

# Healing Through Remembering



## Response to NIO on the Report of the Consultative Group on the Past

Monday 5 Oct 2009

## **HTR Response to NIO Consultation on the Report of the Consultative Group on the Past<sup>1</sup>**

### **Background to Healing Through Remembering**

Healing Through Remembering (HTR) is an extensive cross-community project made up of a range of individual members holding different political perspectives. This includes people from loyalist, republican, nationalist and unionist, British Army and police backgrounds as well as individuals from different religious backgrounds, victim/survivors' groups, academics and community activists. They have come together over the last nine years to focus on the issue of how to deal with the past in relation to the conflict in and about Northern Ireland.<sup>2</sup> As part of its original submission to the Consultative Group on the Past in January 2008, HTR outlined a set of core values and principles for dealing with the past that have emerged from the work of the organisation.<sup>3</sup>

This submission was written following two one-day meetings of the membership of the organisation called specifically to engage with the Report and the NIO Consultation Paper, drawing on our knowledge and experience of work in this area. The resulting submission is the agreed position of the diverse membership of HTR.

This submission is intended as a contribution to the unfolding process. We hope our response to this Consultation, as an organisation engaged in this debate with a cross-section of society, will prove useful in considering the way forward.

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<sup>1</sup> This submission should be read alongside the *Report of the Consultative Group on the Past* and the subsequent Northern Ireland Office (NIO) *Consultation Paper – Dealing with the Past in Northern Ireland: The Recommendations of the Consultative Group on the Past*.

<sup>2</sup> HTR research and discussion documents referenced throughout this submission are available on the website [www.healingthroughremembering.org](http://www.healingthroughremembering.org) or hard copies can be requested from the office (028 90238844).

<sup>3</sup> For full details a copy of the original submission is available on request. A summary of the principles is attached in Appendix I.

## **Introductory comments on the Report of the Consultative Group on the Past**

HTR recognises that it is not possible to produce in a single report a complete and final set of proposals for dealing with a conflict so protracted, localised and nuanced as the conflict in and about Northern Ireland. There will always be people who think or feel that they or their community has not been properly acknowledged or honoured. Therefore any set of proposals that offer the opportunity to progress the issue of dealing with the past will be incomplete and probably inelegant. However HTR acknowledges the energy and endeavour that went into producing the Report of the Consultative Group on the Past (hereinafter referred to as the Report) and recognises much of value in the Report and the recommendations. We, like all stakeholders, have reservations about some parts of the report and the process both for producing it and consulting on it.

HTR believes it is appropriate that the Report looks not only at issues relating to those affected by the conflict but also at those wider considerations for a society coming out of conflict. This wider engagement is crucial if the objective of “promoting peace and stability in Northern Ireland” is to be achieved.

HTR believes that in order to achieve sustainable change in our society, initiatives for dealing with the past must begin with dialogue and in-depth deliberation, and only then move to agreed outcomes. Collaborative engagement and agreement at every stage will allow the development of realistic achievable outcomes. The process is as important as the product.

HTR notes that there is important potential for wider engagement in the challenge of dealing with the past should an independent body be created to drive this process. However, any new body must be developed and structured in light of the wealth of skills and experience accumulated within the statutory, community and voluntary sectors over recent decades. Furthermore, the learning offered by international experiences should be taken into account. These proposals present an opportunity to take stock of such existing initiatives, to allow a review of lessons learned and to create improved processes.

HTR endorses the view in the Report that the involvement of OFMDFM (Office of the First Minister and Deputy First Minister), the British and the Irish governments is crucial to the implementation of such an initiative to deal with the past. The Report recognises that the conflict, in and about Northern Ireland, has had an impact on people living in the jurisdictions of all of these governments and beyond. The implementation of any initiative to deal with the past should address concerns across these islands.

HTR has spent nine years engaging in debate on how to deal with the past. In the course of this work the organisation has learnt much with regard to the sensitive use of language and terminology in order to enable engagement, rather than hamper or divert debate and dialogue. Terminology may change

and develop over time depending on the context and the working out of suitable processes. Experience has shown that where language is contested and progress is hampered, the use of a working definition - despite differences of opinion - can be the best way to address issues of importance. Like so much else in life, language and terminology need to be negotiated and can also evolve dynamically.

## **Comments on the Consultation Process**

Further to responding to the recommendations made in the Report, HTR has identified a number of issues regarding the Consultation Paper and process which should be noted. These are based on not only HTR's internal meetings but also on external meetings the organisation facilitated at the request of other groups and organisations seeking assistance in engaging with the Consultation.

These include:

- many groups and individuals in society have welcomed the opportunity to respond to the report;
- the Consultation has generated a substantial number of debates and other events, which have produced enthusiastic discussion despite the difficult nature of the issues;
- formulating a response to the Consultation Paper has required significant resources. This has particularly limited the capacity of individuals, community and voluntary groups to respond;
- the variety of detail on different aspects of the Report has in some instances led to an unhelpful skewing of the intensity of debate;
- the format of the Consultation Paper questions was not conducive to constructive debate on the issues presented; and
- due to the format of the Consultation Paper there are aspects of the Report that are not covered in the consultation (e.g. work with young people).

