CONSULTATION PAPER ON TRUTH AND JUSTICE

Eolas Project
c/o Relatives for Justice
235a Falls Road
Belfast
BT12 4PE

Draft Version 3.0
2nd September 2003
# TABLE OF CONTENTS

Table of Contents ...............................................................................................................................i

1. **Introduction: who we are and why we produced this document** .................................................1
   - Background ....................................................................................................................................1
   - The aims and activities of Eolas .................................................................................................1
   - Purpose of document ....................................................................................................................2

2. **Global approaches to truth** ........................................................................................................4
   - Strategies for dealing with the past ............................................................................................4
   - The development of formal truth mechanisms ..........................................................................5
   - Pros and cons of formal truth commissions ..............................................................................6
   - Other strategies for delivering truth and justice .......................................................................7
   - From the international to the local/national ..............................................................................8

3. **Truth in Ireland - Key Historical developments** ........................................................................9
   - The truth and justice debate to date .........................................................................................9
   - Key historical developments ....................................................................................................10
   - The concerns of unionists/loyalists and those in Britain .........................................................14

4. **The process we went through** ....................................................................................................15
   - Developing a strategy for dealing with truth and justice .........................................................15
   - Vision, Mission ............................................................................................................................15
   - Principles and values ..................................................................................................................16
   - Understanding truth and justice ................................................................................................16

5. **Discussion of possible truth and justice mechanisms** .................................................................19
   - International lessons but a locally-owned approach .................................................................19
   - Common Threads .......................................................................................................................19
   - Facilitating Debate .....................................................................................................................21
   - Discussion Model One ...............................................................................................................22
   - Discussion Model Two ...............................................................................................................24
   - Discussion Model Three .............................................................................................................26

6. **Conclusions and questions for consideration** ............................................................................29
   - Questions ....................................................................................................................................29
   - Conclusion .................................................................................................................................30
   - References ....................................................................................................................................31
1. INTRODUCTION: WHO WE ARE AND WHY WE PRODUCED THIS DOCUMENT

Background

Over a three-year period a number of grass roots groups working with those directly affected by the conflict have been networking around issues of policy, best practice, organisational structure and support, as well as sharing and coordinating resources. Out of these series of meetings the Eolas network was established in 2002. One of the central issues that arose for all organisations involved was that of truth and justice in an evolving context of conflict resolution. This became a priority objective for Eolas to examine.

Against a wider backdrop of sporadic, but often intense focus on the issues of political prisoners and victims, it was apparent that the need to deal with the past was increasingly urgent across the political community. However, ideas on how exactly this could be achieved were not being seriously examined and followed through at a political level. One example of this was the absence of comment on truth and justice from the Victims Strategy produced by the joint Office of First and Deputy First Minister under devolved government, despite many organisations underlining it as a priority during initial consultations prior to the strategy being developed.

The paradox was, and remains, that positive and encouraging signals are being sent by those with civic and statutory responsibility via the media only to dissipate when consultation and engagement on how to take such a process forward should follow. There is also the view that, because dealing with our past is contested and controversial (and the context is fragile in the absence of political institutions), it is better to focus on the important yet less controversial issue of service delivery than face up to and grapple with truth and justice issues.

As a result, the uncertainty at this level has permeated the wider debate around dealing with our past and enabled those sceptical about or opposed to examining the past a convenient opportunity to misrepresent truth telling and truth recovery processes. This often goes in the opposite direction to the overwhelming opinion of the people directly affected by the conflict from across the community. This has also tended to prey on people's worst fears and particularly those most affected by the conflict.

The reality is that the work of conflict resolution is exactly that of contested ground, opinion, and perspective—it is controversial. It is equally the reality that if we fail to deal with the difficult issues that have been our past and affected so many lives, it will continue to loom and pose a threat to the stability of future institutions and progress.

The aims and activities of Eolas

Eolas (the Irish word for 'information') is an informal grouping of organisations and individuals working with victims and former political prisoners in the republican and nationalist communities of Ireland.

Reshape, Rebuild, Achieve, launched on 11th April, 2002.
Collectively they have many decades of experience of conflict, human rights activism, and academic inquiry, along with local and international experience of conflict resolution processes.  

Eolas seeks to contribute to individual and societal healing and understanding informed by a common narrative of the past. This has driven the organisations and individuals involved in Eolas to examine and explore ways of addressing our past.

Essentially, we are working in the present through seeking to come to terms with the past.

The debate within our own community is, as is the case in the unionist community, uncertain about dealing with the past. Despite the fact that we are mostly suspicious of the intentions of the British state, we believe that it is imperative that we do deal with the past. The question of 'how' prevails. Though coming from a single identity context, we seek to be objective and remain conscious of the need for a process to be universal, inclusive and challenging for all of us involved.

It was with this in mind that Eolas convened a 3-day residential (from 11th to 13th June 2003) around truth, justice and truth recovery processes. The purpose was to draw together the various thoughts, ideas, and strata within our own community at the residential with the aim of developing a framework for a focused discussion document that could be more broadly deliberated in the community.

This document is the result!

It represents the collective thoughts of the participants rather than the organisations to which they are connected. The consultation process will allow for discussions within our own organisations as well as more widely. We hope that it will assist in reaching a consensus view of what may be required in order to take forward more comprehensively and collectively the needs in this community with regard to the past.

Finally, we acknowledge financial support from the Victims Unit of the Office of the First and Deputy First Minister in Stormont. Eolas is administered through Relatives for Justice, an organisation working with victims of the conflict with a strong section of the membership having experienced state violence.

Purpose of document

One of the biggest challenges facing us as a society is dealing with the legacy of a prolonged conflict in which over three thousand people died and human rights abuses were systematically perpetrated. Since the start of the peace process there has been an ongoing debate on how to deal with this legacy. The past cannot be undone but it is our belief that it can be dealt with in a way that acknowledges the loss, the harm and the abuses inflicted. We further believe that truth and justice processes can help to redress the wrongs of the past and support the transition to a just society in the future.

Participants in the Eolas network include Shauneen Baker (Relatives for Justice), Michael Culbert (Coiste na n-larchimí), Claire Hackett (Falls Community Council), Tom Holland (Ardoyne Commemoration Project), Patricia Lundy (Ardoyne Commemoration Project), Phil McCourt (Ardoyne Commemoration Project), Mark McGovern (Ardoyne Commemoration Project), Martin Mullan (Relatives for Justice), Patricia McEneaney (Bloody Sunday Trust), Jackie McMullan (Coiste na n-Iarchimí), Andrée Murphy (Relatives for Justice), Catherine Murphy (Coiste na n-Iarchimí), Cathy Níalís (Cunamh), Clara Reilly (Relatives for Justice), Mike Ritchie (Coiste na n-Iarchimí), Bill Rolston, Bernice Swift (Fírinne), Mark Thompson (Relatives for Justice).

We were delighted to have Brandon Hamber as the independent facilitator for this residential. He has long experience of working on victims’ issues and knowledge of truth commissions. His background in South Africa helped us to broaden our debates.
The purpose of this document is to develop this discussion on truth and justice by examining the case for an official truth process and presenting some models. The document is intended as a contribution to an ongoing debate. It is intended to stimulate discussion and the Eolas group will initiate a process of consultation with it. It is important to state that it does not represent a final position of those involved in drawing up the models, but rather a ‘brainstorming’ exercise to imagine how a formal mechanism might look which would address some of the concerns within our community.

The models presented here for discussion have different aspects but all are based on the need for public acknowledgement of the suffering endured by all the victims of the conflict. This acknowledgement requires revealing, understanding and accounting for the past. All the models therefore take an investigative approach, dealing with unresolved issues in a way that is victim-centred and seeking to answer questions about causes as well as establishing facts.

