system in terms of its work towards reconciliation and dealing with the past.
- To **commission a report** from independent academics on themes and patterns identified in the work of the HIU, ICIR, OHA and the Coroners’ Court.

In practical terms, we recommend that these distinct purposes and functions should be clearly separated. On this basis, ideally the next steps should include:

- **One oversight body** to which all *task-focused* Legacy Institutions and projects are *accountable for the implementation of their remits*, and which, on this basis, monitors and promotes the coherence and effectiveness of the whole system. This will be informed and guided by the principles and values, which as per point 2.2 above, should be designed to reflect a clear purpose, provide focus and direction, and enable the maximum number of people to participate.
- **Four task-focused Legacy Institutions** or vehicles for **delivering specific work** to engage with issues arising from the past i.e. the HIU, ICIR, OHA, and Report on Themes.
- **With regard to ‘reconciliation’**: Scope for the **oversight body** to consider and progress **other projects**, such as for example considering statements of acknowledgement (per point 12.6 below).

| Question 11: Commissioning the academic report on themes and patterns | | |
|--|------------|----|
| Do you think that the ESRC should be engaged to commission the academic work on patterns and themes to ensure independence, impartiality and best practice in academic research? | YES | NO |
| Any further comments: | | |

11.3 We have responded 'YES' to this question; however, in processing this response from us, it is important for the NIO to take into account the following observations:

- The purpose of the involvement of the ESRC in the context of the clearly distinct functions described at 11.2 above requires clarification.
- The role of the ESRC as described in the Consultation document is not a role that the ESRC claims for itself. The ESRC is a Research Council that administers government funding to universities to enable high quality research. It is therefore an appropriate body to verify the credibility of the *research* that may be produced; however, it cannot give credibility to the design principles underpinning the *appointment of the group of people responsible for commissioning the academics* (i.e. the IRG itself) to conduct the research.

11.4 The credibility of the **process behind the eventual commissioning of research** will be of fundamental importance. People will need to have confidence that the *group of people* who commission the academics are not acting on the basis of party political interests. This leads to Question 12 below.

11.5 The credibility of the **research produced in the form of the academic report on themes and patterns** will be determined in large part by the quality, range, and depth of primary source material examined by the commissioned researchers.

From our perspective, a flaw in the current design is the reliance on “secondary” research and sources. In the proposed approach, the academics would get summary reports from the Legacy Institutions from which to develop their work. While they can access other information such as family reports, it appears they will not have access to the full range of raw data that will be collected in this process – i.e. statements made directly to the HIU, ICIR, or OHA. Furthermore, with regard to the OHA, the academics will be restricted to viewing information collated by the OHA itself, and not the wide network of existing oral history initiatives. This approach is in contrast with the international experience of truth commissions and other mechanisms to deal with the past, which have worked with the raw data to produce robust analyses and reports. The information and sources made available to the academics will, according to this model, be selectively and subjectively chosen. As such this data and the final analyses produced will not only be limited, but questionable in terms of impartiality and rigor.

Question 12: IRG – Structure

General comment on the proposed IRG:

- 12.1 We believe there is value in the concept of the IRG and that the activities it aims to deliver are important and worthwhile.
- 12.2 We are, however, concerned that there is a critical ‘design flaw’ in this Legacy Institution insofar as it appears to be responsible for at least three distinct streams of activity:

- To **review and assess the implementation** of the *Stormont House Agreement* proposals, which deal with the past; this includes HIU, ICIR, OHA and potentially other projects, such as for example considering statements of acknowledgement (see point 12.6 below).
- To **promote reconciliation** in Northern Ireland, i.e. monitor and promote the coherence and effectiveness of the whole system in terms of its work towards reconciliation and dealing with the past.
- To **commission a report** from independent academics on themes and patterns identified in the work of the HIU, ICIR, OHA and the Coroners’ Court.