## The Legacy of the Past and Reconciliation

### Recommendations 1 – 3

R1. An independent Legacy Commission should be established to deal with the legacy of the past by combining processes of reconciliation, justice and information recovery. It would have the overarching objective of promoting peace and stability in Northern Ireland.

R2. A Reconciliation Forum should be established through which the Legacy Commission and the Commission for Victims and Survivors for Northern Ireland (CVSNI) would liaise to tackle certain issues around the conflict.

R3. The Legacy Commission should be given a bursary of £100m to tackle these society issues.

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### Recommendation 1 and 2 – Legacy Commission and Reconciliation Forum

HTR welcomes, with reservations, this initiative as a range of proposals for addressing our shared past, and supporting our society in the process of emerging from conflict.

In particular HTR agrees with the emphasis throughout the Report that dealing with the past is a society-wide issue. This wider engagement is crucial if the Report is to achieve its objective of “promoting peace and stability in Northern Ireland”.

HTR believes that in order to achieve sustainable change in our society, initiatives for dealing with the past must begin with dialogue and deliberation, and then move to agreed outcomes. Collaborative engagement and agreement at every stage will allow the development of realistic achievable outcomes. The process is as important as the product.

While there is a welcome for this initiative to deal with the past, HTR has some concerns about the ability of a single body such as the Legacy Commission to deal with all of the roles allocated to it effectively and efficiently.

Nonetheless this Report is a starting point and should inform further deliberation. That said, this should not give rise to undue delays in the process but should lead to actions and agreed outcomes for the future.

The proposed format and functions of the Legacy Commission and in particular the Reconciliation Forum appear very wide ranging, with the potential to spread responsibilities and resources too thinly. There is a need for a transparent process to identify the appropriate objectives for each strand proposed in the Report, taking into consideration the roles which existing bodies already fulfil - and could potentially - fulfil in these respects.

It is important that lessons already learnt from both internal and external evaluations of existing structures are not lost. In the formation of any new Commission there also needs to be a comprehensive assessment taking into

consideration these lessons already learnt, the transition arrangements between the existing and proposed structures and the provision that must be made to guarantee the successful working of the new scheme. An ongoing review should be built into the new process to ensure that improvements can be implemented along the way. This is particularly important in the Processes of Justice and Information Recovery.

The proposed Commission appears to be a largely top-down/statutory initiative, as opposed to being anchored in and informed by civil society. In particular this raises the following points for consideration:

- it does not seem to take into account the existing skills, knowledge and experience in, for example, the voluntary, community and victims' and survivors' sectors. This not only overlooks existing good practice but also risks limiting community-based engagement which is crucial to furthering the overall aims of the Commission;
- therefore a fully inclusive equality impact assessment is needed which reflects the needs of different groups in our society such as people living with a disability, those from minority ethnic groups and which also reflects the different experiences of men, women and young people;
- the full Report appropriately recognises that it is not only Northern Irish Society but also the people and Governments of the Republic of Ireland and Great Britain that have been impacted by the conflict. However, the recommendations, and the NIO Consultation, do not clearly include these north-south and east-west dynamics in the engagement and delivery of the Legacy Commission.

There is need for a consideration of how to involve all these elements (north-south, east-west, community/voluntary sector and broad spectrum of society) in the process and the Commission's work.

### **Recommendation 3 – Bursary**

While welcoming the principle of identifying specific funds for societal issues, there is little indication of how the CGoP arrived at the bursary figure of £100m. It is therefore impossible to comment on this beyond reflecting that the Legacy Commission has a considerable remit and so will need to be properly resourced.

In order to facilitate a more detailed debate on the costings involved in these issues HTR has commissioned a paper from Deloitte which examines the costs to date and potential future costs for dealing with the past. This includes the implementation of the Legacy Commission and also costs for dealing with the past if the Legacy Commission is not established.

HTR's has identified the following:

- that the costs as outlined in the Report do not reflect all the elements envisaged;

- there has been substantial expenditure to date on dealing with the past;  
and
- there will continue to be substantial costs regardless of whether or not the Legacy Commission is established.

HTR will be continuing this area of debate and exploring realistic costs in more detail over the coming months.

## Victims and Survivors

### Recommendations 4 – 6

R4. The suffering of families from Northern Ireland and Great Britain should be recognised. The nearest relative of someone who died as a result of the conflict in and about Northern Ireland, from January 1966, should receive a one-off ex-gratia recognition payment of £12,000.

R5. The CVSNI should take account of, and address in their work programme, the present and future needs and concerns of victims and survivors, devoting attention to the provision of services, funding, healthcare needs and compensation.

R6. The Reconciliation Forum would also have a mandate to promote the improvement of services for healthcare issues attributable to the conflict, such as trauma, suicide and addiction.

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### Recommendation 4 – Recognition Payment

HTR welcomes the particular gesture of recognising those bereaved in the conflict. Consideration should be given, however, to the other ways of recognising those affected by the conflict rather than just an ex-gratia payment. This payment only recognised only the bereaved and did not consider those injured or traumatised.

The distress expressed in relation to the ex-gratia payment, and the subsequent outcry on the part of some, show the need to address these issues carefully and with sensitivity. The responses highlighted in the media do not reflect the wide range of opinions that people have had on this issue. The debate on this issue is continuing and should inform further consideration on this recommendation.