What is being proposed in this document is an approach that we believe serves local needs. In developing this thinking we have considered and drawn on international experience. This global context is discussed in the document to inform the debate. International experience and input has supported the peace process in Ireland and should assist us to develop a locally relevant process.

It is important also to place our ideas on an official truth process outlined here in the context of the range of ongoing work on truth, justice and remembering. We are publishing this document in the belief that such a process can further the difficult undertaking of coming to terms with the past. We believe that such a process should serve the need for acknowledgement by victims and the transition to a just society. This exercise should not however be conceived as precluding all other processes. It is one method which, in its search for answers, can deliver something additional to other mechanisms for dealing with the past. We submit it for a wider debate and for feedback which will be taken on board in a final proposal.
2. GLOBAL APPROACHES TO TRUTH

Strategies for dealing with the past

There are a number of strategies which have been used – both internationally and locally – to deal with unresolved issues of the past. Most of this document deals with formal truth mechanisms. However, there are a number of other ways in which the past could be or is already being addressed in Ireland.

In its consultation process the Healing Through Remembering project\(^4\) was alerted by those it consulted to fourteen different types of processes that could assist with coming to terms with the legacy of the conflict.

- Storytelling and oral history was a popular suggestion because it could potentially psychologically assist the person telling their story, and promote understanding in others of what happened.
- Memorials ranging from permanent monuments to living, organic memorials (e.g. peace parks, tree planting) were suggested.
- Museums displaying a wide range of stories of the conflict, as well as exhibitions and art were considered helpful.
- Public and collective commemorations, and a day set aside to remember those killed and injured in the conflict was a popular choice.
- Truth recovery processes aimed at uncovering the truth about the events of the past, such as a truth commission, were also suggested.
- Legal processes such as trials and inquiries, built on the premise that prosecutions might be important to establish truth and justice, were also recommended.
- Community and intercommunity interactions were also felt to be essential for developing respect and understanding. These could be important for attempting to deal with the legacy of violence.
- Support for individuals and victims is important in assisting people in moving forward in a positive and healing way.
- Research and social policy development could be helpful in uncovering the impact of the conflict, and social policy development would be a necessary precursor to other remembering processes, and could potentially be helpful in its own right.
- A centre for remembrance was suggested by a few submissions, but its activities and purposes varied significantly.
- A financial response, i.e. the establishment of a memorial fund and the need for a satisfactory compensation system for those who had been most severely affected during the conflict was suggested.
- Education and training could be an outcome of several of the remembering processes mentioned above, but could also be part of a remembering process in their own right.
- It was also noted that supporting current remembering processes is important as there is a lot of healing, commemoration and remembering work taking place in communities.
- Self-examination of institutions and apologies is another method which seeks to get institutions and organisations to undertake self-examination in order to reflect on their role in the conflict, both positive and negative. Public apologies might follow and could be helpful in themselves.

This list reflects much of the diversity of what could be done when trying to deal with the past. All of these approaches have been tried in different contexts and some are already underway in the north of Ireland. The ability of the different methods to address the issues of truth and justice vary. What is clear, however, is that addressing the issue of truth and justice will take a multitude of methods, but will also require a dedicated focus.

The above methods each deal with the problem at different levels. Some are focused on individuals, others are about community responses, and still others are aimed at the political level. All may be needed, and it is worth considering each in its own right.

Eolas participants were particularly interested in reflecting on which of the methods suggested above might make the greatest contribution to dealing with the issues of truth and justice. The one which has received a lot of comment but little imagination concerned the potential of a formal truth mechanism.

The development of formal truth mechanisms

In the last three decades more than 24 countries coming out of a period of sustained political violence have decided to have a Truth Commission about the past. We have seen ‘truth and reconciliation commissions’ (South Africa, Sierra Leone), ‘commissions on historical clarification’ (Guatemala), ‘commissions on the disappeared’ (Argentina), and ‘truth and justice commissions’ (Haiti). The logic of this approach was that there had been severe human rights abuses during the political conflict about which the truth had not yet been told. As the societies moved into a transitional phase, the unfinished business of the previous regime had to be tackled.

In each of these societies there were specific reasons that the truth had not been revealed. The armed personnel of authoritarian regimes had acted with impunity, literally getting away with murder, torture, disappearances, etc. The rule of law had often been suspended or severely distorted, which meant that many of the mechanisms which ought to have led to some semblance of justice – trials, inquests, etc. – were unable to deliver. And within that general disregard for the rule of law, human rights abuses frequently went without proper investigation. Finally, many of those who objected to the regime and its disdain for human rights found themselves marginalized, victimised and targets for further abuse.

The sense of injustice which arose out of that experience was what led many, especially victims and their relatives, in each of these societies to campaign for some formal mechanism for truth telling. When the conflicts ended, they were faced with stark choices.

- First, they could attempt to forget about the human rights abuses of the past. But experience has shown that this is impossible; in Spain currently, for example, activists are seeking to discover the graves of those opponents disappeared by the Franco regime six decades earlier.
- Second, they could seek to prosecute those guilty of past human rights abuses. But this is often rejected in the name of the fragility of the new regime and amnesties are offered – like in Argentina and Chile – to perpetrators. Even this may not be a solution in the long term; thus in Chile currently 350 senior army officers of the Pinochet regime are under investigation despite the amnesty law passed when the dictator handed over power to a civilian regime; and in Argentina, the parliament has just voted to overthrow an amnesty granted to the military chiefs when their dictatorship ended.
- Thirdly, people could seek to confront the legacy of the past head-on with some formal truth-seeking mechanism. In doing so, they have had to make difficult decisions. Should there be a limit
to the types of abuses investigated (death but not injury) or the time frame? Should there be an amnesty offered to those involved in violence in return for telling the truth? Should the truth commission focus on reconciliation, reparation, justice, or some combination of these? Should it name the names of those involved in violence or guilty of human rights abuses? Should it pass on the evidence it has gathered with a view to prosecuting those involved? Many people in Ireland have an idea of the South African Truth and Reconciliation Commission’s answers to these questions. But it must be emphasised that different Commissions have given a range of different answers to the above questions. In fact, in many ways – not least the trading of amnesty for truth – the South African case is unique; no other Commission went down this route.

What is a Truth Commission?\(^5\)

Typically, truth Commissions:

- are temporary bodies, usually in operation from one to two years;
- are officially sanctioned, authorized or empowered by the state and, in some cases, by the armed opposition as well as in a peace accord;
- are non-judicial bodies that enjoy a measure of de jure independence;
- are usually created at a point of political transition, either from war to peace or from authoritarian rule to democracy;
- focus on the past;
- investigate patterns of abuses and specific violations committed over a period of time, not just a single specific event;
- complete their work with the submission of a final report that contains conclusions and recommendations; and
- focus on violations of human rights and sometimes humanitarian norms as well.

Pros and cons of formal truth commissions

The promises held out by a truth commission are many. First and foremost is the promise of the truth about past abuses. Some commissions have focused on seeking the truth about the state’s role in human rights violations, while others have also included the actions of liberation or oppositional movements. Of course, the truth is often already known in the forensic sense of which organisation did what to whom. Frequently, the names of those who inflicted violence and those who have instructed them are known to victims. In this case the truth commission can offer some explanation of why the abuses occurred when they did, what was the political logic behind the abuses of the time. If this is so, there will hopefully be some acknowledgement of the harm done to victims, an acknowledgement often absent in the heat of the conflict itself. And with that acknowledgement there is even the chance of an apology. True, some may still in their heart of hearts hope for justice in the sense of someone being tried and sentenced for what they did to them or their relatives. But often this process can prove to be enough for both victims and perpetrators to experience reconciliation and closure. And beyond that, the truth commission can contribute to reconciliation and closure in the society overall and play a key role in producing a society in the future very different from the one in the past – one where human rights violators do not act with

impunity, where a culture of abuse is turned into a culture of tolerance, and where everyone agrees that the abuses of the past will never occur again.