In practical terms, we recommend that these distinct purposes and functions should be clearly separated. On this basis, ideally the next steps should include:

- **One oversight body** to which all *task-focused* Legacy Institutions and projects are *accountable for the implementation of their remits*, and which, on this basis, monitors and promotes the coherence and effectiveness of the whole system. This will be informed and guided by the principles and values, which as per point 2.2 above, should be designed to reflect a clear purpose, provide focus and direction, and enable the maximum number of people to participate.
- **Four task-focused Legacy Institutions** or vehicles for **delivering specific work** to engage with issues arising from the past i.e. the HIU, ICIR, OHA, and Report on Themes.
- **With regard to ‘reconciliation’**: Scope for the **oversight body** to consider and progress **other projects**, such as for example considering statements of acknowledgement (per point 12.6 below).

| Question 12: Implementation and Reconciliation Group | | |
|--|-----|-----------|
| Do you think the IRG is appropriately structured to allow it to review the work of the legacy institutions, to commission an independent academic report and promote reconciliation? | YES | NO |
| Any further comments: | | |

- 12.3 Based on the information in the Consultation documents, the process by which the IRG is appointed is problematic, because it indicates that the people appointed to the IRG would be directly selected by political parties. This needs to be reviewed.
- 12.4 To generate confidence in the process, we recommend that more suitable models for the appointment process be considered. For example:
- Further detail in relation to the *qualifications and experience* that would inform the selection of appointees should be provided; it could be that potential appointees would have to demonstrate cross-community leadership, experience of dealing with the past, and/or qualifications in human rights or a related field.
 - Political parties could be represented on a selection panel, but prevented from appointing *their specific choice*. Public nominations for appointment, based on a set of criteria, could be forwarded to the panel for collective assessment. Of course, in this scenario, there could be political trade-offs and balances sought in the appointment of certain individuals; however, a more collective approach such as this could get the process going with minimal risk of controversy over party political appointments creating a deadlock in the process.
- 12.5 The critical point here is that it would not be possible to resolve issues associated with the perceived credibility of the IRG – i.e. the process by which it is constituted – by referring to the stamp of academic standard offered by the involvement of the ESRC.
- 12.6 With regard to the academic function: the purpose of producing the academic report on patterns and themes must be clarified. It should be remembered that for most people, the challenges and legacies associated with the conflict are not an academic problem. That said, relevant, focused, and accessible academic research and insight has an important role to play.

In the *Stormont House Agreement*, there was some indication that work of this nature, identifying patterns and themes, could inform gestures of acknowledgement. If this is the purpose of the academic report, it should be made clear this is the case, and how that process might work. Maintaining a distinct identity and function from the Reconciliation Group would enhance this clarity.

12.7 With regard to the monitoring and promoting the overall coherence of the system function:

- a. As it stands precisely how the IRG will monitor the various bodies is not clear beyond receiving reports from them. There is no indication of the power of the IRG to compel any of the bodies to produce more information or information on a specific area if deemed necessary.
- b. The IRG should be enabled to report outwards and make recommendations for the future, beyond the lifetime of this phase of activity in the wider dealing with the past process.

Question 9: OHA – Method

| Question 9: Oral History Archive | | |
|--|-----|-----------|
| Do you think that the Oral History Archive proposals provide an appropriate method for people from all backgrounds to share their experiences of the Troubles in order to create a valuable resource for future generations? | YES | NO |
| Any further comments: | | |

- 9.1 We welcome the inclusion of Storytelling as a core element of the Consultation; however, based on the experience of HTR, the proposals for the Oral History Archive do not provide an appropriate method for people from all backgrounds to share their experiences of the Troubles.
- 9.2 A key focus of HTR's work since 2001 has been to explore and support Storytelling and Oral History activities. Extensive engagement with existing and emerging oral history projects has informed the organisation's thinking on this theme, and in 2009 HTR published a set of *Ethical Principles for Storytelling and Narrative Work* (see **Annex 7**). These are summarised in Table 3 below.

Table 3: Summary of HTR Ethical Principles for Storytelling and Narrative Work

| THEMATIC AREA | | PRINCIPLES | |
|---------------|------------|------------|--|
| 1 | SOCIETY | 1 | Meaning making |
| | | 2 | Looking to those affected |
| | | 3 | Protection from harm |
| | | 4 | Compassion/Empathy |
| | | 5 | Education |
| | | 6 | Reconciliation |
| 2 | INDIVIDUAL | 1 | Free and informed consent |
| | | 2 | Protection of individual autonomy / self-determination |
| | | 3 | Participatory justice |
| | | 4 | Empowerment |
| | | 5 | Inclusion |
| | | 6 | Equality |
| | | 7 | Distributive justice |
| | | 8 | Honesty |
| 3 | PROCESS | 1 | Accountability |
| | | 2 | Transparency |
| | | 3 | Inter-connectedness |
| | | 4 | Context-specific |
| | | 5 | Collective benefits |
| | | 6 | Legal obligation |

This framework has shaped the establishment of *The Stories Network*, a forum for those gathering and sharing personal narratives related to the conflict in and about Northern Ireland, hosted and chaired by Healing Through Remembering. In 2015, the *Stories Network* developed a detailed *Briefing Paper on the Oral History Elements of the Stormont House Agreement* (see **Annex 8**). This submission provided detailed feedback on the concept of an OHA structured around the ethical principles outlined above.