HTR is concerned that this issue was 'taken off the table' by the Secretary of State without due consideration of the rationale for the recommendation or a wider consultation. This lack of thoroughness and transparency fuels fears and concerns that this will not be an inclusive process.

Practical issues about eligibility criteria for the £12,000 still remain. If this recommendation is to be implemented it will need to be pursued with much more consideration and sensitivity. Many families have already been pulled apart by the conflict and there is potential to do more damage to already fractured relations or to create division among family members.

As for the total cost of the Recognition Payment, the precise figure of £40m does not reflect the real costs of payments and implementation of this recommendation.<sup>4</sup>

By placing the Recognition Payment under the heading of Compensation the Report is in danger of conflating and therefore causing confusion between

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<sup>4</sup> See *Paper on Dealing with the Past: Costs to Date and for 2010-2014* commissioned by HTR, produced by Deloitte.



these two distinct concepts. Compensation is a huge issue which has already resulted in considerable contention.

HTR notes the current debate on the definition of a 'victim and survivor'. Having previously considered this issue at length HTR decided to subscribe to the Victims and Survivors (Northern Ireland) Order 2006 working definition of a 'victim and survivor'. This allows the organisation to develop debates around not only practical needs of those most affected but also wider societal issues.

### **Recommendation 5 and 6 – Needs of Victims and Survivors AND Improved Healthcare Services**

HTR welcomes the Comprehensive Needs Assessment (CNA) currently being initiated by the CVSNI (Commission for Victims and Survivors Northern Ireland). HTR supports the principle that the ongoing remit of this assessment should address the evolving needs of an aging population, trans-generational impact of trauma and emerging needs of those affected by the conflict.

It should be noted that many of the needs of those affected by the conflict – particularly the injured and bereaved - are represented by groups. However, not all of these people are represented in groups. Furthermore the needs of those affected by the conflict who live outside Northern Ireland (and thereby outside the remit of the NIO and Northern Ireland Assembly) should not be overlooked.

While the health and social care system is structured to deal with trauma and other conflict related issues/conditions, it is not appropriately geared to the complexity/level envisaged in this Report. A significant skill base exists in terms of responding to crisis, however long term care for those suffering from trauma and chronic injury is by comparison limited. The proposed mandate of the Reconciliation Forum to promote the improvement of healthcare issues attributable to the conflict should include consideration of a restructuring of services with a view to systemic reform as part of the integrated societal transformation envisaged in the Report. The planning of such restructuring should include those whose needs are to be addressed. It should also ensure that services and support are offered in the geographical areas of greatest need.

That said, the assumption should not be made that the health service and CVSNI are the only potential supports where the needs of 'victims and survivors' can be met. There remains a need for community and voluntary sector initiatives in service delivery and support, but also in terms of empowerment, societal transformation and advocacy. In this context the crucial need for an ombudsman role in relation to championing and protecting the interests of 'victims and survivors' should be met by the CVSNI.

HTR is aware of considerable concerns about the current and potential bureaucracy in accessing support and the reluctance of many to accept being

defined as a 'victim or survivor' in order to access appropriate services. This represents an additional challenge in the identifying of and addressing need, and emphasises the imperative upon agencies and bodies to work in a complementary way.

In all of the above the need to create an inclusive and transparent process and to draw on local and international experiences is crucial.<sup>5</sup>

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<sup>5</sup> See *Healing Through Remembering Report* (2002) for more information.

## The Legacy Commission

### Recommendations 7 – 10

R7. The Chair of the Legacy Commission should be an International Commissioner, who would also have specific responsibility within the Commission for addressing society issues through the Reconciliation Forum, tackling sectarianism, promoting reconciliation and administering the bursary. There would be two other Commissioners.

R8. The mandate of the Legacy Commission would consist of four strands of work:

- helping society towards a shared and reconciled future, through a process of engagement with community issues arising from the conflict;
- reviewing and investigating historical cases;
- conducting a process of information recovery;
- examining the linked or thematic cases emerging from the conflict.

R9. The Legacy Commission's mandate would be for a fixed period of five years.

R10. The Office of the First and Deputy First Minister (OFMDFM) should join the British and Irish Governments in implementing this initiative.

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HTR welcomes the suggestion that by including international and local commissioners the Legacy Commission aims to balance a demonstrated independence with genuine local integration. It should not be assumed, however, that this suggestion alone resolves the issues of independence and of local integration.

HTR endorses principles of trust, transparency and engagement.<sup>6</sup> There is need for transparency in the formation and workings of all processes in order to build enough trust for these to operate successfully and to ensure the best benefits for society. Criticisms of the CGoP have occurred when there has been a perceived lack of transparency, and therefore of trust.

HTR therefore suggests that if a Legacy Commission were to be established, the process of establishment itself needs to be transparent in order to build trust. The first stage could be an open transparent appointment process for an international and a local commissioner. There are interesting international examples of ways to invite applicants and appoint commissioners to engage with difficult issues.

The first task of the appointed commissioners should be to consider how best to implement the Report on the basis of this consultation.

