

# ENGAGING WITH THE PAST: BUILDING FOR THE FUTURE



Sinn Féin response to the consultation  
on addressing the legacy of the past



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# FOREWORD

Sinn Féin is committed to the full implementation of the Stormont House Agreement (2014) in a human rights compliant manner. Implementing the legacy mechanisms as intended creates the opportunity to engage with the past and build for the future in a victim-centred manner.

At the end of this legacy consultation phase, and the British government response, there will be a Westminster legislative process.

Facilitating this legislative process places a particular onus on the British government to:

- Ensure that all victims are treated with equality, dignity and respect;
- Ensure that the legislation reflects the policy intent of the Agreement and which,
- Ensures that the new legacy architecture is fully independent, human rights compliant and adequately resourced.

The opportunity presented by the full human rights compliant implementation of the Stormont House Agreement must not be squandered or compromised during the legislative process; nor cannot it be subject to a British national security veto, the demands of the British military lobby or political trading in Westminster. Any deviation or overt political interference risks the potential of the Stormont House Agreement legacy mechanism.

Throughout the last year I have engaged and listened to the countless stories of pain, injury and loss from across the political spectrum. For the

families who are waiting 45 years on access to a basic inquest I have heard their frustrations and that time is not on their side. For all those seriously physically and psychologically injured I have heard and listened to their immediate needs. I have engaged with families who are frustrated by protracted delays where the state has held back reports, information and documentation. We have seen thousands of people take to the streets of Belfast in February demanding the right to truth.

I want families to know that we in Sinn Féin have listened to your stories of injury and loss, your need for acknowledgement and your hopes for a better future. Your views have informed our approach to this consultation.

Implementing and participating in the legacy mechanisms will undoubtedly be an immensely difficult and painful process for families seeking answers into the death of a loved one, those injured, and society more generally.

Notwithstanding the risks, the new Stormont House Agreement legacy architecture has the potential to comprehensively engage with the past and in parallel facilitate a wider societal conversation about the future and the prospect of building a society defined by the protection of rights for all. In this content the full human rights compliant implementation of the Stormont House Agreement holds the potential to create a new impetus that will assist societal reconciliation and healing.

In conclusion I am convinced that if



the legacy mechanisms work on the basis of equality, dignity and respect for all, then there is the very real potential to write the words of a new chapter of the peace process. This will require all sides to acknowledge, uphold and protect the rights of all victims. It will require a collective focus on healing all the wounds of the past. It will require affirmation, sensitivity and



generosity. It will require thinking and actions that are not defined by sectarian, sectional, party political or self-interest. It will require political leadership.

The opportunity to engage with the past is now. The time to engage with the past is now.

Michelle O'Neill  
LEAS UACHTARÁN  
SHINN FÉIN



# INTRODUCTION

1. The Stormont House Agreement (2014), hereafter referred to as 'The Agreement', was negotiated by the five main political parties and the Irish and British governments. All agreed that an approach to engaging with the past is necessary, and in a manner, that respected the following principles:
  - Promoting reconciliation;
  - Upholding the rule of law;
  - Acknowledging and addressing the suffering of victims and survivors;
  - Facilitating the pursuit of justice and information recovery;
  - Is human rights compliant; and
  - Is balanced, proportionate, transparent, fair and equitable.
2. The Agreement was negotiated to provide for a new legacy architecture that would be better suited to engage comprehensively with the legacy of the past. A key consideration was to give choice to families who had experienced conflict related loss.
3. The Agreement provided for:
  - An independent Historical Investigations Unit *"to take forward investigations into outstanding Troubles-related deaths"*;
  - An Independent Commission on Information Retrieval *"to enable victims and survivors to seek and privately receive information about the death of their next of kin"*;
  - An Oral History Archive *"to provide a central place to share experiences and narratives related to the Troubles"*; and,
  - An Implementation and Reconciliation Group *"an institution to promote reconciliation and anti-sectarianism and to review and assess the implementation of the other legacy mechanisms and to commission an independent academic report on themes and patterns"*.
4. While not part of the legacy consultation, the Stormont House Agreement (Point 28) outlined that there should be progress in respect of a pension for all severely physically injured victims. It is Sinn Féin's view that the provision of a pension for all seriously physically and psychologically injured should be provided immediately.
5. This paper details the Sinn Féin response to the NIO Legacy Consultation. It sets out our views and offers commentary, on how the draft Bill can be strengthened to reflect, and is consistent with, the policy intent of the Stormont House Agreement (2014).



## GENERAL CONSIDERATIONS

6. It is our view that the disjointed, fragmented and piecemeal approach to all legacy matters has been designed by the British government to prevent any comprehensive examination of their role in the conflict. It has been designed to limit any investigation into the nature, causes and consequences of their policies that perpetuated, sustained and prolonged the conflict. This has additionally shaped an obstructionist approach to legacy matters which has flagrantly disregarded human rights obligations. More disturbingly the British government's approach has caused the inordinate delays experienced by some families awaiting access to a basic inquest, disclosure or inquiry.
7. In our view this *piecemeal* approach has been politically motivated. It has been designed to drip feed information to families so as to prevent any overarching investigation of the state's role in perpetuating and sustaining the conflict.
8. The approach of the British state has been to deny wrongdoing, to conceal the truth and limit accountability. Many families have described the British government approach to the past as one defined by:
  - **Denial:** where the British state have denied involvement in the death of a loved one;
  - **Delay:** where the British state have frustrated legal process to block the truth;
  - **Death:** where family members believe the British state strategy is to wait on the death of family members rather than tell the truth.
9. Such expressed sentiments by families, who have been denied access to the truth, is clearly impacting and corroding wider confidence in the rule of law and the administration of justice. It is therefore essential that the Stormont House legacy mechanisms function as intended. This will require meaningful and substantive political leadership from the Irish and British governments and political parties.
10. Implementing the legacy mechanisms will undoubtedly be an immensely difficult and painful process for families seeking answers about the conflict related death of a loved one, those injured, and society more generally. Making the legacy mechanisms work on the basis of equality, dignity and respect has the potential to write the words of a new chapter of the peace process. This will require all sides to uphold the rights of all victims. It will require affirmation, sensitivity and generosity. It will require thinking and actions that are not defined by sectarian, sectional, party political or self-interest. It will require political leadership.
11. Notwithstanding the risks, the new legacy architecture has the potential to comprehensively engage with the past and facilitate a wider societal conversation about the context, nature and consequences of conflict. And while challenging, the full human rights compliant implementation of the Stormont House Agreement, holds the potential to create a new impetus that will assist societal reconciliation and healing.



# III CONTEXT

## British government obligations

12. The British government has binding legal, political and moral obligations in respect of implementing the Stormont House Agreement (2014). As such it has obligations to:
  - Facilitate a legislative process which reflects the policy intent of the Stormont House Agreement;
  - Provide the adequate resourcing for the full and complete implementation of all the legacy mechanisms;
  - Fulfil outstanding Weston Park legacy agreements and hold a public inquiry into the state killing of human rights lawyer Patrick Finucane;
  - Provide adequate funding for the Lord Chief Justice's Legacy Inquest Plan.
  - Provide adequate funding to the Office of the Police Ombudsman to complete its historic caseload.
13. Any deviation from the intent of the Stormont House Agreement (2014), during the legislative process, will be viewed as a breach of trust and could have consequences for family participation in the new legacy architecture. It will simply reaffirm concerns around the lack of British government impartiality, independence and commitment to fulfil its human rights obligations. None of this will be acceptable to Sinn Féin.
14. Family concerns are very real, and grounded in experience. It is therefore essential to public confidence in this process:
  - That no one is seen to be above the law and that everyone is accountable to the law;
  - That no attempts are made to introduce or facilitate a statute of limitation for state actors;
  - That there is a British state commitment to combat impunity for past violations. Combatting impunity and facilitating accountability are essential to restoring the confidence of victims in the rule of law and the administration of justice.
15. The fact remains that British institutions are not seen by all stakeholders as neutral arbiters, owing chiefly to the participation of their state forces in certain relevant, and contested, events of the past. The role of British state forces, the distinct lack of accountability for their actions and a blatant disregard for subsequent binding Court rulings has defined Britain's approach to legacy matters.
16. The duty on the British government to fulfil human rights obligations is compelling.
17. This was recognised by Council of Europe Human Rights Commissioner Nils Muiznieks' comments in Belfast, in November 2014: *"The UK government cannot wash its hands of the investigations, including funding of the investigations. These are the most serious human rights violations. Until now there has been virtual impunity for the state actors involved and I think the government has a responsibility to uphold its obligations under the European Convention to fund investigations and to get the results. The issue of impunity is a very, very serious one and the UK government has a responsibility to uphold the rule of law. This is not just an issue of dealing with the past. It has to do with upholding the law in general."*