- 9.3 Based on the experience outlined above, the proposed OHA raises significant questions. While the *Stories Network* will make its own detailed submission to this Consultation, as the HTR Board we wish to note the following concerns and questions:
- 9.4 We believe that the **only** way such an initiative would work, would be via *collaborative engagement with existing archives and repositories that remain in their established and trusted locations*. We believe it would be an error to attempt to establish a new archive housed within a government body.
- 9.5 The existing archives in the *Stories Network* are already accessible to people, and individuals and communities from a range of different backgrounds have demonstrated that they are comfortable accessing them in this way. We recommend that an alternative model that should be considered is for PRONI to commission such an existing Network to archive and create improved pathways and connections between existing storytelling resources.
- 9.6 It is important to understand in advance that people will not simply come forward to a government setting to share their stories – it will take considerable resources to outreach, build relationships, and network to build confidence and trust, as well as to gather, record, and properly store the stories. This will require genuine and long-term engagement with community groups working in this area that have already developed trusted relationships, not merely inviting them to submit collections to the new archive or nominating a few select individuals to be part of a Steering Committee.
- 9.7 The indication that some stories may be destroyed is ethically questionable, and would represent a serious disincentive for people to contribute their stories to the archive. Moreover, it is unnecessary from a practical standpoint: if the archive is proposing to **only** hold oral histories [i.e. digital/audio materials] and their relevant written catalogues, there can be no question of space/storage constraints.
- 9.8 The proposals in the Consultation document do not reflect the three strands of the Good Friday/Belfast Agreement: they give sole responsibility for the OHA to be established as one archive in one part of these islands. There is no reason why it could not be a collaborative project between Ireland, Great Britain, Northern Ireland and the diaspora.

9.9 There are a number of questions that must be asked before any process can be agreed in relation to this measure. Some of these have been considered in the *Briefing Paper on the Oral History Elements of the Stormont House Agreement* produced by the *Stories Network* (**Annex 8**). They include:

- a. What is the purpose of such an archive?
- b. How will this archive be used?
- c. Why should this resource be held in a government archive?
- d. How has PRONI demonstrated its capacity to manage this process? Storytelling experts with experience of working with archives and with PRONI specifically have found that the PRONI infrastructure struggles to manage the current prison memory archive. The capability of PRONI to coordinate a wider range of methods and sources – which would be inevitable in the process of collating existing archives from a diverse range of communities – is questionable.
- e. Why can the stories not reside where they have done for years – in the communities where the story tellers feel safe, at home, and supported to tell them?
- f. How will the process be resourced? In the extensive and varied experience of the *Stories Network*, good practice oral history is a labour intensive activity, and yet this is an uncoded proposal.
- g. How will this process handle and manage the integration of audio material in different formats, and ensure that these are preserved and accessible into the future? (Future-proofing IT solutions, adapting to new technologies.)
- h. How will the OHA ensure inclusive and equal access for people with a disability to the various materials gathered?
- i. Regarding the proposed ‘factual’ timeline – what has this to do with oral history? This question is important: there are many aspects of people’s very different experiences that do not fit an elegant, orderly narrative – which would, in any case be contentiously selective; all of these perspectives and true experiences should be reflected, preserved, and made available to share in the way that they are told.

Question 10: OHA – Engagement

Question 10: Oral History Archive

What steps could be taken to ensure that people who want to share their experiences of the Troubles know about the Archive and are encouraged to record their stories?

- 10.1 Please refer to points 9.3, 9.4, 9.5, and 9.6 above.
- 10.2 It should also be noted that the OHA as it is described in the Consultation is not a risk-free process, and will be perceived as potentially too dangerous to engage with; if anything, based on the current proposals to locate the archive in a mainstream government institution with little community engagement, the OHA will more than likely collate a sanitised version of people's experiences that will not reflect the full range of life stories relevant to the conflict.