### Recommendation 7 – Chair of the Legacy Commission

There are many local and international examples of initiatives dealing with the past that highlight the benefit of including international figures in their processes.<sup>7</sup> That said, international/independent contributions need to be supported by the wealth of knowledge we already have in our society.

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<sup>6</sup> See *Healing Through Remembering: Momentum and Change* (2008) for more information.

<sup>7</sup> See *Making Peace with the Past: Options for truth recovery regarding the conflict in and about Northern Ireland* (2006) and *Making Peace with the Past Executive Summary* (2006)

There is a need for clarity on the roles of the Commissioners. For example:

- Is the task for the Chair of the Legacy Commission too onerous for one person?
- Are the commissioner roles involving legal elements such as prosecutions and information recovery separate from societal and thematic issues?
- What is the mechanism for co-ordination between the Commissioners?

There is also a need to build trust locally during work of the Legacy Commission. The local element of the Commission must be such that it fosters trust and builds on local expertise. The learning and lessons from the Commission should remain even when the International Commissioner, and any other international elements of the Commission depart and the Commission has ended.

### **Recommendation 8 – Mandate of the Legacy Commission**

A strength in the mandate of the Legacy Commission lies in the holistic approach which identifies the need to deal with the past in a way that helps to build a more peaceful future for all.

That said there is a need to avoid creating too wide a remit for any single body, particularly in a fixed timeframe and budget, to achieve all that is being proposed.

Many of the issues highlighted in the four strands of work have been and continue to be engaged in by both statutory and non-statutory bodies. This is despite a lack of explicit political strategy for working “towards a shared and reconciled future”. A challenge that must be met in taking these strands forward is to take account of and co-ordinate the different work, insights and experiences that already exist in our society.

### **Recommendation 9 – Timeframe for Legacy Commission**

It is appreciated that a commission should have a lifespan to ensure activities and responses are focused and not open ended. Nevertheless it is hard to respond to the recommendation for a five year mandate without further details on how this timescale was decided upon.

A detailed transparent process of planning, milestones and public accountability should be the cornerstone of the Commission. This should include measurable annual targets and reports.

While some elements of the work will need a set timeframe the report also recognises that some aspects of the work are generational. This point is in

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for more information.

danger of being lost in the wording of recommendation 9 which states that the mandate of the Legacy Commission “be for a fixed period of five years”.

As stated above there is also a need to build trust and expertise locally – the legacy of the work should remain, even when the Commission is finished and the proposed International Commissioner moves on.

As the Report recognises, the overarching objective of the Legacy Commission of “promoting peace and stability in Northern Ireland” is a long term goal. The proposed five year time frame therefore needs to include the methods of progression towards this goal beyond the lifetime of the Legacy Commission. As stated above this must include building both trust and expertise in the local context.

### **Recommendation 10 – Role of Governments**

HTR endorses the view that the involvement of OFMDFM (Office of the First Minister and Deputy First Minister), the British and the Irish governments is crucial to the implementation of such an initiative to deal with the past.

Political leadership, and political generosity,<sup>8</sup> will be key elements to the success of any of these recommendations. In the absence of political commitment, achieving the goals of the Legacy Commission - such as tackling sectarianism, addressing society issues and promoting reconciliation - will take a lot longer.

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<sup>8</sup> See *Making Peace with the Past: Options for truth recovery regarding the conflict in and about Northern Ireland* (2006) and *Making Peace with the Past Executive Summary* (2006) for more information.

## Society Issues

Recommendations 11 – 16

R11. Society issues arising from the conflict which should be tackled include: addressing sectarianism; promoting remembering activities; working with young people; providing improved services for healthcare needs; ensuring an even spread of economic benefits; and helping those exiled from Northern Ireland during the conflict to return.

R12. The Reconciliation Forum should help to address these issues by analysing activity undertaken; considering the need for further activity; giving advice to Government and others; advising on strategies and on development and delivery of services; and deciding on priority areas of activity.

R13. The Legacy Commission should act as a champion for these society issues.

R14. The Legacy Commission should take the lead in ensuring that sectarianism continues to be addressed, including through setting the direction for the debate and by highlighting the contribution that all sectors of society can make.

R15. The Legacy Commission should engage specifically with the Christian Churches in Northern Ireland to encourage them to review and rethink their contribution to a non-sectarian future in light of their past, particularly in the area of education.

R16. The guidance produced by the Quigley-Hamilton working group, to eliminate discrimination against those with conflict-related convictions, should be incorporated into statute and made applicable to the provision of goods, facilities, and services as well and recruitment.

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### Recommendations 11, 12, 13 and 14 – Engagement of the Reconciliation Forum with Wider Societal Issues

HTR welcomes the principle that wider society issues are core to these proposals on dealing with the past.

The proposed Forum to address these issues gives an identifiable structure within which to centre these considerations. This new co-ordinated approach is a positive step, as is the proposal to include other relevant organisations.