18. This has been compounded in recent times by a cynical political commentary, including comment from British Prime Minister Theresa May, which is designed to falsely present an argument that only state forces are being pursued in respect of legacy investigations. These comments are provocative, insulting and cause significant distress to families. But more significantly they have also been challenged by the PSNI Chief Constable and the Director of the Public Prosecution Service. Establishing and implementing the legacy mechanisms will have to account for the fact that neither the British state nor other stakeholders can assume the position of neutral arbiters of the conflict.
19. It is therefore vital that processes, procedures and safeguards are embedded to guarantee the highest standards of independence and impartiality in respect of the role afforded to the British Secretary of State in facilitating the legislative process.

## IV

# SINN FÉIN APPROACH TO LEGACY MATTERS

### Background

20. Sinn Féin first produced a considered policy statement on truth recovery and legacy matters in 2003. The policy statement called for a focused debate and political engagement with all relevant parties on the timing and purpose of a truth recovery process. The policy statement recognised that a formal collective examination and acknowledgement of the past was necessary for all victims and survivors. The policy statement also placed an emphasis on building for the future.
21. Investigating and examining the policy context of conflict, engaging and listening to victims and the importance of acknowledgement are core tenets of Sinn Féin's approach to engaging with legacy.

### Context

22. The past cannot be changed or undone, nor can the suffering, hurt or pain be disowned. While there may never be consensus on the narratives or understanding of the past, or on the causes of conflict, it is essential that different narratives are acknowledged, if not understood.
23. It is indisputable that the legacy of the past has left deep personal, communal and societal wounds across all sections of the community. It has fractured relationships within and between communities and relationships across these islands. Engaging with the past means engaging with these fractured, and in many cases broken, relationships. It requires an open acknowledgment of the human consequences of all harm, injury and loss.
24. There are also many who live with psychological and physical scars of conflict who need immediate care and support services. As part of implementing the Stormont House process we are committed to ensuring that all those seriously physically and psychologically injured receive the necessary care, services and support.



## Process from Stormont House: How we got here

25. Sinn Féin's principal and consistent focus in the negotiations that led to the Agreement (2014) was to ensure that all victims are treated with equality, dignity and respect. Our focus was to ensure that all victims had their choices respected and that all options (investigative, information recovery and story-telling) remained open. This will, of course, present challenges to all conflict actors, including Republicans.
26. After the Stormont House Agreement, the Irish and British governments were each tasked with taking forward legislation in their respective jurisdictions. The British draft legislation was then deliberately leaked. It was permeated with 'national security' provisions which evidenced a real claw back. The engagement of a national security veto as a blocking mechanism to prevent relevant information and onward disclosure explains why the Fresh Start Agreement (2015) did not include an agreed way forward on the issue of legacy.
27. Our focus, then and now, is to ensure that the Stormont House legacy mechanisms are implemented in a full human rights compliant manner. In our view the implementation of the legacy provisions of the Stormont House Agreement (2014) offers the very real prospect of comprehensively engaging with legacy and all its manifestations.
28. Sinn Féin will encourage Republicans to engage with the legacy mechanisms in a manner that engages with the many and varied needs of all victims.

## Investigating and examining the Policy Context of Conflict

29. Engaging meaningfully and comprehensively with the past requires an examination of British policy intent; a policy intent which fuelled, exacerbated and perpetuated the intensity, scale and duration of the conflict. British policy intent must be subject to wider public examination and scrutiny.
30. Investigating and examining the policy context, and the role of the British state as a major protagonist, will require full, open and transparent disclosure, from the British state and all state agencies.
31. This necessitates full and unrestricted disclosure from the British state to the legacy mechanisms. Mechanisms that will be sufficiently empowered, capable and competent to investigate the themes and patterns that were the outworking of British state conflict policy.
32. Families, communities and wider society need to fully understand the far reaching scope of a state shoot-to-kill policy, the torture and interrogation experienced in British military or RUC detention centres and prisons, the policy and practice of British state collusion and a range of other human rights abuses and gender-based violations.
33. Any dilution, restriction or limiting of information will seriously undermine confidence and put at risk the potential of the legacy mechanisms functioning as intended.

## Importance of Acknowledgement

34. Sinn Féin acknowledges the grief and loss associated with each and every life lost in the conflict.
  - We acknowledge that there are many other victims beyond our shores.
  - We acknowledge that for many families these wounds will not be easily healed, if at all.
  - We acknowledge there are many who live with the trauma of physical or psychological injury.
35. Acknowledging the human impact of all pain and loss, and the needs of all victims and their families, is vital to creating the necessary environment to progress the work of the legacy mechanisms. That means ensuring that all families are empowered to participate in the legacy mechanisms on the basis of equality, dignity and respect.



36. Sinn Féin has consistently engaged with the past with a focus to shape rights-based processes that would address the needs of all victims; processes where all families would be treated with equality, dignity and respect.

### Engaging and listening to victims

37. Sinn Féin's policy position was that an independent, international truth recovery process was needed to engage with the challenges of legacy.
38. As part of the negotiations process that led to the Stormont House Agreement (2014), Sinn Féin actively engaged and listened to a broad range of families, NGOs, campaign groups and the wider victims sector. This continues to be an ongoing engagement. However, from our engagements it was clear that families equally saw the potential in fully human rights compliant legacy mechanisms that were being considered as part of the Stormont House negotiations (2014).
39. Sinn Féin listened to the concerns of families. As such it is our view that the full, comprehensive and Article 2 compliant implementation of the legacy mechanisms provides the basis to engage meaningfully with the needs of victims, assist reconciliation and healing and build for the future.
40. It was clear from these engagements that many families had different expectations of how best to engage with legacy, indeed many wanted different outcomes. However, the one clear and consistent message that emerged was that, in any future legacy process, families wanted choices and did not want any option closed down, restricted or limited.

### Implementing Stormont House Agreement Legacy Mechanisms

41. In our view there are a number of general principles that Sinn Féin believes should underpin, and which are core to the implementation of, the legacy mechanisms:
- All processes should be victim-centred;
  - The full co-operation by all relevant parties is essential to the success of all processes;
  - All should be treated with equality, dignity and respect;
  - All processes must be free from political interference;
  - An objective of this legacy process should be healing — both for victims and for society in general;
  - A common aim should be to enable society to build on the peace;
  - Respect, generosity and reconciliation should inform the parties seeking to reach agreement.



# ENGAGING WITH THE PAST: BUILDING FOR THE FUTURE

## Context

42. Two decades on from the signing of the Good Friday Agreement (1998) many families continue to ask questions about the deaths of their loved ones. Many feel that there has been no *official* recognition of their loss. Many are still denied legacy inquests, many are still battling in the courts for maximum disclosure from the British state. This is not a tenable situation. Equally the Irish government has a binding obligation to assist families and to facilitate full disclosure to assist information recovery.





43. Engaging with the past will mean answering the uncomfortable questions of many families and wider society.
- It means seeking to provide maximum information to families who seek answers.
  - It means investigating and understanding the policy context, and the state abuse of legal process, that facilitated, perpetuated and sustained conflict.
  - It means investigating human rights abuses, upholding the rights of victims to remedy and combatting impunity.
  - It means breaking the silence.