These are grand promises, but unfortunately the experience is that they are not always delivered. Those involved in violence and human rights abusers can find ways to avoid appearing in public or can be less than forthcoming with the truth when they do so. There may be no apology, no reconciliation and no closure for victims in particular if perpetrators act in such an unreconstructed way. Above all, the commission may prove to be a devastating disappointment for victims in that they have been given only one bite at the cherry, as it were. The commission is meant to be a symbolic drawing of a line in the sand; after that, those victims who claim that they did not get acknowledgement or justice cannot easily have a second attempt. Often such attempts are ruled out by law, especially amnesty laws. But even if not, the societal commitment to moving on after the truth commission may leave those who are dissatisfied looking like begrudgers, unwilling to ride the crest of the wave of forgiving and forgetting, and once again marginalized.

Other strategies for delivering truth and justice

Formal justice mechanisms

The prosecution of individuals responsible for violations they committed in the past occurs from time to time in most countries coming out of conflict—these can offer some truth (at least to those involved in the case) and the potential for justice in a formal sense. Seldom do trials move beyond the individual case to the broader context and structural causes of the violation.

Individual trials are, of course, different to more extensive tribunals run domestically (say, aimed at prosecuting top military officials and not just one person). Domestic tribunals following political conflict are, however, fairly rare. Examples include a national tribunal in Greece in 1974 following the fall of the generals. In Argentina some generals were brought before the courts in 1985 (this was stopped two years later due to political pressure).

Recently, there has been an international move away from such domestic approaches towards attempts to prosecute those responsible for gross violations across borders if necessary. A number of ad hoc international tribunals have developed in recent years to try to do this. For example, the International Tribunal in Rwanda was set up through the UN Security Council to prosecute those alleged to have committed war crimes and genocide.

Currently, however, there have also been developments to set up the International Criminal Court. This is a permanent international tribunal which will try individuals accused of genocide, war crimes and crimes against humanity.

Truth-seeking inquiries

As well as truth commissions, there are also different kinds of truth-seeking inquiries.

There are inquiries into single events or violations that took place and ended many years ago. They may or may not be about the current political transition. They may also not even be about the

---


current political leadership and their role in an event. The Bloody Sunday Inquiry would fall into this category.

There can also be other official or semi-official inquiries into a series of events or issues. These are not normally as independent as truth commissions. They can take the form of parliamentary inquiries, or in the US, congressional hearings. Sometimes, these processes can lead to bigger inquiries or even truth commissions.

In addition to this there have also been a range of non-governmental projects that have sought to uncover abuses of the past and document violations. Many organisations engage in this all the time by collecting information about violations, but some have set up very formal and public processes, and achieved a great deal. The most well-known example in this regard is the REMHI Project in Guatemala, which, largely through the efforts of the Catholic Church, took thousands of testimonies and produced a thorough report of violations that took place.

**From the international to the local/national**

With this background in mind concerning the variety of approaches which can and have been developed, we then sought to situate our discussions in Ireland. We wished to have a clear and consensual grasp of the unresolved issues which are important to the republican/nationalist community. The next chapter outlines the philosophical approach which informs the community in which we live and work and outlines some of the major developments whose resolution will be fundamental to the design of a successful formal truth recovery process.
3. TRUTH IN IRELAND – KEY HISTORICAL DEVELOPMENTS

This chapter deals with broad historical developments during the course of the conflict. It outlines, from our perspective, indicative key incidents and policies which inform our approach to truth and justice. It also outlines responses by the community to these incidents and policies which underpin how truth and justice is understood by republicans and nationalists.

What follows is not an exhaustive account but merely the most commonly identified incidents and defining points/periods raised in our discussions. Numerous incidents were mentioned which included:

- many legislative manoeuvres by the British state regarding their practices and policies;
- actions by all the combatant groups; and
- numerous incidents that both injured and claimed lives.

However, for the purposes of this discussion document, it was decided to focus on broad historical developments.

The truth and justice debate to date

In relation to the north of Ireland the British state is duty bound under both international agreement and law, to investigate thoroughly, promptly and impartially all acts of violence within its jurisdiction. This is particularly important when its agents are involved directly, or where allegations exist that implicate them in acts of violence by third parties. In the thirty plus years of conflict, the British state has failed to comply with these criteria – despite the fact that it has been responsible for killing 367 people directly, and where evidence exists in relation to scores of collusion killings involving loyalists. Instead, and in these instances only, their investigative procedures are perfunctory, lacking in independence and designed to cover or exonerate their actions.

By contrast, the state has used draconian ‘emergency legislation’, including non-jury Diplock courts, to imprison other combatant groups in great numbers. This official practice has protected the disclosure of much wider administrative policies such as shoot-to-kill and collusion, and provided impunity to its agents. It has extended to, and involved, its police, its prosecution department, courts, and parliament. It has also allowed their propaganda to misrepresent the overall causes, nature and extent of the conflict here.

It is therefore no accident that, for our community, British state violence constitutes the highest percentage of unaccounted for actions amongst all of the combatant groupings to the conflict. Rather it is by design; it is policy. The British are not neutral to the conflict; they are very much part of it. Additionally the denial of justice by the British state regarding its actions has undoubtedly fuelled and sustained the conflict, and for those affected remains an outstanding issue that must be addressed as a core element of any conflict resolution process.

In terms of achieving this it is important to understand the concept and interpretation of justice as it generally exists within the thinking of the nationalist / republican community. To assist this, for those outside of our community who are unaware of the nature and extent of the policies and practices of state violence, we set out below a chronology detailing some of the instances that were raised by the Eolas Consultation Paper on Truth and Justice a discussion document
working group and form the basis of the many issues that need to be addressed. We acknowledge that there are outstanding issues that also exist within the British/unionist/loyalist community.

Our community experiences the institutionalised nature of British state violence and therefore views violence in a much wider context than our unionist counterparts. Whilst many unionists see justice as personalised and in a formal setting of courts and imprisonment, the same cannot be said for many of those who have witnessed injustice in our community. Formal justice was never to be delivered to victims of British state violence and it quickly became apparent that the obstacles to this were indeed symptomatic of wider administrative practices and policies that lay at the heart of the conflict for over three decades. Given this context it was obvious that – as a community apart – a broader definition of justice in a conflict resolution scenario would be explored and developed. This approach is not significantly different to the common drive down the years by human rights campaigners and activists who set their face against the characteristic nature of British state practices when addressing state violence.

Our justice is generally one of looking at the systemic nature, causes and extent of the conflict, examining the nature of the system that allowed and facilitated actions as opposed to the person or people who carried out those actions. We are therefore interested in examining the key historic and thematic developments of the conflict. We are seeking to establish a ‘macro’ truth that allows for an inclusivity of experience and understanding as to why particular incidents occurred rather than examining individual cases in individual ways. It is about reflecting an understanding and common narrative of our past. Thus disclosure, acknowledgement, recognition and acceptance of culpability on the part of the British state are at the core of any successful settlement of outstanding injustices for our community. An indication of a willingness to change – and the measure of change in itself – can often fit our interpretation of justice as opposed to a determination to exact punitive justice. For republicans and nationalists ‘the truth will out in the end’ and only then will a sense of justice prevail.

As part of conflict resolution this is a more globally accepted and recognised path which, instead of holding the future hostage to the past, allows us to deal with our past in a way that is mutually beneficial to creating a more stable and secure future. We believe that it is one that will contribute to and inform the nature of future institutions. It is also about facilitating individual healing on a collective journey towards societal healing.

It is in this context, and realising exactly what is achievable and conducive to peace and nation building, that the three models included in this document were developed by the three working groups at our residential.

We are also of the strongly held view that we are now dealing with issues that should have been at the heart of the negotiations of 1998 and should consequently have formed part of the Belfast Agreement (GFA).