However, the title of “Reconciliation Forum” needs to be reconsidered. There is value in a body that drives positive societal transformation, but there are difficulties with the term “Reconciliation”. These include:

- for many people the term is off-putting as it implies some form of relationship with a perceived perpetrator;<sup>9</sup>
- it is viewed by some as a church-based concept and way of engaging and therefore not inclusive;
- it implies too many different goals to different people due to various interpretations, as such it is an unhelpful single goal;
- reconciliation is an ultimate goal and therefore not helpful as a title for a five year mandate; and

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<sup>9</sup> See *A Day of Private Reflection: Discussion Paper and Proposal* (2006), *Healing Through Remembering Report* (2002) and *Making Peace with the Past: Options for Truth Recovery regarding the Conflict in and About Northern Ireland* (2006) for more information.

- reconciliation is an ongoing organic process that cannot be the mandate of a single body to govern and guide.

Taking into account that societal transformation is an organic development, HTR again stresses the importance of the process itself in this work. The development of a mechanism such as the Forum needs to balance political goals and strategy for transformation with an informed understanding of societal context, including appetite and readiness for change.

Further to the considerations listed in recommendation 11, a review of physical installations in towns and cities which potentially increase segregation of attitudes and communities needs to be addressed. This would include, for example, boundaries created by road structures, duplication of services and facilities, and memorial sites.

There needs to be a clear delineation of the role and responsibility of the CVSNI in the context of the Forum and the Legacy Commission. Whereas the Forum is about society issues, the CVSNI specifically champions the interests and needs of 'victims and survivors'. The important distinction between these mandates should not be lost. Moreover, if the distinction between these roles is blurred there is a danger that the effectiveness of both will be impaired.

The Forum has a very wide remit particularly considering the time and budgetary constraints suggested. [This also true for the role of Chair of the Legacy Commission.] Given this wide remit there is a risk that some aspects of the work might be dealt with in less detail, and that appropriate integration of all areas of work may not be achievable.

To tackle such a wide ranging remit emphasis needs to be placed on the following:

- concentrating on establishing a co-ordinated strategy of communication and action between existing and new bodies;
- formulating appropriate policy recommendations for government, statutory and other sectoral bodies as opposed to trying to develop a mandate of implementation;
- maintaining a watching brief on the implementation of these policies; and
- maintaining working connections with a diverse range of community elements. There is a danger that the Forum could become a centralised bureaucracy with little connection to the communities with whom it must necessarily engage.

## **Recommendation 15 – Role of the Christian Churches**

HTR welcomes the identification of the Churches as an important part of society to be engaged with on these issues, and also with the capacity to be an agent of positive or negative influence.

In a similar way the Legacy Commission should engage with other organisations and sectors to help them consider their contribution. These would include, for example, academia, the media and the judiciary - some of which are examined in the full report.

The proposal that the Legacy Commission works with groups – as opposed to merely challenging them – “to review and rethink their contribution to a non-sectarian future in the light of their past” is a positive one.

There needs to a more comprehensive analysis of the causes of the conflict and of sectarianism. These reviews will constitute a significant part of the process of engagement with organisations.

This review process will also highlight many of the positive things that churches and individuals from the churches did during the conflict. There are good examples within the work of the churches and ecumenical bodies addressing sectarianism and division which should be shared and promoted. This will also be true for other organisations and sectors.

The examination of education as part of building for the future is welcomed. While recognising the significant role that churches have played and continue to play in the education sector, this examination should take into account the influence of other organisations and sectors.

Engagement with faiths other than the Christian churches is also necessary, as these are increasingly a part of our society and have a role in shaping our future.

### **Recommendation 16 – Eliminating Discrimination**

The aim of recommendation 16 to enhance “an individual’s ability to play a part in society” is welcomed. The future must be a future for all. However, careful consideration should be given to the impact of any legislation or statute adjustment in this regard.



## Processes of Justice and Information Recovery

Recommendations 17 – 23

R17. A new independent Unit dealing with historical cases would be created within the Legacy Commission, which would continue to review and investigate historical cases, backed by police powers. This would constitute the second strand of the Commission's work.

R18. The new Review and Investigation Unit would take over the work of the Historical Enquiries Team and the Police Ombudsman's Unit dealing with the historical cases. The need for these would fall away when the new Unit is established. The new Unit would build on the work they have done to date.

R19. The process of recovering information of importance to relatives (information recovery) would be separated from the investigation procedure and be subject to a distinct process within the Legacy Commission under a separate Commissioner. This would constitute the third strand of the Commission's work.

R20. In the fourth strand of its work, the Legacy Commission would examine themes arising from the conflict which remain of public concern, such as specific areas of paramilitary activity, or alleged collusion. This thematic examination would take place without public hearings. This would facilitate more open and frank disclosure and avoid the constant publicity of present inquiry proceedings.

R21. There would be no new public inquiries. The question whether to proceed with the promised Finucane Inquiry is a matter for the British Government but the issues raised by this case could be dealt with by the Legacy Commission.

R22. The outstanding Inquests would remain with the Coroners Service. Criminal case reviews would continue to be pursued through the Criminal Cases Review Commission.

R23. The Group is not proposing an amnesty but recommends that the Legacy Commission itself make recommendations on how a line might be drawn at the end of its five-year mandate so that Northern Ireland might best move to a shared future.

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HTR welcomes the opportunity this initiative presents to take stock of existing justice and information recovery processes. This will allow a review of lessons learnt - both internally and from independent evaluations - and the creation of improved processes.

HTR notes that there is a potential for wider engagement with this process if an independent body is created to address these issues. However, as previously noted any new body must be developed on the basis of the review of lessons learnt.