Question 7: ICIR – Support for families**Question 7: Independent Commission on Information Retrieval**

What actions could the ICIR take to support families who seek information about the death of their loved one?

- 7.1 We welcome the inclusion of a mechanism to enable truth and information recovery as a core element of the Consultation.
- 7.2 With regard to supporting families, further clarity is needed in relation to the following specific points:
- a. The ICIR will need the capacity to conduct outreach: it is important that it raises awareness of its remit, and engages with communities to build understanding and trust of the process.
 - b. There seems to be no provision for the possibility that individuals from the same family may have different views on seeking information in relation to a specific case, or that families may decide to withdraw from the process before it reaches a conclusion. These scenarios must be considered, and strategies for handling them clarified.
- 7.3 We are concerned that the description of the ICIR in the Consultation does not include provision for how those providing information would be supported. This will be a necessary part of its remit in terms of: observing a duty of care to the people engaging with the process, some of whom may be vulnerable, isolated, and/or feel afraid; incentivising engagement by offering reassurance of respectful and safe practice; and maximising the effectiveness of the information-gathering process.

Useful models for the provision of this kind of support exist: a tried and tested approach is implemented by the *Northern Ireland Registered Intermediary Scheme* (<https://www.justice-ni.gov.uk/ri>). Registered Intermediaries (RIs) are communication specialists who assist vulnerable victims, witnesses, suspects, and defendants with significant communication deficits to communicate their answers more effectively during police interview and when giving evidence at trial. The RI Schemes currently operate in respect of all cases being heard in all courts in Northern Ireland.

- 7.4 The delivery of support for those who come forward to engage in this process is critically important: a more detailed description of and commitment to victim-centred practices is needed both in relation to this area specifically, as well as across the wider process described in the Consultation. This should be developed in consultation with the Commissioner for Victims and Survivors, the Victims and Survivors Service, and relevant community-based organisations.

Question 8: ICIR – Structure, powers, protections

| Question 8: Independent Commission on Information Retrieval | | |
|--|------------|----|
| Do you think the ICIR is structured correctly, with the right powers and protections, in a way that would provide victims and survivors with the chance to seek and receive information about the deaths of their loved one? | YES | NO |
| Any further comments: | | |

8.1 We have selected 'YES' in response to this question, since the ICIR offers a model and a way forward for information recovery; however, in processing this response from us, it is important for the NIO to note that for this measure to work, absolute clarity is required regarding the use of information given to the ICIR. The suggestion that information could lead to an investigation if discovered through another route will be a significant disincentive to engage.

8.2 The key question that arises is: *how can there be any guarantee that this process occurs in isolation from the HIU?*

A potential way forward could be to establish the HIU and ICIR as sequential rather than concurrent processes: the HIU first, followed by a clear process to demonstrate that no further prosecutions will be sought through the HIU mechanism, and then the ICIR commences its work. However, even in this scenario, information that came to light via could potentially be passed to the PSNI – in which case, the original problem remains.

It is vital that this question is resolved prior to any next steps being undertaken in relation to this measure.

8.3 HTR understands that the protections proposed (immunity from FOI and DPA, judicial review, etc) seem necessary in order for the model to work. Equally important for it to work, however, the ICIR needs to build and enjoy the trust of society. To build trust, demonstrable accountability is needed.

Our research in this area has demonstrated that *a lack or perceived lack of institutional and political accountability can critically undermine the effectiveness of measures that aim to deliver truth and information recovery.*

This insight is emphasised in the HTR report *Making Peace with the Past: Options for Truth Recovery Regarding the Conflict in and about Northern Ireland* (see **Annex 9** – note in particular Chapter 4, which discusses options for truth recovery in Northern Ireland, and highlights key strengths, opportunities, and weaknesses of a range of approaches). This report was produced via a collaborative process involving the participation of a diverse working group, including people from loyalist, republican, British Army, and police backgrounds, as well as victims and survivors. This collaborative process robustly challenged the options

discussed, and we therefore recommend that the Northern Ireland Office consider the report and its findings as part of this response to the current Consultation.