### British state reluctance

44. The British state has always sought to conceal, deny and cover up its central role in the Irish conflict. Their approach has been to prevent any meaningful scrutiny of state conflict policy or the role of state actors in perpetuating and sustaining conflict. For this reason, there is justifiable concern among many victims of state violence about the British government's commitment to meaningfully fulfil their legacy obligations.
45. Fulfilling legacy obligations will require a step change in the British government's approach to engaging with the past. To date the British government's approach has been to deny and cover up its own role and culpability as the main conflict protagonist. This is evident in their approach to:
- The wilful obstruction of the Irish Government-established Barron Inquiry and subsequent Oireachtas committee investigations into British State collusion in the killing by Loyalist paramilitaries of 33 people in the Dublin and Monaghan bombings of May 1974 and in other fatal attacks in the 26 Counties. This obstruction has included the refusal of the British Government to comply with the unanimous Dáil resolution of July 2008 calling on the British Government to 'allow access by an independent, international judicial figure to all original documents held by the British Government relating to the atrocities that occurred in this jurisdiction'. Experience has shown that collusion between British state forces and Loyalism was widespread;
  - The Widgery Tribunal which whitewashed the British army's murders of 14 civilians in Derry. The impediments placed by British agencies in the way of the more recent Saville inquiry into those murders;
  - The sabotage of the investigation by John Stalker into extra-judicial executions by British forces in North Armagh;
  - The suppression of the Stevens Report, of the 3,000 pages only 15 pages were published;
  - The strictures placed on investigations into killings involving collusion between British agencies and Loyalist paramilitaries. The secrecy imposed on the reports of these limited inquiries;
  - The development of the Inquiries Act (2005) to secure secrecy around British involvement in collusion in the murder of human rights lawyer Pat Finucane;
  - The legal protection and immunity from prosecution, given to certain Loyalist paramilitaries, working under British direction, in the murder of citizens;
  - The track record of the Public Prosecution Service (PPS) during the conflict makes it doubtful that any RUC/British Army personnel or other British agents would face charges arising from cases of 'collusion' or 'shoot-to-kill'. The role and involvement of the PPS in the Brian Nelson affair is central to this entire issue. For this reason, it is essential that there is an examination of the function and role of criminal justice agencies in causing or sustaining the conflict;
  - The delay into inquests opening and the refusal to adequately resource the Lord Chief Justice's Legacy Inquest Plan brings into question the British government's commitment to having a fit for purpose legal system capable of meaningfully engaging with legacy cases.



46. This adds to a widespread concern among many families around the commitment of a British Government to effectively fulfil their Stormont House legacy obligations. The distinct and evident lack of accountability for British state actions and policy intent, throughout the duration of conflict and beyond, has undoubtedly undermined confidence in the rule of law and the administration of justice.

## VI

# STORMONT HOUSE AGREEMENT

(2014)

### Introduction

47. This section will set out general comments pertaining to legacy matters that were agreed in the Stormont House Agreement. It will set out our views on matters which are being given legislative expression in the Draft Northern Ireland (Stormont House Agreement) Bill and some matters which are not.
48. This section will set out Sinn Féin's view on:
- The definition of a victim;
  - The provision of a pension for all with severe physical and psychological injuries;
  - The provision of adequate funding for the Lord Chief Justice Legacy Inquest Plan;
  - The provision of adequate funding for the Office of the Police Ombudsman;
  - Proposals for a statute of limitation;
  - The Official Secrets Act;
  - The provision of adequate funding for the Stormont House Agreement Legacy Mechanisms;
  - The need for a gender sensitive approach to engaging with the past; and
  - The provision of Legal Aid.

### General Commentary

49. This section will detail general commentary designed to strengthen, enhance and build wider support for the delivery of the Stormont House Agreement legacy mechanisms:

### Definition of a Victim

50. The current definition of victimhood was arrived at through consensus and provides the basis for fair and equitable provision, as outlined in the Victims and Survivors (NI) Order (2006). Furthermore, the negotiations that culminated in the Stormont House Agreement were conducted on the basis of the current definition. Any attempt to redefine, amend or change the definition of a victim threatens the foundation on which the Stormont House Agreement legacy architecture was negotiated.





51. In our view the current definition provides the only basis to deliver the policy intent of the Stormont House Agreement (2014) legacy mechanisms. In our view:
- Efforts to revise or revisit the definition of a victim are no more than an attempt to manipulate the very real needs of individual victims and survivors for narrow political point scoring. Sinn Féin is committed to ensuring that the process to engage with legacy is not reduced to a zero sum exercise.
  - Any attempts to change the definition in the legislative process, or through a Private Members Bill, will pollute, poison and undermine collective endeavours to establish in statute the agreed legacy mechanisms.
52. In summary if we are to collectively and genuinely engage with the past in an inclusive, comprehensive and human rights compliant manner, it is vital that all families who suffered loss have their voices heard, their experiences validated and victimhood publicly acknowledged. Establishing equality of victimhood in all future legacy processes is the key fundamental principle in this regard.

**It is Sinn Féin's view that any attempts to review let alone change the definition of a victim is outside the parameters of the Stormont House Agreement.**

### **Provision of a pension for all with severe physical and psychological injuries**

53. Society has an immediate responsibility to deal with the scars of those injured during the conflict. In our view it is essential that high quality services are provided to all victims at the point of need. This will also require:
- A pension for all severely physically and psychologically injured would be a societal recognition that their experiences are acknowledged, their victimhood publicly validated and their voices heard.
  - The provision of a pension is also about restoring dignity for those seriously physically and psychologically injured; people who live with the consequences of life-changing injuries that are aggressive, debilitating and which affect mobility.
  - Any attempt to use the issue of a pension for the seriously physically and psychologically injured to reopen the debate on the definition of a victim must be resisted. It is vital that this issue does not become a 'zero-sum exercise'.

**It is Sinn Féin's view that the provision of a pension for all seriously physically and psychologically injured should be provided immediately.**

### **Funding for the Lord Chief Justice's Legacy Inquest Plan**

54. In February 2016, the Lord Chief Justice Declan Morgan outlined his 5-year plan to clear the backlog in legacy inquests. This was contingent upon two requirements:
- The provision by the British Government of the adequate funding and,
  - The full co-operation by the PSNI, the MOD and other relevant state bodies in relation to the location and provision of ALL relevant documentation and material and locating potential witnesses and suspects.
55. Since then the request from the foremost law officer for adequate funding has been stonewalled by the DUP and the British government. This is particularly concerning as some families have now been waiting over 40 years for an Article 2 compliant investigation into the deaths of their loved ones. The creation of one pretext after another as to why families cannot access basic legal processes further risks undermining confidence in the rule of law.



56. As a consequence, the British government remains in clear violation of their international obligations to provide Article 2 compliant investigations/inquests in a timely and effective manner. This in spite of the issue being highlighted by families, human rights NGOs, political parties, the Irish government, the Committee of Ministers of the Council of Europe and the High Court in Belfast where Justice Girvan has reaffirmed that the obligation on the state to investigate deaths during the conflict remained whether or not there was a functioning Executive.
57. **It is Sinn Féin's view that the British government should immediately release adequate funding to resource the Lord Chief Justice's Legacy Inquest Plan which is a separate and structurally distinct legal process from the new legacy mechanisms.**

### **Funding for the Office of the Police Ombudsman**

58. The Police Ombudsman's Office still retains a remit to investigate a caseload of historical cases. This is despite a decreasing funding allocation from the Department of Justice. With a timeframe of 3-4 years for the HIU to be fully operational, it is essential that the Office of Police Ombudsman, which has a current caseload of 400 cases, is adequately resourced in the intervening period to facilitate completion of as many historical cases as possible. Such an approach, which is resource contingent, would lighten the caseload for the commencement of the new HIU.
59. Furthermore, some outstanding legacy inquests await the completion of connected Police Ombudsman's investigations before they can proceed. Again without this injection of additional funding, there is a potential scenario where the Lord Chief Justice receives resources to commence his Legacy Inquest Plan but certain inquests are unable to proceed due to incomplete Police Ombudsman investigations.
60. As part of a forward planning process it is vital that blockages are overcome at source.
61. Further delays or the emergence of new or unforeseen barriers would compound the anguish of families who have waited so long for access to due process, while further risking the undermining of confidence in the rule of law, administration of justice and new legacy mechanisms.
62. **It is Sinn Féin's view the Office of the Police Ombudsman must be adequately and immediately resourced.**