As highlighted elsewhere in this submission, effective societal transformation is dependent on the transparency and inclusivity of this work.

Given that the "overarching objective" of the Legacy Commission is to "promote peace and stability in Northern Ireland" special consideration needs to be given to the manner in which the outcomes of these strands of work are made public.

### **Recommendation 17, 18 and 19: Strands 2 and 3 – Review and Investigation AND Information Recovery**

HTR's own work on dealing with the past has already identified a number of issues on truth recovery and acknowledgement.<sup>10</sup>

In light of this work a number of issues are raised in consideration of these recommendations, these include:

- there is a need for a transparent explanation of the process of transition from existing mechanisms to any new approach;
- there is a need for a multi-faceted approach in this area involving personnel with experience and skills from a range of sectors and disciplines other than policing and legal expertise;
- how will the process provide an incentive for participation from all necessary participants? This is particularly relevant in cases where there is a fear of prosecution;
- how will the expectations – both positive and negative - of families and individuals be managed in each strand? This needs to take account of, and demonstrate, the limited possibility of prosecutions owing to the length of time that has elapsed;<sup>11</sup>
- there is a clear need for processes that are less legally/lawyer based and/or for legal fees to be capped rather than on a per diem rate. The planning of these structures therefore needs to include a consideration of these possibilities;
- there must be a transparent and justifiable explanation of decisions made regarding withholding of information from families and individuals;
- there must be a transparent process of progress through the strands of this approach. (For example this might include the possibility that a case could be referred back to the review and investigation strand based on information recovered in strand 3 or 4);
- while these are legal processes, sight must not be lost of the human stories and the experiences of individuals and families at their heart. There seems to be the potential for an individual to be asked to deposit their story several times over to those responsible for the different strands. Appropriate support services must be available at all stages of the process; and
- it must be recognised that not all families nor individuals in families may want information recovery. There therefore is the potential for conflict within families as to whether further information is sought. There is

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<sup>10</sup> See *Making Peace with the Past: Options for truth recovery regarding the conflict in and about Northern Ireland* (2006); *Making Peace with the Past Executive Summary* (2006) and *Acknowledgement and its Role in Preventing Future Violence* (2006) for more information.

<sup>11</sup> See *The Viability of Prosecution based on Historical Enquiry*. Legal Opinion (2006).

also the potential of external pressures influencing whether or not a family or individual requests further information. The process needs to take these considerations into account.

#### **Recommendation 20: Strand 4 – Thematic Examination**

HTR welcomes the examination of “themes arising from the conflict which remain of public concern”. This needs to be widened to include elements that may have fuelled and perpetuated the conflict. It also needs to consider wider issues such as organisational policy issues, gender issues and class issues. If the only source of themes to be addressed is from cases arising from strands 2 and 3, this will limit the remit of strand 4 to considerations of deaths. There needs to be a route whereby the themes identified in the work of the Forum can be incorporated into strand 4.

The Report proposes that there should be no oral evidence heard under Strand 4 in the first two years of the Legacy Commission, to ensure this does not affect the progress in Strands 2 and 3. This needs to be reexamined in light of the suggestion above that a wider consideration of themes is necessary.

HTR notes that a potential outcome of strand 4 could be an acknowledgement of the details of issues that have caused “public concern”. If this is the case there would be a need for explicit acknowledgement and appropriate resolutions for change.

#### **Recommendation 21 – Public Inquiries**

If the initiation of public inquiries in relation to dealing with the past is to be abandoned entirely, there needs to be explicit demonstration that the alternative methods of inquiry be adequate and serve public interest.

#### **Recommendation 22 – Inquests and Criminal Case Reviews**

Clarification is needed as to whether this recommendation implies that the inquest would be informed by reports and/or information gathered in strands 2, 3 and/or 4.

#### **Recommendation 23 – Drawing a Line**

HTR welcomes the suggestion that taking a decision on how to move forward as a society or “draw a line” is part of the overall process of dealing with the past under these proposals, rather than as a definitive decision made in advance.

However, it seems impossible at this stage even to guess at what appropriate decisions can be made at the end of the five year remit. The decisions about what should be done will evolve out of the processes undertaken.

## Remembering

Recommendations 24 – 31

R24. The Legacy Commission should, through the Reconciliation Forum, support CVSNI in facilitating and encouraging the telling of stories, including by young people, about the impact of the conflict on individuals and communities; and the stories of intra-communal differences

R25. CVSNI should also be supported in developing the existing ways in which the conflict and its impact are remembered. This should include the development of educational projects; providing support and guidance for those facilitating remembering projects in line with certain criteria; and promoting the value of remembering across society as a means of achieving reconciliation

R26. Future Storytelling initiatives should be developed taking account of certain criteria.

R27. Full support should be given by government, the private and voluntary sector, including the churches, to the contribution of the annual Day of Reflection, initiated by Healing Through Remembering, on 21<sup>st</sup> June each year. Consideration should be given to renaming the event a Day of Reflection and Reconciliation

R28. Each year, on or around the Day of Reflection and Reconciliation, the First and Deputy First Minister should together make a keynote address to the Northern Ireland Assembly and invited guests, reflecting on the past in a positive way and confirming their commitment to lead Northern Ireland society towards a shared and reconciled future

R29. The Reconciliation Forum should take the lead in implementing an initiative, at the end of the five year mandate of the Legacy Commission, whereby Northern Ireland, with the support of the two Governments and the Northern Ireland Assembly, should conduct a ceremony remembering the past and all those who suffered during the conflict.