Based on the report's findings in relation to the importance of institutional and political accountability, the following questions are important:

- a. To whom/which organisation/body is the ICIR accountable?
- b. How can accountability be assured within the ICIR process?
- c. While the information gathered by the ICIR will be protected by these measures, more clarity is needed in relation to how the public could ask questions about the way that the ICIR works, the processes that it applies to investigate cases. Essentially: would it be possible for the public to raise questions about the *process*, particularly if they were unhappy with the way their case was handled by the ICIR? How would such questions be handled?

8.4 Following the observations at point 8.3 above: the appointment process of the Commissioners is important: it will be essential to ensure that:

- a. as wide a scope of potential candidates as possible is taken into account, to ensure the best possible people are appointed, and
- b. the process meets the standards set by the Commissioner for Public Appointments Northern Ireland (CPANI).

8.5 Clarification is required regarding the relationship and communication between the ICIR and the IRG. Key questions include:

- a. How does the ICIR link to the IRG?
- b. Can there be a practical flexibility incorporated into this process? It will be important for the ICIR to have the ability to collate and hold information on emerging issues that can inform how the IRG works and what the IRG reports and recommends regarding further steps beyond the lifetime of this phase of activity.

Question 3: HIU – Remit (timescale)**Question 3: HIU remit**

Should the HIU's remit also include deaths which took place between the signing of the Belfast Agreement on 10 April 1998 and 31 March 2004?

YES

NO

Any further comments:

- 3.1 While this important change may seem small, it will cause confusion for some members of the public. It will be important, therefore, that steps are taken to contact directly the small number of people who fall into this category, to ensure minimum confusion and manage expectations.

Question 4: HIU – Previous investigations, potential further investigation**Question 4: HIU - Director assessing previous investigations and deciding whether further investigation is needed**

| | | |
|---|------------|----|
| Do you think that the process set out above is the right way to assess whether an investigation into a Troubles-related death has taken place or whether investigation is needed? | YES | NO |
|---|------------|----|

Any further comments:

- 4.1 We have selected 'YES' in response to this question, because we welcome the over-arching proposal for taking forward outstanding historical investigations, and note positively the inclusion of measures that reflect lessons learned through the previous HET process, in particular the incorporation of a dedicated family liaison function. However, in processing this response from us, it is important for the NIO to take the observations outlined below into account.
- 4.2 With regard to the consideration of previous investigations: we recommend that families who have already received an HET report and are dissatisfied, for whatever reason that may be, should be given the option to re-introduce their case to this new process and request a review. We believe this will only involve a small proportion of completed cases, and that there would not be a significant amount of work to be done in these instances. By contrast, doing this could deliver benefits both for families and for the HIU itself.

Based on our engagement over the years, where families were dissatisfied with the HET, their concerns related primarily to the handling and presentation of specific details in the report, and the manner in which the report was delivered to them.

Families who still feel sufficiently frustrated to re-introduce their case for review could derive enormous benefit from a positive family liaison process under a new system. This engagement has the potential to restore dignity, to create the space for grieving, and to release families of a perceived obligation to continue to fight for information and recognition. In a word: a positive process could offer the families meaningful **acknowledgement** of the loss and pain associated with the death of an individual family member.

HTR has researched this theme extensively (see **Annex 10**, *Acknowledgement and its Role in Preventing Future Violence*; and **Annex 11**, *Are we there yet? Dealing with the past in and about Northern Ireland*); international experience and research show there is restorative potential in genuine gestures of acknowledgement for both individual healing and wellbeing and societal recovery.

From the point of view of the HIU, the new Institution could generate significant good will and confidence at the grassroots if it starts out with an inclusive approach that invites engagement from those that have felt excluded or poorly treated by previous processes.

- 4.3 The role of HIU Director includes significant scope for flexibility and discretion. As in the case of all of the leadership posts across the proposed Legacy Institutions, this individual must be of an exceptionally high calibre, able to demonstrate sensitivity, flexibility, and wisdom in relation to challenging and complex cases and matters arising. The success of the HIU will be dependent in large part on the calibre and capability of this individual and their performance in the role.

Question 5: HIU – Disclosure appeals mechanism**Question 5: HIU - disclosure appeals mechanism**

Do you think that the proposed mechanism to appeal disclosure decisions to a judge provides adequate opportunity to challenge decisions by the UK Government to protect information?