### **Proposals for a Statute of Limitation: No one should be above the law**

63. During the talks that led to the Stormont House Agreement (2014) all parties, and both the Irish and British governments, registered their opposition to the introduction of any form of amnesty.
64. Both the Irish and British governments have also articulated their opposition to the lobby to introduce a 'Statute of Limitations' into the legislative process, as has the PSNI Chief Constable and the Police Federation. This is also a position articulated by British Secretary of State Karen Bradley MP who has also stated that no one is above the law.
65. Any attempt to deviate from this position, to satisfy the demands of the British Armed Forces lobby, will be strongly resisted, resented and opposed by large sections of the victims and survivors' community across the political spectrum. Such a proposition has also been unanimously rejected by the Victims and Survivors Forum.
66. **It is Sinn Féin's view that any attempt to introduce a statute of limitation for British state actors risks undermining all aspects of the new legacy architecture. It deviates from the policy intent of the Stormont House Agreement and risks causing further distress to victims and survivors. We believe such a proposition is an affront to families who seek truth, justice and accountability.**



## Official Secrets Act should not be a barrier to participation or disclosure

67. There should be no barrier to any Irish or British state actor participating in or disclosing information to any of the new legacy bodies.
68. The signing of the Official Secrets Act (OSA) is a potential barrier for state actors participating in the new legacy mechanism. Such barriers to participation will limit the flow of relevant information to the legacy mechanisms, in particular the Independent Commission on Information Retrieval.
69. All possible steps should be taken to remove OSA barriers which will assist participation and information disclosure. Full state co-operation is essential so that all legacy bodies can fulfil their remit.
70. It is therefore incumbent on the British state to grant “official authorisation” or “lawful authority” to those (who have signed the Official Secrets Act) and to encourage them to participate and bring forward information that would assist the workings of the legacy mechanisms.
71. Any systemic barriers to participation will also reflect on the role of the British state in facilitating and fulfilling their obligations to facilitate the full and complete implementation of the Stormont House Agreement legacy bodies.
72. **In Sinn Féin’s view participation in the legacy mechanisms by British state personnel will be a touchstone issue. To facilitate full participation and disclosure by state personnel all barriers must be addressed in a manner that is open, transparent and which contributes to public confidence. Not addressing these barriers will determine the levels of confidence in the legacy mechanisms and their ability to deliver and fulfil their remits.**

## Funding Stormont House Agreement legacy mechanisms

73. In the last round of legacy negotiations political consensus emerged that the £150million funding package allocated to fund the legacy mechanisms would be inadequate.
74. Indeed, there are real questions whether the £150million legacy package is sufficient to cover the work of the HIU alone. Inadequate provision of funding risks undermining the potential of all the legacy mechanisms functioning and delivering as intended.
75. There was also consensus that it would take a longer timeframe than the proposed 5 years to complete the HIU caseload. A suggested 8-year timeframe to complete all HIU cases is more realistic.
76. **Sinn Féin is therefore supportive of periodic reviews that seek to inform the extent of funding requirements and the necessary timeframe for all legacy mechanisms.**

## Recruitment process for special advocates to represent families in Closed Material Proceedings

77. It is essential that all families are supported to engage in the legacy mechanisms and related processes.
78. Many families seeking truth and justice have been systematically denied access to justice and equality of arms throughout the duration of the conflict. For many the law was used as a tool of conflict. Such abuses of legal processes eroded confidence in the rule of law. It is therefore essential that family experience of the legacy mechanisms is qualitatively different from past experiences and that families are empowered with choices; choices that will enhance and facilitate their meaningful participation in the new legacy processes. This is particularly applicable in circumstances where legal personnel will be representing families in their absence in closed court proceedings.



79. In circumstances where the bulk of the hearing will be held in open court, with closed material proceedings limited to the hearing of sensitive information, families must be able to engage legal representatives of their choice to research and investigate relevant material as the basis for their legal challenge. Legal aid must be readily available for this work.
80. As such families must have maximum confidence in the legal personnel who will represent their interests. Giving families the choice to select their legal representatives to represent them in closed proceedings is vital to building confidence in the legacy architecture.
81. **Sinn Féin is fundamentally opposed to the use of Closed Material Proceedings. However, where families engage in these proceedings they should be afforded the legal right and resources to facilitate participation in all processes pertaining to their cases. It is Sinn Féin's view that a new recruitment process should be held so as to broaden the pool of special advocates who will be eligible to represent families, if they choose to participate, in Closed Material Proceedings.**

## Legal Aid

82. Sinn Féin is concerned at media reports that the British Ministry of Defence is establishing a team to consider proposals to protect armed forces veterans from prosecution for historical investigations. In our view such speculation and the perception that British state personnel will receive preferential legal support will unsettle families and in so doing undermine confidence in the legacy mechanisms. There must be no dilution of the principle that all citizens are equal before the law.
83. For the legacy mechanisms to function as intended it is imperative that families are empowered and have full access to legal aid. The availability of legal aid will assist maximum family participation and confidence in the process. It is essential there is provision for equality of arms for families participating in the legacy mechanisms.
84. **In Sinn Féin's view there should be a statement of intent around the availability of legal aid for all families.**

## Engaging with the Past in a gender sensitive manner

85. Sinn Féin is supportive of the Gender Principles developed by the Legacy Gender Integration Group. It is our view that their application should be core to the design, delivery and implementation of the proposed legacy mechanisms.
86. The adoption of the principles, and their application, will encourage sensitivity to differing gendered needs, in line with the rights guaranteed under the Convention for the Elimination of All forms of Discrimination Against Women (CEDAW) and United Nations Security Council Resolution 1325 (UNSCR1325).
87. In our view a gender integration oversight group, with appropriate powers and resources positioned within the IRG, would be an effective way of ensuring gender is integrated holistically into the institutions and processes.
88. We also hold that gendered impact of the conflict should be actively considered as a specific theme for investigation by the IRG, as well as an identifiable consideration in other thematic work.
89. Those who have been bereaved as a result of the conflict have been exposed to multiple harms. This includes loss of income, diminished personal and family safety, physical and emotional harm, and the ongoing denial of accountability. It is vital these impacts are documented when people engage with the fresh institutions, so that gendered harms are identifiable in the individual statements and stories recorded, and in the thematic work that will be undertaken.



90. More generally criteria for recruiting and appointing staff and governance boards across the institutions should include those who have expertise in gendered harms and impacts. The use of multidisciplinary teams, with a broad skills set, will assist in achieving a degree of gender balance throughout all levels of the legacy mechanism.
91. It is Sinn Féin's view that an explicit commitment to gender sensitivity needs to be incorporated into the enabling legislation, to sit alongside the six general principles set out in the Stormont House Agreement.