R30. The Group therefore recommends that the Commission should, at the end of its work, challenge the people of Northern Ireland, including political parties and whatever remnant or manifestation of paramilitary groups remain, to sign a declaration to the effect that they will never again kill or injure others on political grounds

R31. A shared memorial to remember conflict in and about Northern Ireland should be kept under consideration by the Reconciliation Forum and criteria should be observed, in working towards a shared memorial conducive to reconciliation. The Legacy Commission should, at the end of its five year life span, make recommendations in this regard.

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### Recommendation 24, 25 and 26 – Storytelling AND Remembering

HTR welcomes the identification throughout this Report of storytelling and narrative work as a means for dealing with the past.

The proposed inclusion of a variety of voices, such as those of young people and stories of intracommunal difference, is an important aspect of this work.

Despite the wide range of existing storytelling and narrative work initiatives there are voices which have not yet been heard for a range of reasons. There is a need to consider the various reasons why certain voices have not yet been heard and to address how to remedy this lack.

After many years considering the issue of a collective storytelling and narrative process, HTR believes there is a need to facilitate and resource the continuation of existing initiatives.

Furthermore, HTR believes that there are substantial difficulties with a collective process.

The following considerations inform this view:

- that there is a risk of disempowering local initiatives by removing their autonomy in the centralisation of the process;
- that a central process will experience difficulty building trust within communities;
- that, because storytelling and narrative work involve varying degrees of disclosure of identity and experiences, people seem reluctant to engage with any process or deposit their stories in a context other than the community with which they identify most closely.

Any collective storytelling or narrative work initiative should not be led or overseen by the CVSNI. To locate storytelling within the mandate of the CVSNI implies that storytelling is the exclusive preserve of 'victims and survivors', rather than something that wider society can also participate in and benefit from.

As noted previously in this submission, consideration needs to be given to the point that, taking the Report's proposals altogether, individuals may find themselves telling and depositing their stories in different formats several times over to the different strands.

It is noted that storytelling is mentioned throughout the Report without much detail or explanation of which methodologies are envisaged as appropriate. The experience and research of HTR has shown that storytelling and narrative work involve a range of methodologies and media. HTR's latest consideration in this area is the production of a document detailing ethical principles for storytelling and narrative work which apply to a range of methodologies.<sup>12</sup>

Both locally and internationally there has been a tendency to perceive storytelling and narrative work in relation to conflict as a panacea, even a short cut, to dealing with the past. However, the challenges this approach represents for individuals and communities should not be underestimated. These challenges must be seriously and sensitively addressed in the event of any storytelling or narrative work initiative.

There needs to be a wider consideration of different methods of remembering.<sup>13</sup> This might include acts of commemoration, festivals, drama, events, displays of artefacts<sup>14</sup> and art work.

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<sup>12</sup> See *Storytelling Audit. An audit of personal story, narrative and testimony initiatives related to the conflict in and about Northern Ireland* (2005), *Storytelling as the Vehicle" Conference Report* (2005) and *Ethical Principles – Storytelling and Narrative Work* (2009) for more information.

<sup>13</sup> See *At the End of the Day: Commemoration - Forward Thinking into the Past* (2008)

<sup>14</sup> See *Artefacts Audit: A report of the material culture of the conflict in and about Northern Ireland* (2008)

## Recommendations 27 and 28 – Day of Reflection

HTR believes that a Day of Reflection has the potential to make a positive contribution to individuals and society generally and emphasises a commitment to a peaceful new society.<sup>15</sup> The organisation welcomes the support for the Day of Reflection in the recommendations and the suggestion that a wide range of organisations be engaged in the Day. However, HTR would like to stress that it promotes the Day as a voluntary initiative and that no-one should feel that they have to take part.

HTR has now promoted three annual Days of Private Reflection (2007 – 2009). The independent evaluations of these Days have indicated a growing support for the Day. These evaluations and the initial consultations before the first Day have all indicated that the term ‘reconciliation’, when used in the materials for the Day, had the potential to exclude a number of individuals and groups from taking part in such an initiative. As stated previously, for many people the term was identified as off-putting as they felt it implied some form of relationship with a perceived perpetrator. For this reason HTR is reluctant to use this term within the title; however, as with all elements of Day, public opinion is a driver and therefore this may change in the future.<sup>16</sup>

While encouraged by the recommendation that the First Minister and Deputy First Minister mark the Day, HTR believes that it is not appropriate to direct anyone in marking the Day. Rather, HTR encourages anyone participating in the Day to do so in a way that is underpinned by an inclusive and sensitive approach which:

- respects differing views, political aspirations, and perspectives on the conflict;
- recognises and accepts that there are diverse views on a Day of Reflection and that not everyone can or will feel able to participate;
- encourages a positive and respectful way of reflecting on our past;
- promotes support and is a source of strength to those who have been most adversely affected by the conflict; and
- reaches out to people in Northern Ireland, including those from different ethnic backgrounds, the Republic of Ireland and Great Britain.