**Key historical developments**

What follows outlines the range of key developments during the conflict which emerged from our work at the residential. The list is not exhaustive but reflects, in general terms, the feeling within republican and nationalist communities.
1960s
The northern state proves incapable of responding to the reasonable demands for equality and an end to repression from the civil rights movement. Instead repression increases and loyalism/unionism reacts with intensity. Our community begins to organize, setting up defence committees and transport for fleeing families. Schools and churches are opened in nationalist areas to assist refugees. Amnesty is arranged for police officers of the RUC involved in criminal activity between October 1967 and 1970.
- First new wave of attacks by the UVF including bombings of infrastructure, the killing of the first RUC man, attacks and killings of Catholics;
- The civil rights movement is attacked and beaten by both the RUC and loyalists;
- Incursions by loyalist mobs, led by B Specials, into Catholic areas begin across Belfast. These leave several people dead and hundreds homeless—in one attack 9-year-old Patrick Rooney becomes the first child victim of the conflict, shot by the RUC as he lay in bed;
- Samuel D evenney dies as a result of a horrific attack by the RUC in his Derry home;
- The Scarman Tribunal is set up to look into the violence and provides an amnesty to the RUC involved in any violence.

1970s
The conflict escalates in the 1970s, which turns out to be by far the worst decade in terms of lost lives and people injured. Thousands are also imprisoned, processed on the conveyor belts of Castlereagh, Gough Barracks, and Strand Road ‘holding centres’ to non-jury Diplock courts and then to Long Kesh, M agilligan, and Armagh prisons. The H-Blocks are also built to hold POW’s with the earlier encampments being discontinued. It also becomes evident that the sectarian murder campaign of loyalists is designed to terrorise the nationalist community so that they would turn on republicans. The dirty war has taken root. Campaign, protest and legal actions play a central role for our community, shaping our responses to these everyday occurrences. Involving the international community becomes also a key objective in forwarding our response to social, economic and justice issues and to human rights. Activists provide evidence of systematic torture of detainees and force the Irish government to take an intergovernmental case against the British state to the European Court. Britain is found guilty. Militarily a course has been charted that inevitably leads to republicans and the British state becoming engaged in a long war. Towards the end of the decade it is being acknowledged – privately – on the part of the state, that defeat for republicans militarily alone is not achievable. All political initiatives fail.
- The provisional IRA comes into being – it is an offence to be a member;
- The U DA is formed – it is not an offence to be a member;
- The first British soldier is killed by the IRA;
- British counter insurgency tactics are employed – collusion and misinformation;
- Internment is introduced, predominantly affecting nationalists/republicans;
- Rubber bullets are introduced and used against civilian population. They are replaced by more lethal plastic bullets. They are described as the technology of political control to deter mass protests;
- Bloody Sunday and the subsequent Widgery Report into the shootings and killings backs the official version – the impunity with which state forces operate begins to emerge;
- Holding / interrogation centres for processing and imprisonment are established – due process is dispensed with;
- The Association for Legal Justice (ALJ) is formed to document abuse and seek legal representation for people arrested, interrogated, detained and imprisoned. They also begin to highlight and campaign against the growing number of state killings;
- Criminalisation and Ulsterisation policies are introduced;
- Prison protest begins.
1980s
This decade is characterised by a more clinical and sophisticated approach adopted by the British state in terms of administrative policies and practices. These are aimed at taking the war directly to republicans and consequently our community.

As the prisoners draw huge public support following the removal of political status – largely with the support of activists on the streets – those central to organizing on the outside are targeted. Some are killed, others survive attacks. It becomes apparent that those carrying out the attacks – loyalists – are not acting alone. Elected representatives in the nationalist community become targets.

As the prisoners begin to die on hunger-strikes linked to prison protest in the H-Blocks, mass civil protest occurs in Ireland and across the world. Plastic bullets are used to intimidate civilians and discourage peaceful demonstration.

The Anglo-Irish Agreement of November 1985 heralds a supposedly new beginning between the Fine Gael government in Dublin and the Tory government in London. Strategically it is designed to marginalize republicans who have begun to impact on elections, making significant gains. But the Agreement also alienates unionists because it sets up an Anglo-Irish Secretariat in the north. The Agreement fails. Both the beginning and end of the decade is punctuated by the British state’s use of lethal force and shoot-to-kill incidents. Investigative procedures are cosmetic and perfunctory. This is sharply brought to public attention with the high rate of controversial killings and the failings of the domestic legal system to hold those responsible accountable. This lends more weight to the widely held view that impunity exists for members of state forces.

Loyalist actions are again on the increase. Incidents where collusion is alleged increase sharply. The decade ends as it began. Like Scarman and Widgery, both John Stalker and John Stevens have been and gone. Stalker is controversially removed from his investigations into shoot-to-kill when it becomes apparent that he actually intends to investigate in a professional manner.

Activists within the community continue in their work aimed at addressing abuses. International tribunals into plastic bullets and shoot-to-kill take place. The formal register of violations and campaigning with international NGOs, continues along with various other methods of highlighting and exposing what is happening.

- Hunger strikes;
- Brutality and miscarriages of justice;
- Shoot-to-kill; amnesty by AG Patrick Mayhew for the RUC officers involved;
- Plastic bullets;
- Republicans enter electoral politics;
- Anglo-Irish Agreement;
- Collusion – establishment of FRU (Force Research Unit, a British undercover unit);
- Private talks between SDLP and Sinn Féin.

1990s
Loyalists’ unprecedented capacity to strike at will and often with precision continues. Where the circumstances suit, the state continues its shoot-to-kill tactics. However, it emerges that loyalists, aside from receiving information, have also been armed with imported South African weapons. John Stevens – in a further investigation – happens upon one of the state’s key agents, Brian Nelson, who has effectively been running the UDA killing machine. He was also instrumental in procuring the imported weapons.
Against this backdrop activists and relatives, bereaved through these state practices, organize and form Relatives for Justice (RFJ) in 1991 which was initially hosted by the Pat Finucane Centre for Human Rights in Derry. RFJ impacts on the UN and seeks the direct intervention of Special Rapporteur on Summary and Arbitrary Executions. He concludes that a number of incidents must be independently examined. The British refuse.

1994 sees the ceasefires and the move towards all-party talks. Despite difficulties and a sustained period without talks, negotiations eventually begin. They conclude in 1998 with the Good Friday Agreement between local political parties in the north of Ireland and both governments. The United States government plays a central role in the process – an indication that Britain’s role was not a neutral one.

Resolving the conflict becomes an area of heated political struggle and activity whereby forces opposed to the Agreement attempt to rally and sabotage it. Victims and former POWs find themselves at the centre of this public discourse, their roles and experiences being discussed by others. The clear object of many is to judge the past and determine for themselves who was right and wrong. War continues by other means as opposed to addressing the genuine needs of all those affected by the conflict. Amnesty provisions are put in place to facilitate resolution of two issues: the disappeared, and decommissioning.

Support groups mushroom, including Coiste na n-Iarchimí for republican ex-prisoners, and Cunamh, Firinne, Survivors of Trauma and the Bloody Sunday Trust for victims.

• Collusion, arming the loyalists, and the role of FRU emerges;
• Stevens returns regarding collusion;
• Nelson trial and government and judiciary intervention regarding a deal;
• Shoot-to-kill and the use of lethal force continues;
• The UDA is eventually proscribed;
• Miscarriages of justice in Britain (Birmingham 6, Guildford 4, Maguires all released);
• Community inquiries – Cullyhanna, Shanaghan, and many others;
• Ceasefires;
• Political talks;
• Political agreement;
• Support groups for victims and POWs;
• Bloody Sunday inquiry;
• Conflict resolution.