## Specific Commentary

92. This section will detail specific commentary designed to strengthen, enhance and build wider support for the delivery of the Stormont House Agreement legacy mechanisms. It will set out the relevant section of the Stormont House Agreement (2014) pertaining to each legacy mechanism, linking to the relevant section of the Draft Bill, and offer commentary:

## HISTORICAL INVESTIGATIONS UNIT (HIU)

### Relevant Section from The Stormont House Agreement (2014)

The relevant section of the Stormont House Agreement (2014) is listed below and is to be read across to Part 2 of the Draft Bill:

### *Historical Investigations Unit*

30. *Legislation will establish a new independent body to take forward investigations into outstanding Troubles-related deaths; the Historical Investigations Unit (HIU). The body will take forward outstanding cases from the HET process, and the legacy work of the Police Ombudsman for Northern Ireland (PONI). A report will be produced in each case.*
31. *Processes dealing with the past should be victim-centred. Legacy inquests will continue as a separate process to the HIU. Recent domestic and European judgments have demonstrated that the legacy inquest process is not providing access to a sufficiently effective investigation within an acceptable timeframe. In light of this, the Executive will take appropriate steps to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements.*
32. *Appropriate governance arrangements will be put in place to ensure the operational independence of the two different elements of the work of the HIU.*
33. *The HIU will have dedicated family support staff who will involve the next of kin from the beginning and provide them with expert advice and other necessary support throughout the process.*
34. *The HIU will consider all cases in respect of which HET and PONI have not completed their work, including HET cases which have already been identified as requiring re-examination. Families may apply to have other cases considered for criminal investigation by the HIU if there is new evidence, which was not previously before the HET, which is relevant to the identification and eventual prosecution of the perpetrator.*
35. *As with existing criminal investigations, the decision to prosecute is a matter for the DPP and the HIU may consult his office on evidentiary issues in advance of submitting a file.*
36. *When cases are transferred from HET and PONI, all relevant case files held by those existing bodies will be passed to the new body. In respect of its criminal investigations, the HIU will have full policing powers. In respect of the cases from PONI, the HIU will have equivalent powers to that body.*



37. *The UK Government makes clear that it will make full disclosure to the HIU. In order to ensure that no individuals are put at risk, and that the Government's duty to keep people safe and secure is upheld, Westminster legislation will provide for equivalent measures to those that currently apply to existing bodies so as to prevent any damaging onward disclosure of information by the HIU.*
38. *HIU will be overseen by the Northern Ireland Policing Board.*
39. *The necessary arrangements will be put in place to ensure the HIU has the full co-operation of all relevant Irish authorities, including disclosure of information and documentation. This will include arrangements for cooperation between criminal investigation agencies in both jurisdictions and arrangements for obtaining evidence for use in court proceedings. Where additional legislation is required, it will be brought forward by the Irish Government.*
40. *In order to ensure expeditious investigations, the HIU should aim to complete its work within five years of its establishment*

### **Sinn Féin's understanding of the HIU**

93. The HIU should function as an independent, Article 2 compliant, investigative unit to deal with all outstanding conflict related deaths. The issue of torture and other Article 3 violations has also emerged as an issue of concern. The British government must fulfil their international obligations and devise a means to investigate all such alleged violations. This does not necessarily fall within the remit of the HIU but an investigative element is nonetheless required.

### **HIU Members and Officers (Part 2, Section 4)**

#### **Comment:**

94. All persons employed as HIU officers should have no actual or perceived conflicts of interest. This would require the HIU to disbar former state actors or their agents i.e. RUC, British Army, MI5 personnel or indeed any former participants in the conflict. This would mirror the position adopted by the Police Ombudsman and the Kenova Inquiry while demonstrating a robust commitment that all of its investigations are conducted in an Article 2 compliant manner. The Consultative Group on The Past Report (p.130) clearly anticipated this scenario when it stated that: '*Former Police officers should not investigate cases which concerned the activities of their previous force*'.
95. In respect of Part 2 (3) (6) the HIU must have regard to all principles as outlined at Part 1 (1).

### **Funding (Part 2, Section 4)**

#### **Comment:**

96. The HIU funding needs to be adequate and ring-fenced. Independence and public confidence may well be compromised, and at risk, if the HIU has to bid annually for funding with other law enforcement/justice agencies. This situation will be further exacerbated if the HIU has to bid into a shrinking DOJ budget allocation.

### **Deaths within HIU Remit (Part 2, Section 5)**

#### **Comment:**

97. All families have the right to an Article 2 compliant investigation into the death of their loved one.
98. The timeframe for HIU investigations should end on 31 March 2004 subject to the consent of affected families and the provision of adequate resourcing. This is particularly relevant to the expressed wishes of the Omagh families who are seeking a public inquiry into the deaths of their loved ones and who are opposed to their inclusion in the HIU Caseload.



99. As per Schedule 3 (7) (4) (d) Grounds for further investigation of complete cases: conduct in respect implicitly refers to cases involving state collusion. As such, it would represent a clear conflict of interest for the PSNI Chief Constable to adjudicate on what represents reasonable grounds for pursuing further investigations into either a criminal offence or misconduct.

### Functions of the HIU (Part 2, Section 6)

#### Comment:

100. In circumstances where families hold that the death of their loved ones are linked to other deaths or investigations, the HIU director should have the power to conduct an overarching Article 2 compliant investigation into those deaths.
101. The HIU must submit each statement of accounts to the Policing Board, who in turn must send copies to the Department of Justice and the Comptroller and Auditor General.

### Exercise of Functions (Part 2, Section 7)

#### Comment:

102. At Part 2 (7) (1) the HIU must exercise its function with all the general principles detailed at Part 1 (1). We are concerned that due regard is only given to one of the six principles namely (f) with a repeat of some of the wording contained in (b) and (c).
103. The British approach to national security is too vague, flexible and non-defined. In the absence of clearly understood indicators or a schedule, the engagement of national security represents nothing more than a British state veto. Such absence of detail and parameters detailing when national security may be engaged also threatens the potential of the new legacy architecture.
104. **It is Sinn Féin's view that attempts to engage a blanket British national security veto are not only contrary to the policy intent but risk undermining the independence of the legacy mechanisms. Full co-operation, maximum disclosure of state papers and accountability is core to truth recovery.**

### Exercise of the Investigatory Function (Part 2, Section 8)

#### Comment:

105. The HIU Director must consult the Policing Board before issuing a statement which sets out the manner in which the HIU is to exercise its investigatory function, so as to secure that:
- All Article 2 obligations are complied with;
  - All other Human Rights obligations are complied with;
  - Deaths are investigated chronologically in the order in which they occurred except where connected deaths demand an overarching investigation.
106. Sinn Féin has fundamental concerns in respect of Schedule 15(13) (2) that will seek to give the British Secretary of State the power to overrule the decision of the Policing Board to conduct an inquiry into matters concerning the HIU on the grounds of national security. Such a power will undermine the ability of the Policing Board to fulfil its oversight remit and furthermore undermines the stated policy intent.
107. At (8) (3) (a) it is our view that the determination of 'exceptional circumstances' should be determined in full and open consultation with families.



## **Operational Control by the director (Part 2, Section 9)**

### **Comment:**

108. At (9) (9) (b) with regard to previous investigations that the HIU director should carry out a fresh investigation at the request of the families, if it is established that the initial investigation was not Article 2 compliant.

## **Avoiding Conflicts of Interests (Part 2, Section 10)**

### **Comment:**

109. The substantive and procedural independence of the HIU director is essential to the new HIU achieving the intended policy intent. For this to happen there are a number of issues in the legislation that need to be addressed:
- There must be no actual or perceived conflicts of interest for any member of the investigation teams or back-up personnel.
  - This would require the HIU to disbar former state actors or their agencies ie RUC, British Army, MI5 personnel or indeed any former participants in the conflict. This would mirror the position adopted by the Police Ombudsman and the Kenova Inquiry while demonstrating a robust commitment that all of its investigations are conducted in an Article 2 compliant manner.

## **Separate Conduct of Criminal and police misconduct investigations (Section 2, Part 12)**

### **Comment:**

110. The HIU director should have a remit and powers to conduct misconduct investigations into all state agencies who dealt with the conflict related matters. It is a matter of public confidence that the HIU director has the power to investigate misconduct or allegations of misconduct that extends to personnel employed in all state agencies. Misconduct investigations cannot and should not be solely confined to the police.

## **Recommendations regarding police discipline (Part 2, Section 15)**

### **Comment:**

111. Sinn Féin has a very specific concern that the power of the HIU director to conduct investigations into allegations of misconduct is restricted to the police. It is our view that this power should extend to personnel employed in all state agencies.