YES

NO

Any further comments:

- 5.1** We have selected 'YES' in response to this question, because we note that the proposed disclosure appeals mechanism is an important inclusion in the Consultation, and is a method that can be tested in the early implementation of the HIU; **we recommend, however, that its operation should be kept under close review.**

Information regarding disclosure should be published as part of a transparent process of accounting for activity and progress: at a minimum statistics and other relevant data to demonstrate redactions and their underpinning decisions and rationale should be included in the HIU Annual Report and made public in this way. Ideally, however, a format for sharing this information with the Reconciliation Group on a more frequent basis should be established to enable reflection, challenge, and progressive adjusted practice based on lessons learned over the lifetime of the Institution.

- 5.2** We have noted with concern the inclusion of 'national security' as a premise for non-disclosure: it is important that the leadership of the HIU and the Secretary of State keep in mind that this terminology will likely give rise in the public to remembered experiences of the failures of the criminal justice system and memories of such historical measures as internment and the 'Diplock Courts'. In this context, extreme judicious care will be required in the exercise of this provision.
- 5.3** As a point of principle, in the context of historical patterns of secrecy and non-disclosure, we believe there will be a legitimate expectation that the leadership of the HIU and the Secretary of State should seek always to enable maximum disclosure. Demonstrating accountability and transparency in this decision making process will be vitally important for building and maintaining public confidence.

Question 6: HIU – Overall view

| Question 6: HIU - overall view | | |
|---|------------|----|
| Does the HIU provide a method to take forward investigations into outstanding Troubles-related deaths in a proportionate, victim-centred manner with an appropriate structure and safeguards? | YES | NO |
| Any further comments: | | |

- 6.1 We have selected 'YES' in response to this question because we welcome the over-arching proposal for taking forward outstanding historical investigations, and note positively the inclusion of measures that reflect lessons learned through the previous HET process; however, in processing this response from us, it is important that the NIO take the observations outlined below into account.
- 6.2 HTR understands that very few investigations, if any, will lead to prosecutions (see **Annex 12, *The Viability of Prosecution Based on Historical Inquiry: Legal Opinion***: this research commissioned by HTR highlighted the evidential and procedural difficulties associated with historical investigations). It is important that the HIU ensures this message is communicated clearly and sensitively in individual cases.
- 6.3 It will be important that the investigators recruited to the HIU are of the highest quality, with deep experience of complex murder investigations.
- 6.4 The Consultation documents do not provide any insight into the role of the Advocate Counsellor referenced in the *Stormont House Agreement*. Any next steps should clarify the purpose and institutional 'home' for this role, how/whether it intersects with family liaison under the HIU, and how it will integrate and utilise the skills and capacity of the existing family support provision across the community and voluntary sector.
- 6.5 We recommend that the HIU be resourced in such a way as to ensure high quality training and ongoing monitoring and support for its staff, and family liaison posts in particular, in relation to victim-centred practice and communication. This must be treated as a priority and not as a desirable 'extra'. There is a wealth of experience, good practice, and training provision across existing services on which the HIU can draw in this regard.

The *Northern Ireland Registered Intermediary Scheme* (<https://www.justice-ni.gov.uk/ri>) is referenced at point 7.3 above; in addition to this, the Victims and Survivors Service (www.vssni.org) co-ordinates workforce development across the victim/survivor sector that includes relevant training. There is a role for the community and voluntary sector to play in this context: the capability and expertise that it holds should be utilised.

- 6.6 Regarding information that will be gathered by the HIU in the course of its work, both that which is included in family reports, and that which is not: at the end of an investigation, could it be used to inform the ICIR process, thus increasing the information available to families through that mechanism? As a general principle, we recommend this should be the case: there could be a very productive **one-way** sharing of information from the HIU to the ICIR. This engagement would, however, need to be safeguarded by guarantee that information is not shared from the ICIR to the HIU – refer to points 8.1 and 8.2 above.
- 6.7 Overall, the proposal for the HIU seems to offer movement in the right direction for delivering due process to bereaved families. It does not, however, engage with the needs of other groups and individuals. International experience shows that where a narrow view is taken of the impact of violent conflict (such as death only), in time, it will become necessary to widen this remit (for example, to include the impact of injury, torture, gender-based violence, etc.).