2000 to 2003
The view that outstanding issues needed to be addressed is generally accepted but not progressed other than occasional bursts of comment in the media. The international ruling by the European Court on Human Rights finds Britain guilty of violating Article 2 - the Right To Life. It further highlights the need for retrospective examination of past investigations into both state and loyalist killings and attacks. The Court unanimously finds in favour of the relatives. The judgment is highly critical of all the domestic investigative processes involved, including the DPP, the inquest system and the civil courts.

The Weston Park initiative, and subsequent appointment of Canadian Judge Peter Cory to investigate several incidents, barely touches upon the real need to examine - on a much wider and inclusive basis - unresolved conflict-related incidents. The initiative is, however, political recognition of the need.
Stevens returns to deliver a summary of his findings after a 14-year investigation into state collusion with loyalists. In answers to a series of questions he likens the situation to something of a ‘Central American dictatorship’, stating that collusion has been ‘systemic’. Days before Stevens is due to make public 17 pages of his 3,000-page report, the man at the heart of his investigation, Brian Nelson, is alleged to have died. Stevens was intending to re-interview Nelson.

The PSNI Chief Constable Hugh Orde issues a statement that 1,800 conflict-related murders are likely not be resolved, adding that there is a need for a truth process. This gives weight to the reality that if this society is to move forward the truth about our past is a prerequisite. Astonishingly, Mr Orde’s numbers do not include killings by RUC officers and British soldiers.

- Conflict resolution;
- Article 2 rulings;
- Victims, POWs, truth, prosecutions;
- Decommissioning;
- Talks;
- Institutions established and collapsed;
- Plastic bullets;
- Disappeared initiative/amnesty;
- IRA statement regarding non-combatants;
- Stevens.

Understanding and recognising the concerns of unionists/loyalists and those in Britain

Eolas participants, whilst concentrating on discussion and consultation within our own community, remain acutely aware of the range of unresolved issues and incidents that concern the unionist/loyalist community. We recognize that these will also need to be addressed as part of any agreed formal truth process. This will also be true of people affected by the conflict in Britain. This consciousness informed our deliberations during the residential and subsequently in further discussions.

Many of these incidents have been raised in recent times, especially since the signing of the Good Friday Agreement. We see this as an indication of how important resolution is both for those bereaved and injured in these incidents as well as for the wider unionist/loyalist community.

We affirm that these conflict-related incidents must be dealt with in the same way as the concerns that we have outlined earlier.

Whilst being sensitive to the views, feelings and sentiments of this constituency of victims and survivors, it would be wholly inappropriate and wrong for us to assume exactly what approaches they might favour to address their hurt. This would be a matter best decided by the unionist/loyalist community here, and by those affected in Britain.

Indeed we would welcome the emergence of a similar process to our own within the unionist/loyalist community, and in Britain, that empowered those most directly affected to examine, develop and present models that might address their needs. We would also be willing to dialogue directly with any individuals, groups or organisations interested in such an exploration.
4. THE PROCESS WE WENT THROUGH

The information above provides a general background to some of the approaches tried internationally. Of course, our priority was to try to think whether any of this applies locally, and more importantly to develop local approaches to dealing with past. The Eolas residential provided space to consider this and what follows are some of the thoughts (for discussion) that came out of the residential.

**Developing a strategy for dealing with truth and justice**

As a starting point the Eolas group felt it was important to approach the issues from the perspective of developing an overall strategy for dealing with the issues of truth and justice. To this end, it was felt it would be useful to outline a vision, mission and a set of principles and values that should lie behind our approach to the issues. These, it was felt, should be at the heart of any truth and justice process that would operate at a political level. They were:

**Vision**

The ultimate vision for any process or strategy for dealing with the issues of truth and justice should be:

A society that acknowledges the hurts and losses of all, and promotes understanding; where a full and true account of the conflict is exposed, including the policies that initiated and perpetuated the conflict, its causes and consequences. Resulting in a future new society, which is based upon equality, human rights, justice and dignity, with a population that has an informed opinion of the events of the last 30 years; who have a true sense of understanding and have learned lessons of history, allowing us to move forward individually and collectively.

**Mission**

The mission or purpose for any process or strategy for dealing with the issues of truth and justice should be to:

- Facilitate an overall process of transition from an old, unjust regime to a new just and equal political system, which responds to the needs of individuals;
- Ensure an expression and validation of experiences;
- Lead to individual and collective healing;
- Build a sense of empowerment, confidence, trust and safety;
- Learn lessons of history and inform necessary areas for change in the future;
- Access people and exchange information and knowledge;
- Provide conclusions on the causes, nature and extent of the conflict in and about the north of Ireland from 1968 to 1998;
- Result in historical clarification, with the causes, consequences and institutional truths about the past being exposed;
- Ensure responsibility and accountability from those responsible for past injustice.
Principles and values
The principles and values underlying any process or strategy for dealing with the issues of truth and justice should involve the following:

- The nature of the process undertaken should be considered to be as vital as the outcome;
- A bottom-up approach;
- Sensitivity and awareness;
- Openness and honesty;
- Support;
- Respect;
- Victim-centred;
- Full and willing participation of all actors;
- Ownership by all stakeholders and a collective commitment to the process;
- Independence;
- Accountability and responsibility by all involved;
- Equality;
- Based on a level playing field;
- Non-retributive;
- Determination and focus;
- Generosity of spirit;
- Independent of all military parties;
- Clear terms of reference.

Understanding truth and justice
In addition, at the Eolas residential it was felt it was important to outline some of the key issues that will need to be considered when addressing truth recovery and justice. Participants answered a series of questions and through these sought to draw out the broader issues that needed to be dealt with in developing a strategy for dealing with issues of truth recovery and justice.

These were not only helpful for workshop participants, but would be valuable questions for all interested in developing thinking in this area to consider. The questions were:

- What is your understanding of the issue(s) you are dealing with?
- Who are the people, role players and/or groups you are concerned with?
- What are the most pressing needs as you see them?
- What might happen regarding the debate on truth and justice over the next five years?

The Eolas group responses to these questions were broadly as follows.

What is your understanding of the issue(s) you are dealing with?
The common thread in this discussion was that, on a macro level, any process developed needed to focus on the nature, causes and extent of the conflict, focusing on all of the role players, including the state. On a micro level, the individuals’ need to find a way to come to terms with, rationalise or accept events
that have had personal impact on them was seen as pivotal to any process and in providing the opportunity for this to happen, any process would then become part of a move towards a just, peaceful society.

The need for truth and justice is the paramount concern, although the interpretation of what is meant by justice can vary widely, from criminal prosecutions through to having the opportunity to hear and be heard regarding individual experiences. Accountability, however, was seen as an issue that was common to all participants in any truth recovery process.

In terms of the current political situation, it was acknowledged that there is no political stability or agreed settlement, and any movement on truth recovery or any process developed is completely affected by the prevailing political climate—just as any lasting settlement will be affected by whether we can agree on how to deal with the past and its causes and effects. As a result of the fact that the nature of the state has not changed, republican and nationalist influence on societal structures such as the courts, judiciary and civil service is limited and could be limiting to any truth recovery process.

As it has proved to be problematic in the past, any process should also provide a mechanism for dealing with issues of remembrance and commemoration.

Who are the people, role players and/or groups you are concerned with?

Any truth recovery process must be victim-centred and victim-led. The issue of who constitutes a victim has been a problematic one in the past, but it is widely agreed that the definition contained within the Reshape, Rebuild, Achieve document is workable and that we could seek to draw a consensus on this. The definition reads as follows:

“[T]he surviving physically and psychologically injured of violent, conflict-related incidents and those close relatives or partners who care for them, along with those close relatives or partners who mourn their dead.”

This is the most inclusive definition to emerge from debates thus far. Importantly from our point of view, it includes those affected by state violence, loyalist violence and republican violence. Similarly, it is important from our point of view that the effect of imprisonment should form part of any inclusive definition of victimhood.