## **Comprehensive Family Reports (Part 2, Section 17)**

### **Comment:**

112. Maximising confidence in the HIU will require that all family reports are as comprehensive and as detailed as possible. Information flow is essential to this process. To assist this process all relevant information from all sources must be disclosed.
- Each family report must be certified by the HIU director that each investigation was conducted in an Article 2 compliant manner;
  - In circumstances where the HIU director has withheld information from family reports families must be provided with a detailed and specific rationale for withholding information (in a format similar to that set out in a Freedom of Information schedule);
  - The HIU director should have the power of compellability;
  - It is therefore essential that the HIU director is operationally independent and has full discretion and authority in compiling family reports;



- The engagement of a British national security veto and engagement of public interest principles have in the past been contested by families as they have often been used as ‘blanket’ blockages to truth and information disclosure. In such circumstances where the same practice may be engaged in the compilation of HIU family reports it is vital that the appeals mechanism can identify, describe and determine the public interest and any potential national security risk that would arise by publishing information through HIU Family Reports;
- Furthermore, in cases where families are unhappy with their family report, for whatever reason, it is essential that there is a robust and transparent appeal mechanism that is capable of providing families with a detailed and specific rationale for withholding information or not pursuing lines of inquiry. It is equally important that any appeal must be compatible and benchmarked with present human rights obligations.

## Appeals (Part 2, Section 21)

### Comment:

113. The experience of many families bereaved by the British state is that there has been a policy to withhold information, destroy documents and frustrate the right of families to information through protracted legal processes. An appeals process or a bespoke special judicial tribunal therefore must clearly take into consideration:
- The circumstances where British national security considerations were engaged and why;
  - Have robust criteria that any appeal/tribunal judge will have to pay due regard to human rights and national security issues in terms of determining content of family reports;
  - In circumstances — even after the appeal/tribunal — where detailed and descriptive information is withheld from family reports a gist of the material withheld should be made available. This is in the context of a growing concern at the increasing number of ‘closure applications’ made by Whitehall departments which were aimed to block document release;
  - Where an appeal/tribunal process has commenced ALL families must have a right to appeal and accordingly have full access to legal aid to appeal any decision pertaining to their case. Accessing legal aid will empower families and will facilitate their full participation at every stage of this process.

## Full disclosure to the HIU (Part 2, Section 25)

### Comment:

114. The HIU director should have the power of compellability in relation to accessing all relevant information, documents and other material that he/she may require in connection with the exercise of their functions.

## Onward disclosure of information by the HIU (Part 2, Section 27)

### Comment:

115. The HIU director must have full discretion in relation to onward disclosure. This is similar to the powers of the Police Ombudsman. Alternatively, where the British Secretary of State seeks to apply a veto on onward disclosure this must be subject to a judicial appeal panel.

## Police Service and Ombudsman’s functions and police complaints (Part 2, Section 29)

### Comment:

116. The HIU director should have a remit and powers to conduct complaint and misconduct investigations into all state agencies who dealt with conflict related matters. It is a matter of public confidence that the HIU director has the power to investigate complaints of misconduct or allegations of misconduct that extend to personnel employed in all state agencies. Misconduct investigations cannot and should not be solely confined to the police.



## Guidance and protocols relating to information (Part 2, Section 34)

### Comment:

117. Sinn Féin has fundamental concerns about the role of the British Secretary of State giving guidance or determining the identification of sensitive information as per section 7 (2) (a). The British Secretary of State is not an independent, neutral or impartial arbiter in this process. This office has a vested interest in the legacy process, in upholding and protecting British national interests, which of itself represents a clear conflict of interest. It is therefore essential that any powers invested in the office of the British Secretary of State must be limited, procedural and functional.
118. The HIU director alone must be empowered in legislation to have full, complete and unrestricted access to all relevant documentation and material from all state and intelligence agencies in a timely and acceptable manner. It is she/he who should determine what constitutes sensitive information.
119. UN Special Rapporteur Pablo de Grieff concurs with this assessment: “Although everyone must acknowledge the significance of national security concerns, it must also be acknowledged that particularly in the days we are living in, it is easy to use ‘national security’ as a blanket term. This ends up obscuring practices which retrospectively, it is often recognised were not especially efficient means of furthering security. *In particular, national security, in accordance with both national and international obligations, can only be served within the limits of the law, and allowing for adequate means of comprehensive redress in cases of breaches of obligations.*”

## Regulation-making powers of the British Secretary of State (Part 2, Section 36)

### Comment:

120. Sinn Féin has fundamental concerns about the role of the British Secretary of State making regulations in respect of any aspect of the HIU.
121. The British Secretary of State is not an independent, neutral or impartial arbiter in this HIU process. This office has a vested interest in the legacy process, in upholding and protecting British national interests, which of itself represents a clear conflict of interest. It is therefore essential that any powers invested in the office of the British Secretary of State must be limited, procedural and functional.

## Conclusion of the HIU’s work (Part 2, Section 37)

### Comment:

122. (37) (2) (B) suggests that the intention is to continue, where agreed by the British Secretary of State, to extend the investigation function for a single year, with no provision for a further extension if required.
123. What is required is a year on year option to facilitate the completion of all listed HIU cases. In our deliberations with the PSNI and Department of Justice there was recognition that a timeframe of eight years would be a more realistic projection for the completion of the HIU caseload.
124. This should be reflected in legislation to reassure families whose cases may sit at the back of the queue and that an option exists for further yearly extensions. This was further developed by the Equality Commission in their response to the Consultative Group on the Past proposals stating that: “It is clear that the task set forth in the report cannot be concluded within the five-year term proposed for the Legacy Commission.”



## INDEPENDENT COMMISSION ON INFORMATION RETRIEVAL (ICIR)

The relevant section of the Stormont House Agreement (2014) is listed below and is to be read across to Part 3 of the Draft Bill:

### **Relevant Section from Stormont House Agreement (2014)**

41. *A new body, which will respect the sovereign integrity of each jurisdiction, will be established by the UK and Irish Governments, called the Independent Commission on Information Retrieval (ICIR), building on the precedent provided by the Independent Commission on the Location of Victims' Remains. The objective of the ICIR will be to enable victims and survivors to seek and privately receive information about the (Troubles-related) deaths of their next of kin.*
42. *Individuals from both the UK and Ireland will be able to seek information from the ICIR.*
43. *Once established, the body will run for no longer than five years.*
44. *The ICIR will be led by five members: an independent chairperson who may be of international standing and will be appointed by the UK and Irish Governments, in consultation with OFMDFM, together with two nominees appointed by the First and deputy First Minister, one each appointed by the UK Government and the Irish Government.*
45. *The ICIR's remit will cover both jurisdictions and will have the same functions in each. It will be entirely separate from the justice system. The ICIR will also be free to seek information from other jurisdictions, and both governments undertake to support such requests.*
46. *The ICIR will not disclose information provided to it to law enforcement or intelligence agencies and this information will be inadmissible in criminal and civil proceedings. These facts will be made clear to those seeking to access information through the body.*
47. *The ICIR will be given the immunities and privileges of an international body and would not be subject to judicial review, Freedom of Information, Data Protection and National Archives legislation, in either jurisdiction.*
48. *Legislation will be taken forward by the UK Government, the Irish Government and the Assembly to implement the above decision on inadmissibility.*
49. *The ICIR will not disclose the identities of people who provide information. No individual who provides information to the body will be immune from prosecution for any crime committed should the required evidential test be satisfied by other means.*
50. *The ICIR will be held accountable to the principles of independence, rigour, fairness and balance, transparency and proportionality.*

### **Sinn Féin's understanding of the ICIR**

125. The ICIR concept has its genesis in the work of Independent Commission for the Location of Victims Remains (ICLVR). It is our view that the policy intent of the Stormont House Agreement was to develop a new information retrieval mechanism based on the ICVLR model that would assist information flow to families. For the ICIR to work as intended it must obtain and retain, the confidence of those who can deliver the relevant information sought by families. That means the identity, and the information delivered, must be protected and inadmissible in all criminal, civil, inquest and private legal proceedings.