Question 13: Proposals – Overall view

| Question 13: Stormont House Agreement proposals - overall view | | |
|--|------------|----|
| Do you think that the package of measures proposed by the Stormont House Agreement provides an appropriately balanced and planned way to move Northern Ireland forward that can command the confidence of the community? | YES | NO |
| Any further comments: | | |

- 13.1** We have selected 'YES' in response to this question because, **overall, we find that the proposed measures constitute a step forward, offering the potential for better coordinated action and public engagement in relation to dealing with the past.** The framework that is described in the Consultation has the potential to function as a system, and as such offers an improvement on the current disjointed array of initiatives. In processing this response from us, **however, it is important for the NIO to take into account the concerns and feedback we have outlined in this document, which highlight the need for more detailed planning, clarification, and in some areas, adjustment to the proposed structures and processes, before any next steps are taken.**
- 13.2** The comments that we have offered in this response have been submitted in the interest of developing that potential for better coordinated action and public engagement.
- 13.3** In addition to the information provided above and in response to **Questions 16, 17, and 14** below, we wish to emphasise the following:
- a. Any next steps to implement this new framework will occur in the context of a plethora of existing and previous measures. We recommend that this be explicitly recognised, and a clear engagement plan with user-friendly guides developed to show how the new system will work with existing stakeholders.
 - b. Any next steps to implement this new framework must be treated as work in progress: each of the Institutions should be structured in such a way as to incorporate regular review and adjustment of its practice, enabling ongoing improvement on the basis of listening and learning.
 - c. Ultimately, any next steps will only command the confidence of society in terms of how the process operates and engages with people, and what it delivers. Building specific practices and routines that ensure and demonstrate transparency and accountability at every level will be vital: this will build public confidence and foster a sense of ownership and legitimacy that can only grow from the grassroots upwards.

- d. On this basis, we recommend that it is better to establish measures to extend the projected timescale for these Institutions, than push ahead without due deliberation and planning, and thereby unnecessarily exclude people from the process. We recognise that this will present business planning and budgetary challenges: the cost of tackling these practical issues must be balanced against the long-term benefit for the greater good of a peaceful and more reconciled society.

Question 16: Proposals – Impact

Question 16: Impact of the Stormont House Agreement proposals

What are your views on the impact of the Stormont House Agreement proposals (as outlined in Part two) for different groups as described by Section 75 of the Northern Ireland Act 1998?*

- 16.1 As noted in response to **Question 15** above, given that there is no ‘system’ currently in place, there is no opportunity currently for Section 75 to be useful. However, the proposed framework of measures offers, at last, an approach that can be assessed in terms of the equality impact.
- 16.2 In addition, we know without doubt that there are a number of groups of people whose needs are not being properly met in terms of ‘dealing with the past’ in the current circumstances; any next steps to implement this new package of measures offers an opportunity to correct this imbalance and demonstrate accountability in relation to Section 75 provisions. Specifically, the Board of HTR is keen that the following groups are attended to urgently:
- a. Those with a disability: a pension for the **seriously injured** must be delivered without further undue delay (as discussed in more detail at **B3** above).
 - b. Persons of different religious belief or political opinion: the issue of outstanding **legacy inquests** must be examined to discover whether there is an equality impact issue/consideration in terms of identity to be taken into account (as discussed in more detail at **B3** above).
 - c. Men and women generally: the position of **victims and survivors** must be prioritised and examined to discover whether there is an equality impact issue/consideration to be taken into account, and necessary actions taken. See the discussion of the importance of applying a **gender lens** to this analysis at point **B12** above (see **Annex 4**).
 - d. Persons of different age: the position of **children and young people** in the discussion around dealing with the past must be examined to discover whether there is an equality impact issue/consideration to be taken into account, and necessary actions taken; the position of **older people** should be examined in similar fashion.

Question 17: Proposals – Promotion of equality or good relations**Question 17: Opportunity to promote equality of opportunity or good relations**

Is there an opportunity to better promote equality of opportunity or good relations?