In addition to those who were physically or psychologically injured as a result of the conflict, we need to examine the role, whether through action, inaction or as a policy decision, that various public organisations played in the conflict. This list would include:

- Political parties;
- British government;
- Irish government;
- Institutional processes;
- U.S. government;
- Churches;
- Lawyers/judiciary;
- Media;
- Medical profession;
- Human rights organisations.
In developing a process, we would need to involve all aspects of the media, the arts, intelligentsia, curricula setters for schools, tourist boards, museum curators, local politicians etc. as they all have influence on how the situation is represented and presented in the future.

**What are the most pressing needs as you see them?**
At the centre of the process is the acknowledgement of wrongdoing by parties to the conflict, and of hurt, pain and loss caused by the actions of parties to the conflict.

Families pursuing truth are getting a sense of fighting back against what has happened. Any process designed must give them a sense of support, but there must be complete honesty regarding what can actually be achieved.

In respect of the state, it must acknowledge its non-neutrality and must not be allowed to use any process to cover up or sanitise its role. In doing so, this may encourage republicans especially to come forward and acknowledge their role. If we call upon the state to bare all, then we must expect that all protagonists do the same.

There is a need to create a positive dynamic in the political arena to ensure that any process that moves forward does so with support.

**What might happen over the next 5 years?**
Two possible scenarios were suggested by the Eolas group.

First, an internal, closed look at events with imposed pre-set criteria which would have as its goal a community relations/reconciliation/healing outcome. It would not examine structural processes, rather just violence and its outcomes.

A second possible scenario was an open and full examination by an internationally recognised forum. All groups could have an input to the terms of reference, which may cover amnesty issues. A common narrative could emerge from such a process, which would allow all parties to accept and acknowledge each other's responsibilities, thereby aiding peace building in the long term.

What is agreed is that if republicans and nationalists do not wish to have a model foisted upon them, there needs to be a debate and agreed strategy developed within the community.

After considering all the matters outlined in this chapter, we then moved on to formulate potential formal truth recovery processes. These are outlined in the next chapter.
5. DISCUSSION OF POSSIBLE TRUTH AND JUSTICE MECHANISMS

International lessons but a locally-owned approach

There are many lessons to be learnt from other societies’ experiences of truth mechanisms. There is a vast amount of material that can be consulted to see what results these different approaches have produced. However, one clear lesson is that there is no ‘one-size-fits-all’ solution. Any truth process must suit the particular local circumstances within which it takes place. That context is dependent on a range of factors but perhaps the most significant of all are the political circumstances within which negotiations over suitable mechanisms take place. The reality of the prevailing balance of forces will inevitably shape the process. However, that should not prevent the development of new, dynamic, innovative and locally-owned ways of dealing with the past. These may draw on lessons from elsewhere but will be primarily based on the knowledge and experience of those who know better than anyone the needs of communities here. There is therefore a need to develop locally-oriented approaches if this process is to be moved forward, owned and supported.

To this end, Eolas felt it was important to work on and present different models of truth mechanisms as a way of furthering debate at all levels on this crucial topic. At the residential hosted by Eolas three different working groups were established and tasked with developing the basis of a mechanism to deal with conflict-related truth and justice issues in the north of Ireland. These discussions resulted in the development of three models, which are presented as the participants wrote them up; they are also presented in schematic form in Table 1 at the end of this chapter. Participants were invited to be as bold in their thinking as they wished. At the same time, an awareness of prevailing political realities may never have been far from the minds of many. In any event, the models showed a number of areas of common concern and intent that suggested the ground upon which a future nationalist/republican consensus on these issues might be based. It is in that spirit that the following comments and models are offered for discussion and debate.

Common Threads

The three working groups presented models of truth and justice processes that were then divided up into four distinct elements: principles, purpose, mechanism and outcomes. Principles refers to the ideas, concepts and aspirations that underpin the proposed process. These are then developed by detailing precisely what the purpose of the suggested model should be. In order to achieve these ends a specific mechanism is required that needs to take into consideration the range of difficult issues, forces and circumstances that the process would involve. Finally, the working groups each suggested certain outcomes that might result from their proposed models.

In order to facilitate discussion of these models, it is useful to draw out some of the common threads (and some points of difference) which they evidenced.

- The importance of an international dimension to truth and justice mechanisms was apparent in all the models. This was seen as imperative to ensure the independence of the process. In each of the models an International Panel was envisaged. These might be variously constituted but there was general agreement that they should not be subject to ‘domestic’ governmental or judicial control or
interference. The method adopted for the selection of members of an international panel has to ensure impartiality and objectivity. The internationalisation of truth and justice may be critical in providing for inclusive public confidence in the process.

• The international focus was combined with a strong emphasis upon the need for a bottom-up, community-orientated and victim-centred approach. The role of NGOs was seen as particularly vital here. NGOs representative of victims and relatives would have a critical role to play at all stages and levels of any truth process. This would begin with their direct involvement and engagement in any discussions and negotiations tasked to design a mechanism. It would continue in providing both interface and support functions during the conduct of the truth process. Maintaining clear lines of communication with local communities and victims would be essential in preserving grassroots trust and NGOs could act as a key conduit of contact. Similarly, the provision of emotional support structures should be integrated with grassroots networks to ensure the delivery of services suited to local needs and circumstances. NGO involvement would also act as a safeguard to ensure the centrality of the identified core principles and purposes.

• Most of the models evidenced the desire for a balance between an individual and an institutional approach and focus. This had a number of elements. First, the need to address outstanding issues for victims and relatives in individual cases was clearly evident. Similarly, support structures, investigative processes and the publication of information should all be tailored to the needs of individual victims/relatives. However, there was a strong sense that certain structures and issues should be conducted with an institutional focus in mind. Establishing the broad contextual truth and examining the role of institutions as such were both identified as key goals. There was a clear desire to uncover the ‘macro truth’ of the causes, nature, extent and consequences of the conflict. This should include the analysis of both combatant groups and other social institutions (e.g. churches, media and judiciary) in the generation and perpetuation of the conflict. Truth and acknowledgement should be forthcoming from society at large as well as from active combatants, both state and non-state. Similarly, contact between the truth mechanism and parties to the conflict should be organised on an institutional basis. All combatant organisations should be encouraged to participate, although it was recognised that some might be reluctant to do so. These organisations would be expected to co-operate in discovering the truth of circumstances in individual cases. This approach could be employed as the means to establish collective rather than individual responsibility and acknowledgement.

• While ‘story-telling’ was recognised as a significant element by many of the participants, there was a far greater emphasis on the need for any truth and justice mechanism to have a definite investigative dimension. Such an approach implies the establishment of a body vested with certain powers to uncover the causes, nature, extent, whereabouts and details of human rights violations. This investigative process should be as inclusive as possible and should include all actors in the conflict and stakeholders. An investigate model implies the establishment of an independent structure invested with powers suitable to the task. Different approaches to how these investigative units might be established and staffed were outlined but the principle of non-interference from outside organisations was clearly central to all. Alternative mechanisms for conducting investigations were also proposed, including the use of oral hearings, using ‘go-betweens’ for panel/commission contacts with all the parties to the conflict, employing a team of investigators in designated and discrete units, and submitting questions to combatant groups.

• There was a general agreement that the outcome of the process should be non-punitive and non-judicial. This was allied to the desire to avoid a process that sought to attribute individual responsibility. There was no clear consensus on whether or not the process should involve an amnesty mechanism. For one group the possibility of amnesty, and/or having a criminal record expunged, would be critical in encouraging witnesses to come forward with information. It was felt
Facilitating Debate

The models developed in the Eolas workshops are no more than suggestions for consultation and debate. They tend to share certain ways of approaching the issues at hand. In doing so, they are not intended to preclude the debate of radically different ways of dealing with the same questions. That said, they do offer some unique responses to the difficult problems raised in attempting to deal with the past. Their strength lies in the fact that they are rooted in the experience of people who have been engaged in these and related issues at a local and community level. It is in that sense, too, that grassroots discussion of how to take these questions forward in the future is now both timely and necessary.
DISCUSSION MODEL ONE

Preamble

We do not intend to build our model on the suspension of disbelief. For example, we do not start with unrealistic expectations such as unanimous agreement that truth and justice issues must be taken care of. Thus:

• while we seek the involvement of the widest possible range of actors,
• we recognise the reluctance of some to become involved.