In welcoming a diverse range of participation in the Day over the last three years, HTR has always emphasised that perceived leadership on the Day from any particular section of our society may alienate other parts of society from engaging.

HTR emphasises that the Day of Reflection is not an attempt to replace or overshadow other days on which people reflect and remember, including the personally significant days when individuals remember their loved ones.

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<sup>15</sup> See *International Experiences of Days of Remembrance and Reflection* (2005), *Day of Reflection: A Scoping Study* (2006) and *A Day of Private Reflection: Discussion Paper and Proposal* (2006)

<sup>16</sup> See *21 June 2007 Day of Private Reflection Evaluation Report* (2008) and *21 June 2008 Day of Private Reflection Evaluation Report* (2009)

From the outset, HTR has identified that the time may not yet be right for public events. The private – i.e. non-public gathering - element is an important aspect of the Day for many. The public/private aspect of the Day is reviewed each year, and the consideration of more public elements of the Day must be informed by the continual evaluation of the impact and response to the Day.

### **Recommendations 29 and 30 – Ceremony AND Declaration**

While recognising the positive intentions of these two recommendations HTR is of the view that such initiatives must develop from the inclusive processes and strands of work such as those outlined in the Forum and Legacy Commission. Imposition of specific predetermined public actions is not conducive to authentic and lasting societal change.

The suggestion of signing the declaration raises specific difficulties such as

- it will create discrete groups of those signed up and those not;
- what the relevance of the declaration will be by the time it is signed;
- this is a ‘pacifist’ statement without context which will limit those able to sign; and
- there is no recognition that actions speak louder than words.

Perhaps a consideration of acknowledgement relating to the causes of the conflict, wider society issues and the role and responsibility of organisations might be a more appropriate gesture.<sup>17</sup>

### **Recommendation 31 – Shared Memorial**

HTR welcomes the proposal that the idea of a shared memorial should be kept under consideration. This is an ongoing debate which evokes strong emotions and responses in those who are in favour and those who are opposed to the concept.<sup>18</sup>

HTR’s work identifies that a Living Memorial Museum not only offers the opportunity for a collective memorial space but also ways of addressing some of the restrictions of a fixed memorial. These include:

- creating an environment which can address and articulate conflicting histories;
- a space to articulate the findings of the review of causes and consequences of the conflict as identified within different sectors; and
- an educational outreach element.

The debate on a Living Memorial Museum needs to be continued.

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<sup>17</sup> See *Acknowledgement and its Role in Preventing Future Violence* (2006) for more information.

<sup>18</sup> See *Without Walls: A Report on HTR’s Open Call for Ideas for a Living Memorial Museum of the Conflict in and about Northern Ireland* (2008)



## **Appendix I**

### **Summary of the HTR core values and principles for dealing with the past**

In January 2008 HTR drew up the following framework of core values and principles to inform an approach to dealing with the past as part of its submission to the Consultative Group on the Past.

#### ***Commitment to the future***

To build a future that is peaceful, politically stable, and benefits generations to come, we must deal with the past.

#### ***Not forgetting***

The challenge is not to attempt to forget, but rather to find an appropriate way to remember.

#### ***Healing and hurt***

The value of actions must be considered in terms of the potential harm, while also realising that individual and societal healing can only take place once the pain of the past is acknowledged.

#### ***Inclusive, diverse and participative***

A full range of voices and opinions must be heard if understanding is to be generated and mature relationships are to be built. The approach should empower people and create a shared sense of purpose while being realistic about the difficulties that inclusive processes involve.

#### ***Language and terminology***

The use of language must enable engagement, not hamper or divert debate and dialogue. Terminology may change and develop over time due to a changing context and the working out of suitable processes.

#### ***Right to truth***

Society has a right to the truth about the past. Foundational principles to truth recovery are honesty, transparency and a willingness to engage. Truth recovery needs a structured and comprehensive approach.

#### ***Structured and holistic approach***

There must be co-ordination between all the mechanisms for dealing with the past. A range of integrated options is necessary to meet the needs of society and these must unfold over time.

#### ***Flexibility***

An approach must adapt to changing needs and context, growing awareness, newly unearthed questions, issues and circumstances. Participation should be allowed as appropriate and may change and evolve over time.

#### ***Trust, transparency and engagement***

Trust must be built at all levels and honesty in engagement is vital to maintain trust. Listening to each other's viewpoint while not necessarily agreeing with it is important – accepting that we have different opinions but can share them.

### ***Independence and political commitment***

Processes must be officially sanctioned at a political level while maintaining independence in terms of planning and operation. All political parties must commit themselves to dealing with the past in order to build a better future for all.

### ***Recognition and appreciation of existing work***

There is already a wide range of remembering projects underway that look at dealing with the past in a way that will build a better society. It is important to enable these initiatives to continue in their work, and ensure they are seen as complementary to, and not in competition with, any other projects or approaches that may be proposed.

### ***Realistic and hopeful goals***

Dealing with the past is generational work, with the potential of real benefit for current and future generations. At the heart of this must be the identification and upholding of hopeful goals.