

**COMHAONTÚ NA  
NOLLAIG**  
Legacy elements of the  
*Stormont House  
Agreement*

Friday 28<sup>th</sup> March 2015

*Balmoral Hotel, Beal Feirste*



# Four new entities will be set up

- ▶ Oral History Archive
  - ▶ Historical Investigations Unit (HIU)
  - ▶ Independent Commission on Information Retrieval (ICIR)
  - ▶ Implementation and Reconciliation Group
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- ▶ Budget of “up to £150 million over 5 years” (£30 million *per annum*: NB Haas/ O’Sullivan apparently only had £10 million *per annum*)
  - ▶ Executive to “ensure victims/survivors have access to high-quality services, respecting the principles of choice and need”. Comprehensive Mental Trauma Service to be established within the NHS
  - ▶ Victims and survivors will be “given access to advocate-counsellor assistance if they wish”

# Oral History Archive

- ▶ Independent and free from political interference
- ▶ Central bank for people across Ireland and Britain to “share experiences and narratives related to the Troubles”
- ▶ “draw together and work with existing” projects as well as “collecting new material”
- ▶ Contributions will be made voluntarily
- ▶ Consideration will be given to “protecting contributors, and the body itself, from defamation claims”.
- ▶ Will establish an academic research project to produce a “factual historical timeline and statistical analysis of the Troubles”

# Independent Commission on Information Retrieval (ICIR)

- ▶ Modelled on Independent Commission on the Location of Victims' Remains (ICLVR); legislation in Dáil Eireann and Westminster
- ▶ 5 commissioners:
  - ▶ two chosen by OFM/DFM;
  - ▶ one each by UK and Irish governments;
  - ▶ chair - "may be international" - appointed by UK and Irish governments
- ▶ To last for five years; accessible to individuals from across Ireland and Britain
- ▶ Focus on providing information, when victims and survivors seek it, about conflict-related deaths
- ▶ Information given to ICIR not to be disclosed to PSNI/An Garda Síochána and inadmissible in criminal and civil proceedings.
- ▶ However, there is no amnesty; if information from another source emerges, prosecution will still be an option
- ▶ ICIR not subject to judicial review, Freedom of Information, Data Protection etc

# Implementation and Reconciliation Group

- ▶ Oversee themes, archives and information recovery
- ▶ Commission “a report on themes” from independent academic experts
- ▶ Evidence *re* themes to be submitted by “any of the legacy mechanisms”
- ▶ Statements of acknowledgement from governments; expectation for “others to do the same”
- ▶ 11 members.
  - ▶ Chair appointed by OFM/DFM;
  - ▶ 3 DUP nominees;
  - ▶ 2 for Sinn Féin;
  - ▶ one each SDLP, UUP, Alliance, Irish government and UK government

# Historical Investigations Unit - provisions

- ▶ To investigate Troubles-related deaths with a view to prosecutions if possible and a report in each case
- ▶ Take forward uncompleted HET cases (including Army killings) and legacy cases from Police Ombudsman. A five year working horizon is envisaged
- ▶ Families can apply to have completed cases reconsidered if there is new evidence “relevant to the identification and eventual prosecution of the perpetrator”
- ▶ History section of OPONI to transfer over. HET would have transferred before its demise. (PSNI expect to transfer its Legacy Investigation Branch staff over)
- ▶ All files to be transferred
- ▶ HIU to have full policing powers, including to compel witnesses
- ▶ UK government commits to “full disclosure”, though “equivalent measures to those that currently apply ... to prevent damaging onward disclosure”
- ▶ HIU oversight: Policing Board (therefore independent of PSNI Chief Constable)
- ▶ **NB** Inquests to continue as a separate process

# HIU - timeline: based on meetings with PSNI and DoJ

- ▶ March 2015      Legislation (for HIU + ICIR) to be drafted
- ▶ June 2015      Consultation paper
- ▶ Ongoing        ToR, recruitment exercise and appointment of HIU Director
- ▶ Autumn 2015    Legislation at Westminster
- ▶ Spring 2016    Legislation enacted
- ▶ June 2016      HIU established
- ▶ Autumn 2016    HIU fully operational

# HIU - issues for consideration

- ▶ PSNI assumption that LIB will transfer over; Joint Committee on Human Rights report - LIB not article 2 compliant
- ▶ Could be up to 300 staff: what about former RUC, PSNI? How acceptable is it that they be on the staff complement? Is it realistic to say they can't?
  - ▶ Logistical difficulties to recruit so many people
  - ▶ Unionists will want former RUC to be involved
- ▶ Legislation will need to be followed closely; remember how Patten legislation was subverted in first draft!
- ▶ Will director be appointed early enough to shape culture and approach of HIU?
- ▶ Personality and integrity of the director will be important: compare Al Hutchinson and Sam Pollock



# HIU - issues for consideration, cont.

- ▶ Will disclosure be sufficient? Eight current filters:
  - ▶ right to life (Art 2); right to privacy and family life (Art 8),
  - ▶ Freedom of Information; Data protection,
  - ▶ Archives legislation,
  - ▶ Official Secrets,
  - ▶ National Security and
  - ▶ MoD
- ▶ Transfer of PSNI Legacy Support Unit will not be adequate - these are Special Branch gate-keepers
- ▶ In the absence of new evidence, will HIU consider cases completed by HET but with which family are dissatisfied?
  - ▶ One option to consider, make a complaint to the Police Ombudsman re collusion or other RUC mal-practice
- ▶ Section 14 referrals by AG likely to be more difficult after HIU is established

# Overall assessment

- ▶ An improvement on HET
- ▶ Improved budget can make a difference
- ▶ Potentially the most powerful mechanism proposed thus far to deal with legacy issues
- ▶ The devil will be in the detail, legislation, staffing, Director
- ▶ Objective seems to be to produce article 2 compliant mechanism
- ▶ HMIC and Criminal Justice Inspection will have a scrutiny role and this is welcome
- ▶ Role of NGOs is not clear - what is advocate/counsellor assistance? Budget should be available for NGOs to access on the basis that they are trusted by families
- ▶ RfJ will seek to ensure Committee of Ministers of the Council of Europe have a monitoring role