### **The Independent Commission on Information Retrieval (Part 3, Section 40)**

#### **Comment:**

126. The resources provided for the ICIR must be adequate to allow it to fulfil its remit.



## The Reporting Function (Part 3, Section 42)

### Comment:

127. It is essential that there is a clear methodology and schedule to (42) (2) that will verify the credibility of the information which comes to the attention of the ICIR. It is also important that the credibility of unsolicited information should be tested.
128. It is equally essential that a schedule to (42) (3) is detailed that sets out a process to assess, verify and which will provide an evidence base that facilitates conclusions to be drawn on conflict patterns and themes.

## Responsibility in exercising functions (Part 3, Section 43)

### Comment:

129. The British approach to national security is deliberately vague, flexible and non-defined. This arbitrariness itself represents a veto. The absence of detail and parameters for when this may be engaged threatens the potential of the ICIR to fulfil its policy intent.
130. Attempts to engage a blanket British national security veto are not only contrary to the policy intent but risk undermining the independence of the ICIR. Furthermore, engagement of a British national security veto will act as a disincentive and create a chill factor to attracting relevant information.
131. Concerns around Article 2 considerations or the potential to prejudice the administration of justice are acknowledged and can be accommodated on a case by case basis.
132. A Reading of Part 3 (43) (3) (a) (b) alongside Paragraph 155 of the explanatory notes which details that: "policing authorities or a coroner, would not be prevented from pursuing lines of inquiry, pursued on the basis of information in the report, led to evidence being generated, then that new evidence, would not fall under the inadmissibility provisions (despite the report itself being inadmissible)" raises concerns of a fundamental nature which are not reflective of the policy intent.
133. Paragraph 155 highlights the tensions and challenges that will undoubtedly arise if investigations are progressed concurrent with an information retrieval process. Its inclusion has had an immeasurable impact on confidence and has led some to question the motivations.
134. Families may wish to engage concurrently with both the HIU and ICIR processes. This would create a situation, where potentially, information obtained from the ICIR, could be used to facilitate evidential or investigative leads in the HIU process, by providing fresh information, contained in family reports, to the investigation process.
135. Such options do not reflect the policy intent of the ICIR.
136. It is therefore essential that practices are devised which ensure that the ICIR works as intended, which is based on the ICVLR. The concern around the wording of Paragraph 155 is also compounded when read alongside the PSNI response to the Consultative Group on the Past which held that 'investigation and information recovery are inextricably linked'.
137. Managing the tension between information recovery and investigation was also core to the considerations of the Consultative Group on the Past. It will also be core to delivering the policy intent of the Stormont House Agreement (2014). The Eames/Bradley proposals offer a viable alternative by introducing the concepts of sequencing and protected statements.
138. With sequencing, investigations would proceed first. If a prosecution resulted the case would go to trial. If no prosecution resulted, and the investigation was treated as closed then the case could proceed to the information recovery process.
139. Also the Eames/ Bradley proposal was that statements could be made to the Information Recovery Unit and the Thematic Examination Unit. These would not be admissible in criminal or civil proceedings against the person making them. This would apply to both primary and secondary



evidence: in other words, information provided in the statement itself, or any information or evidence which could be obtained or deduced as a consequence of that statement, would not be admissible in criminal or civil proceedings. Statements covered by this procedure are referred to as 'Protected Statements'.

140. The function of the protected statement is to facilitate open and frank disclosure of information relevant to a particular case. No information or detail contained in a protected statement could be used to prejudice an investigation which has not yet been reviewed or completed. This is legislated for in the NI (Location of Victims Remains) Act 1999. Clause 3 (1) (b) details a similar intent stating: "Any evidence obtained (directly or indirectly) as a result of such information being so provided shall not be admissible in evidence in any legal proceedings, including proceedings before a Coroner."
141. In summary the concept of 'protected statement', in conjunction with sequencing of cases, would assist in rebuilding confidence in the information retrieval process and assist the flow of information relevant to any particular case.
142. It is Sinn Féin's view that attempts to engage a blanket British national security veto are not only contrary to the policy intent but risk undermining the independence of the ICIR. Furthermore, engagement of a British national security veto will act as a disincentive and create a chill factor to attracting relevant information. Equally it is our view that provision should be made for a year on year extension to the five-year ICIR timeframe if required.
143. It is Sinn Féin's view that Paragraph 155, and the Draft Bill, should be amended to reflect the policy intent of the Agreement which is given clear expression in the Eames Bradley proposals. We are fundamentally opposed to the power conferred on the British Secretary of State detailed at (46) (2) and (3) to redact and/or remove information contained in family reports before they are forwarded to families. The British approach to national security is deliberately vague, flexible and non-defined. This arbitrariness itself represents a veto and will undermine family confidence in the ICIR process. The absence of detail and parameters around the engagement of British national security threatens the potential of the ICIR to assist information recovery.

## ORAL HISTORY ARCHIVE (OHA)

### Relevant Section of the Stormont House Agreement (2014)

This relevant section of the Stormont House Agreement (2014) is listed below and is to be read across to Part 4 of the Draft Bill:

22. *The Executive will, by 2016, establish an Oral History Archive to provide a central place for people from all backgrounds (and from throughout the UK and Ireland) to share experiences and narratives related to the Troubles. As well as collecting new material, this archive will attempt to draw together and work with existing oral history projects.*
23. *The sharing of experiences will be entirely voluntary and consideration will be given to protecting contributors, and the body itself, from defamation claims. The Archive will bring forward proposals on the circumstances and timing of contributions being made public.*
24. *The Archive will be independent and free from political interference.*
25. *A research project will be established as part of the Archive, led by academics to produce a factual historical timeline and statistical analysis of the Troubles, to report within 12 months.*





## Sinn Féin's understanding of the OHA Policy Intent

144. The Oral History Archive (OHA) presents a vehicle for all voices to be heard; all of those involved in/or affected by the conflict: voices of those who were injured, voices from the families of the bereaved, voices of first responders, voices of clergy, voices of those who were interned without trial and those who were tortured, the voices of political prisoners and their family stories, the media, the trade union movement, faith communities and wider civil society. The strength of the Oral History Archives will be determined by levels of participation, its inclusivity and its independence. Protecting the independence of the OHA can be guaranteed by ensuring that the OHA Steering Group is recruited through a public appointment process, that it works collaboratively and in partnership with the deputy keeper, and that its working processes around document destruction are open, accountable and transparent.

## The Oral History Archive (Part 4, Section 51)

### Comment:

145. The OHA must work collaboratively and in partnership with established local history projects to assist their records, transcripts and work being included in the OHA. This is a much stronger directive than that detailed at (51) (6) (b) which nominally requires the deputy keeper 'to inform other organisations of the possibility of the oral history records made by them being included in the archive'.
- The OHA must proactively seek to engage voices that are not reflected in the collection of records or personal experiences. Where appropriate, resources should be made available to assist this process;
  - Each body or group will bring its own skills and strengths to the table; those with the experience of developing projects in a community setting where trust, access to networks and experience in engaging hard to reach groups are essential attributes possessed by established oral history projects, and PRONI with its focus on collation, technical expertise and storage;
  - Such collaborations offer the potential to contribute meaningfully to the establishment of a 'factual historical timeline'.

## The role of the Deputy Keeper (Part 4, Section 52)

### Comment:

146. Functions detailed at 52 (3) (a) (b) (c) (d) are critical to public confidence in the work and function of OHA. These functions should therefore not solely reside in the office of the deputy keeper but should be functions where the participation, input and consent of the Steering Group must be sought.
- It is essential therefore that the remit, power and authority of the Steering Group must be strengthened in legislation, to clearly document the relationship with the deputy keeper;
  - The nature of this relationship between the deputy keeper and the Steering Group should be clearly reflected in legislation;
  - The Steering Group should function as an independent oversight and engagement body, incorporating individuals with the requisite competencies, skills, expertise and experience.
147. As per 52 (3) (a) clarity is also required as to the type of material, information and testimony that can be admitted into the archive, how this material will be used and the level of requisite resources required for engagement, outreach and partnership working. Such significant and politically sensitive decisions should not solely be a function for the deputy keeper as it lends itself to collaborative decision making with the Steering Group.