Given that, our model is a transitional model.

Terms of reference

The terms of reference of our model are as follows:
• the proposal is for an investigative model rather than, say, a story-telling model;
• investigation will be of all conflict-related deaths and injuries from 1966 to the present;
• the investigation will be as inclusive as possible, leaving out no group which has been involved in causing death or injury;
• it will be totally independent of the British and Irish governments and of the political parties in these islands;
• it will be non-punitive in outcome;
• above all, it will be victim-centred; hence the focus on death and injury rather than, say, structural inequality;
• at the same time, issues such as structural inequality can also be investigated if deemed important.

The purposes of investigation are to:
• bring to light answers to questions raised by victims;
• advance individual and collective healing;
• contribute to a common understanding and political stability.

The model

• The truth-seeking investigative model proposed envisages the establishment of an independent panel agreed by victims and the widest possible range of actors.
• Victims may approach this panel to seek answers to questions, reasons for death and injury, understanding.
• It is open to those involved in the conflict – both state and non-state – also to approach the panel to help them in their task of investigation.
• The panel seeks answers from organisations on behalf of the people who have approached it and brings those answers back to the applicants.
• The panel can also initiate its own investigations, for example, into the role of institutions in perpetuating conflict.
Conclusion

For this model to work requires an intense preliminary process of dialogue with the widest possible range of groups in order to lead to agreement on:

- the process,
- the mechanisms,
- the constitution of the panel,
- the panel’s terms of reference and operational principles.

This stage of preparatory work could take at least one year.
DISCUSSION MODEL TWO

Ground work

This will deliver understanding of processes and issues relevant to the mechanism. This will be done at grass roots and community level. It will involve representative agencies, in particular victims groups.

Make-up of the process

Independent International Panel

- This panel is drawn from countries where there has been experience of truth processes.
- It is made up of an agreed number - not unwieldy.
- This panel will have an agreed remit.
- Their role will be agreed not to be subject to the British High Court or Irish Supreme Court but to an international court.
- Their jurisdiction will be on this basis.
- They will however have powers of subpoena and compellability.
- They will have their own teams for administration which will not be drawn from local people.
- There will be consensus from the political representatives about the appointments.

Team of researchers

The Panel will have a large team of researchers. These will be drawn from the international community on the basis of their experience in community work and technical skills. They will be well resourced and will be the initial face of the mechanism.

Initial Phase

Gathering information, issues and questions

The researchers will be charged with gathering information from across the community relevant to the remit of the process. They will receive information and submissions and questions from representative groups and community organisations. They will also receive questions regarding outstanding issues relating to killings and abuses.

This process will have public and private elements. It will not be unlike the Patten Commission process in this regard. It will have strong interface with local community organisations and NGOs. It will particularly interface with victims organisations and representatives on outstanding issues regarding killings.

The research team will likely have offices in local communities which will increase access and confidence. This bottom-up approach will be the key to the success of the project.
The Team will after a set period of time begin to provide the Panel with lists of issues and questions which need to be addressed by the parties to the conflict. This will be a private document. Individual victims will know what questions relevant to their own cases will be presented. However there will not be a long list made public.

Second Phase

Questions and Answers
The Panel will have direct interface with the representatives of actors to the conflict. There will be clear guidance as to what will provide acknowledgement and true and acceptable answers to questions that will be posed. That this element of the process is not subject to openness but is in private should be an incentive to participants co-operating to provide answers to questions. There will not be individual culpability but organisational co-operation and acknowledgement based on truth.

The team of researchers will seek to ensure that answers are based on community understanding and knowledge of the events in question and that they address the pertinent issues.

None of the evidence gathered in this process or the answers given can be used in future litigation.

Final Phase

Full Report
This will incorporate the conclusions of the Panel. It will address the causes and consequences of conflict and secure and make public acknowledgement and truthful accounts from the actors involved in outstanding cases. This will deliver a ‘macro’ sense of the truth of what occurred and will deliver to the individual cases some acknowledgement and putting on record of what truly happened to their loved ones.
DISCUSSION MODEL THREE

First steps

A Commission of 13 appointed to oversee the process and draft a final report; this Commission would be constituted in consultation with all of the stakeholders in the process – the British and Irish governments, combatant groups and victims. It would have to consist of individuals with international standing and expertise in specific fields, including international law, human rights, transitional justice, etc. but should not be overly weighted by lawyers.

The working group identified 11 specific groups it felt may have a case to answer in regards to a truth process. These are: Continuity and Real IRA, IRA, INLA, UVF/Red H and Commando, UDA/UFF, LVF, other loyalists, RUC, British Army, British Intelligence, 26-County government.

The Commission would hold preliminary discussions regarding terms of reference and liaison with combatant groups. It would call for submissions from interested parties/groups regarding incidents/policies from 1968 to the date of the foundation of the Commission. It would begin preliminary investigations into events/policies it felt reasonably confident would be raised by victims.

Time Frame: 3 Months

Acceptance of Submissions

The Commission would hold oral hearings, possibly in the format adopted by the Patten Commission – travelling to various venues in the six counties and allocating commissioners to attend these hearings. It would also accept written submissions from individuals/groups.

At the end of this process of accepting oral and written submissions, the Commission would prepare a report outlining the issues and incidents it would address.

Time Frame: 6 months

Investigation

A series of investigative units would be established by the Commission at its inception. Each unit would have specific responsibility for liaising with one of the specific combatant groups regarding incidents/policies attributed to them. The fact that each group is assigned specific individual investigators will, we envisage, lead to the development of a greater trust and continuity of contact with the Commission. The development of trust and rapport between the investigators and the individual groups is vital if the process is to succeed.

There was some debate within the group regarding the appointment of investigators. One view was that each commissioner be assigned to lead a specific investigative unit, thereby ensuring that the investigative process as well as the overall process had an international dimension. Another view held that there be a distinct group of investigators, again with international credentials.
The combatant groups would be presented with lists of policies/incidents attributed to it and asked to cooperate with the Commission on providing further detail. These would have been agreed following the acceptance of submissions, with frivolous requests being weeded out by the Commission. This might include operational information, if that is what is requested, but it would not be seeking to ‘name names’ of individuals involved.

During the investigative process, the Commission would publicly provide quarterly information updates/progress reports.

Time frame: 12 months

**Parallel Processes**

Alongside the investigative phase of the process, the following processes should, we felt, be set up and maintained.

**Research/hearings on institutional involvement in the conflict**

This could include the role of the media, churches, judiciary and any other groups and institutions which the Commission felt relevant. These hearings could be public or private, depending on the view of the Commission and NGOs and interested parties invited to make submissions.

**Emotional Support Structures**

The process of telling stories or receiving information may be difficult and traumatic for many people. A support structure running parallel to the process should be developed and should consist not only of statutory sector provision, but allow community-based victim support organisations to develop support programmes in partnership with the statutory sector. These need to be resourced and monitored to ensure best practice.

**Collection of Oral Histories**

As the process will allow individuals to tell their stories, many for the first time, the opportunity for that material to be held for the use of future generations in terms of examining the conflict and its effect on the community should not be overlooked. A process should be developed that will allow the oral submissions to the Commission to be recorded, catalogued and stored in a retrievable format and in a venue where it is accessible. This would be done only with the consent of the individual making the submission. Additionally, the subject of written submissions should not be overlooked. Arrangements can be made to record the testimony of these individuals, should they consent.