- 17.1 As an organisation that has spent nearly two decades considering and promoting the need for a society-wide approach to dealing with the past, we have welcomed the *Stormont House Agreement* and this Consultation as a new opportunity to work towards a better, more secure future founded in equality and good relations. While we have identified specific issues and concerns in our responses to the questions above, we reiterate our commitment to engaging constructively in this process and any next steps, and to maximising this opportunity.
- 17.2 The description of the proposed Legacy Institutions in the Consultation refers frequently to the influence of political and departmental appointments. This creates concern that individual merit may not be prioritised. We recommend that the Commissioner for Public Appointments Northern Ireland (CAPNI) should be referred to as standard practice to ensure transparency in the appointment of all of these high-profile, critical leadership posts.
- 17.3 We wish to reiterate the importance of ensuring robust, constructive, and ongoing engagement with the existing infrastructure of institutions designed to protect and promote key interests and groups across society. We recommend that any next steps should include developing formal, supportive, and accountable relationships with the relevant Commissions and bodies that can enable best practice in every area of this process. This should include at minimum:
- a. **The Commissioner for Victims and Survivors** and the **Victims and Survivors Service** to scrutinise and support the delivery of a properly victim-centred process. This must include consideration of *safe and equitable pathways* to engagement and access.
 - b. Other bodies, such as the **Northern Ireland Human Rights Commission**, the **Equality Commission**, the **Commissioner for Children and Young People**, the **Commissioner for Older People**, and the **Commissioner for Public Appointments for Northern Ireland**.
 - c. Appropriately skilled and experienced critical friends from the academic and community/voluntary sectors.
- 17.4 Further to the above, we wish to emphasise the importance of recognising that there are people identified under Section 75, whose lives have been impacted by dynamics, issues, and events related to the conflict and its legacies. Many of these experiences, which may not initially seem to be conflict-related (for example: domestic violence, suicide, etc.) have not been acknowledged or taken into account by 'legacy' processes up to now.

Question 14: Other views**Question 14: Other views on the past**

Do you have any views on different ways to address the legacy of Northern Ireland's past, not outlined in this consultation paper?

- 14.1 Based on HTR's experience and research, we wish to emphasise that any next steps should explicitly recognise that the proposed package of measures in this Consultation are *partial*: they are a part of a wider, long-term process of 'dealing with the past'.

As previously noted (see **B1** above), society has a moral imperative to rise to the challenge of dealing with the past. This is a shared responsibility and a long-term process in which every part of society has a role to play.

While every person and part of society may have a slightly different perspective on what that process should involve, the ultimate goal is to deliver a better, more reconciled future, in which we do not repeat the harms and mistakes of the past. This may mean, almost inevitably, that individuals have to compromise or give up specific aspirations in relation to specific issues, in the interest of working towards this 'greater good'.

Despite the very real difficulty, sometimes fundamental change, that this sort of compromise involves, HTR's experience and research has shown that the challenge of dealing with the past can be met, if people are enabled to engage and feel some ownership and involvement in the process. Generating such ownership and involvement is necessarily slow work that relies on explicit demonstrations of integrity and accountability. These explicit gestures can create the conditions in which people can encounter one another with the humility and curiosity that enable not only genuine contact, but also acknowledgement of each other's stories and perspectives.

- 14.2 Briefly put, additional and different ways that would enhance how we deal with the past in relation to the conflict in and about Northern Ireland include consideration of best practice in the following areas:
- a. The potential role and impact of personal and institutional gestures of acknowledgement, and of apologies.
 - b. Commemoration of specific events.
 - c. A Day of Reflection, or similar calendar marker for personal and collective remembrance and reflection.
 - d. The role of museums, collections, and artefacts.
 - e. Storytelling.
 - f. The arts: paintings, sculpture, drama, film, music, material culture, etc.
 - g. The role and place of memorials.

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- h. The position, experiences, and views of children and young people, and the transgenerational impact of the conflict and its legacies.
- i. The function, content, and delivery of education for children and young people in this context.
- j. Gender issues and the impact of the conflict and its legacies.
- k. Reparations and restorative justice.
- l. Policy development more generally, in relation to, for example: tourism, economic regeneration, and community relations.
- m. The role and involvement of wider society: thematic groupings such as the churches, the press and media, the health sector, housing and infrastructure, etc.
- n. The role and involvement of the people who were 'not involved'.
- o. The function and impact of research.
- p. North-South and East-West initiatives.
- q. How dealing with the past intersects with questions in relation to Brexit, the border, and our collective future across these islands.

Concluding note

All of the comments included in this response are offered in a constructive, open spirit.

HTR is committed to working constructively to enable the development of approaches to dealing with the past that truly support and meet the needs of society, both in remembering, and in healing and collectively moving towards a viable and peaceful future.

As an organisation that has spent nearly two decades considering and promoting the need for a society-wide approach to dealing with the past, we are open to and ready for further engagement in relation to any questions that may arise from this process, and remain willing to assist in whatever ways we can.