148. As per 52 (3) (d) further discussion is required around the rationale and authority for destroying documents. Investing this power solely in the deputy keeper risks public confidence in the office and may draw commentary of bias.
- A protocol for disposal or destruction of documents must be developed in meaningful negotiation with the Steering Group.
149. Appointments to the OHA Steering Group should be made in accordance with public appointments criteria. This should be reflected in the draft legislation with experience of working with existing projects, outlined as key criteria for selection. The deputy keeper should not have the power to 'appoint' the steering group solely in a consultative or advisory role as detailed at 52 (9) (a). The Steering Group, as a publicly appointed body, should act as the bridge between the technical expertise and resources of PRONI and the experience and trust invested in existing community projects. It is therefore essential that the Steering Group has the mandate, powers and capacity to engage with, and develop working relationships with established community based oral history projects.

## Report to the Implementation and Reconciliation Group (Part 4, Section 54)

### Comment:

150. It should not be a matter for the deputy keeper alone to provide the IRG with a written report on patterns and themes. As this is a matter of public confidence this function should be exercised jointly in conjunction with the Steering Group.
151. It is equally essential that a schedule is agreed that sets out a process for assessing, verifying and providing an evidence base that facilitates conclusions to be drawn on conflict patterns and themes

## IMPLEMENTATION AND RECONCILIATION GROUP (IRG)

### Relevant Section of the Stormont House Agreement

The relevant section of the Stormont House Agreement (2014) is listed below and is to be read across to Part 5 of the Draft Bill:

51. *An Implementation and Reconciliation Group (IRG) will be established to oversee themes, archives and information recovery. After 5 years a report on themes will be commissioned by the IRG from independent academic experts. Any potential evidence base for patterns and themes should be referred to the IRG from any of the legacy mechanisms, who may comment on the level of co-operation received, for the IRG's analysis and assessment. This process should be conducted with sensitivity and rigorous intellectual integrity, devoid of any political interference.*
52. *Promoting reconciliation will underlie all of the work of the IRG. It will encourage and support other initiatives that contribute to reconciliation, better understanding of the past and reducing sectarianism.*
53. *In the context of the work of the IRG, the UK and Irish Governments will consider statements of acknowledgement and would expect others to do the same.*
54. *The Body will be eleven strong. Publicly elected representatives will not be eligible for appointment. The chair shall be a person of independent and international standing and will be nominated by the First Minister and deputy First Minister. The other appointments will be nominated as follows: DUP – 3 nominees, Sinn Fein – 2 nominees, SDLP – 1 nominee, UUP – 1 nominee, and Alliance Party – 1 nominee and one nominee each from the UK and Irish Governments.*
55. *The UK and Irish Governments recognise that there are outstanding investigations and allegations into Troubles-related incidents, including a number of cross-border incidents. They commit to co-operation with all bodies involved to enable their effective operation, recognising their distinctive functions, and to bring forward legislation where necessary.*



## Sinn Féin's understanding of the IRG Policy Intent

152. Building for the future requires a commitment that the past should never again be repeated; it means learning from the lessons of the past on which to build a better future. It requires an examination of the policy context that fuelled, sustained and perpetuated conflict. Upholding, protecting and safeguarding the rights of all citizens and embedding confidence in the rule of law and democratic institutions are vital to build a reconciled future. IRG nominations by the main political parties should be in line with the D'Hondt Principles.

## Functions of the IRG (Part 5, Section 60)

### Comment:

153. Reconciliation is both a goal to achieve but also a process which serves as a means to achieve that goal. It is the public space within which we can collectively engage with the key challenges of truth, justice, and acknowledgement within the context of building for the future.
154. For the purposes of taking steps to promote reconciliation it is our view that the IRG report has the potential to inform a roadmap to advance reconciliation. In our view there are several underpinning assumptions that should define a meaningful reconciliation and healing process:
- Reconciliation offers the means of re-energising politics while opening a new phase of the peace process;
  - Reconciliation is an all-encompassing process. It must be open to all and inclusive of all opinions, identities and aspirations. It must also have an all-island and East-West focus;
  - Reconciliation processes must be bespoke and responsive to local circumstances;
  - Reconciliation and healing will take time.
155. Sinn Féin has a party policy on Reconciliation and Healing and Eradicating Sectarianism which details the necessary steps appropriate to promote reconciliation and to eradicate sectarianism.
156. In taking these steps to advance reconciliation the IRG should be resourced and delivered in a manner that puts reconciliation at the core of all public policy decisions and resource allocation.

## Independent Academic Report (Part 5, Section 62)

### Comment:

157. The draft Bill at (62) references the IRG commissioning academic experts to identify and report to the IRG on patterns and themes. The draft Bill then goes on to restrict what sources of information the academics can access in their work as detailed at 62 (3) (a-k).
158. For the IRG to conduct its work the academics should be, and would expect to be, able to access any documentation or material relevant to their work. The only restriction to accessing source material should be in circumstances where Article 2 considerations are engaged. Restricting other available source material that academics seek to access risks undermining the work of the IRG. Facilitating and maintaining routine access to all official documentation and reports will be vital to avoiding perceptions of bias and also protecting the work.
159. Furthermore, not to disclose or make available all relevant source material risks undermining the integrity of the project and also the integrity of the academics involved. Limiting the potential for any political interference in the commissioned work or of the overall mechanism itself must be addressed in the draft legislation.



160. The Consultative Group on the Past Report, Chapter 8 (P.153) clearly recognised the requirement for access to all relevant documentation and material stating: The Commission should be able to draw on the documents of the Stalker/Sampson Reports and the Stevens' Enquiries. Lord Stevens conducted three Enquiries into allegations of collusion between the security forces and Loyalist paramilitaries in Northern Ireland. These began in 1989 and culminated in the publication of the Stevens 3 Report in April 2003.
161. To protect the independence of the academic work it will also be vital that:
- Criteria are determined that will facilitate the selection of independent academics and the requisite skills sets for all members;
  - There is clarity around the ownership of all academic output;
  - There is a schedule detailing the required academic standards, ie peer reviewed journal standards;
  - Consideration is given to the composition and requisite skillsets of multi-disciplinary teams;
  - Consideration is given to imposing sanctions where breaches of confidentiality by academics have occurred.
162. **It is Sinn Féin's view that academics should have access to all relevant material that will assist their research and all principal reports from the legacy mechanisms should be afforded equal weighting.**

## VII

# GOING FORWARD



163. Sinn Féin remains committed to a full engagement to deal with all outstanding legacy matters with all key stakeholders. We will assess the commitment of the British government to engaging with legacy on the basis of their response to the consultation and the legislative process.
164. Our focus is to ensure that the final legislation remains consistent with the policy intent of the Stormont House Agreement (2014).
165. In the interim we will continue to work to progress other outstanding legacy matters that are not incorporated in the draft legislation to include: the adequate provision of resources for the Lord Chief Justice's Five Year Inquest Plan; provision of a pension for all seriously physically and psychologically injured; and the provision of adequate funding for the Police Ombudsman. We will also continue to articulate our opposition to any attempt to introduce a statute of limitation.



# REFERENCES

Towards an agreed and reconciled future: Sinn Féin policy on reconciliation and healing

[http://www.sinnfein.ie/files/2016/Reconciliation\\_Policy\\_Ard\\_Fheis\\_2016.pdf](http://www.sinnfein.ie/files/2016/Reconciliation_Policy_Ard_Fheis_2016.pdf)

One Community: Sinn Féin Proposals on Tackling the Scourge of sectarianism in Northern Society

<https://www.sinnfein.ie/files/2017/AntiSectarianCharterEnglish.pdf>