**Amnesty Administration Process**

The process that has been described to date does not seek to tackle the issue of retribution or amnesty. It is our belief that such issues would distract from the greater purpose of the process – that being to seek and provide truth and closure. We propose the following method for dealing with issues of amnesty/retribution.

The process is a voluntary one. Individuals who may have been involved in conflict-related incidents would make an application for amnesty to a specially appointed panel – whose make-up is decided along the same lines as the Commission – and the information they provide would be fed back into the investigative process of the Commission. The same rules would apply regarding provision of operational information and not the naming of names.
The group had a discussion regarding the ‘carrot and stick’ principle in the amnesty process. Whilst realising it was fraught with difficulty, our conclusions were that the carrot was the opportunity for individuals to be honest about their past and, in the case of those who had been convicted of offences, to have their criminal record expunged. On the other hand, where amnesty had not been sought and where investigations by the Commission turned up additional information, investigations would remain active.

How these active investigations would be dealt with was a matter that we did not have the opportunity to fully explore, but it was agreed that, as with the truth process as a whole, it would have to take part in an environment where significant changes in the political climate had taken place.

**Report to Commission**

Following the investigative phase of the process, the Commission would receive a report that would outline the findings of the investigations. The investigators would publicly present their findings. Private discussion of the report would be held with representatives of combatant groups and further clarification could be sought at this stage. The Commission would at that stage issue its interim findings and recommendations.

**Time Frame: 6 months**

**Final Report**

Following the issuance of interim findings and recommendations, the Commission would have the opportunity to update its findings and recommendations based on consultation with combatant groups and feedback from others. A final report would be issued at this stage.
<table>
<thead>
<tr>
<th>Principles</th>
<th>Purpose/Terms of Reference</th>
<th>Mechanism</th>
<th>Outcomes</th>
<th>Group 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inclusion of all actors willingness to be included</td>
<td>To investigate all conflict-related deaths and injuries from 1966 to present</td>
<td>Preparatory period of dialogue including widest possible range of groups to reach agreement on processes, mechanisms, constitution of panel, terms of reference and operational principles</td>
<td>Non-punitive</td>
<td>Non-punitive</td>
</tr>
<tr>
<td>Dialogue to reach agreement on process</td>
<td>To derive answers to questions raised by victims and relatives</td>
<td>Establish an independent panel agreed upon by victims and widest possible range of actors</td>
<td>Provide answers to victims and relatives on individual concerns</td>
<td>Provide answers to victims and relatives on individual concerns</td>
</tr>
<tr>
<td>Independence from all governments/parties</td>
<td>To advance individual and collective healing</td>
<td>Victims/relatives approach panel to seek answers to questions concerning circumstances of deaths</td>
<td>Possible investigation of groups and institutions</td>
<td>Possible investigation of groups and institutions</td>
</tr>
<tr>
<td>Victim-centred</td>
<td>To contribute to common understanding and political stability</td>
<td>Former combatants can approach panel to help in investigations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investigative rather than 'story-telling'</td>
<td>To focus on individual deaths and injuries supplemented by investigation of structural inequality</td>
<td>Panel to seek answers from organisations on behalf of the people who approached it and bring responses back to them</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Panel with powers to initiate its own investigations into, for example, the role of institutions in perpetuating the conflict</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grassroots/NGOs to be centrally involved at all stages of the process</td>
<td>To investigate the causes and consequences of the conflict</td>
<td>Preparatory phase to deliver understanding of issues and mechanisms at grassroots/community level. Should involve representative agencies (NGOs) of particular victim groups</td>
<td>Publication of Report</td>
<td>Publication of Report</td>
</tr>
<tr>
<td>Process/Panel must be raised by victims and relatives Independent</td>
<td>To address the individual concerns and issues</td>
<td>International Panel to be established. Panel is international in make-up with members selected from countries with experience of ‘truth processes’. Agreement on panel membership and remit will be reached with representatives of parties/actors. The jurisdiction/powers of the panel not subject to British High Court/Irish Supreme Court but solely to an International Court. Panel to have powers of subpoena and compellability. It will be supported by its own team of administrators and researchers, drawn from the international community, selected on basis of required technical and community-based skills.</td>
<td>Provide answers to victims and relatives on individual concerns</td>
<td>Provide answers to victims and relatives on individual concerns</td>
</tr>
<tr>
<td>Process/Panel must be International</td>
<td>To establish the ‘macro-level truth’ of the conflict as a whole</td>
<td></td>
<td>Address ‘macro-truth’ of the causes and consequences of the conflict</td>
<td>Address ‘macro-truth’ of the causes and consequences of the conflict</td>
</tr>
<tr>
<td>Process/Panel must have Investigative powers</td>
<td>To deliver acknowledgement in individual cases</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Culpability and responsibility should be institutional rather than individual</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Group 2**

Initial Phase: Gathering Information, Issues, Questions. Researchers to gather information from relevant communities. Submissions taken from individuals and community groups. Process will have public and private elements and strong input from individuals and representative community groups. Researchers to have strong emphasis on interface with NGOs, including having offices in local communities. Team to deliver a private list of issues to Panel within a set time period. Victims to be informed of the questions presented relevant to their case.

Second Phase: Questions and Answers. Panel/representatives of actors to the Conflict (loyalist, republican, British state) in private as an incentive to cooperating groups. Clear guidance given on what constitutes acceptable answers and acknowledgement. Ongoing involvement of researchers to insure the community interface element continues and answers relevant to grassroots issues. None of the evidence gathered to be used in any possible future litigation.

Final Phase: Publication of Report. Address ‘macro-truth’ of causes/consequences of the conflict, secure public acknowledgement and truth in individual cases.
Principles

International

Process/Panel must be

International

Purpose/Term of Reference

To investigate incidents involving, and policies of, all the parties to the conflict from 1968 to the present.

A Commission of 13 is established after consultation with all the stakeholders in the process, including British and Irish Governments, combatant groups and victims/representatives. The Commission is appointed to oversee the process and draft the final report. It should include individuals (both lawyers and non-lawyers) with international standing in the fields of international law, human rights and transitional justice. The Commission will hold preliminary talks to establish terms of reference and liaison structures with combatant groups. It will call for submissions from all stakeholders and commence the preliminary investigation of incidents likely to be raised by victims. (Envisaged timeframe: 3 months)

Acceptance of Submissions. Commission would hold oral hearings, similar to those organised by the Patten Commission, travelling to different venues in the 6-counties. Commissioners would be allocated to chair these hearings. Written and oral submissions could be received from both individuals and groups. The Commission would then prepare an interim report for comment, detailing the issues and incidents it would address. (Envisaged timeframe: 6 months)

Investigation. A series of investigative units would be established, each headed either by a particular Commissioner or all of them under the eye of another internationally-recognised appointee. Each investigation unit will liaise with a particular combatant group. This continuity of contact is designed to engender trust and rapport. Combatant groups will be presented with a list of incidents/policies attributed to them and asked to co-operate with the Commission in providing further detail. This might include 'operative detail', but with all names and the attribution of individual responsibility omitted. The Commission would provide quarterly updates on progress. (Envisaged timeframe: 12 months)

There will be Four Parallel Processes. 1. Hearings on the role of Institutions during the Conflict will examine the role of such social institutions as the media, churches, civil service and judiciary, either in public or private. Stakeholders and NGOs will be invited to make submissions. 2. There will be a need to provide Emotional Support Structures for those either providing, or hearing, traumatic information. Any support structure should be properly resourced and monitored. It should also include community-based victims groups and statutory bodies working in partnership. 3. Oral History Testimony can also be collected and recorded in retrievable form for the benefit of future generations, with the consent of those providing their testimony. 4. The Amnesty Administration Process should be voluntary. Applicants will apply to an appointed panel and information they provide will be fed into the investigative process. Criminal records could thereby be expunged.

Report to Commission outlining the findings of the investigators, presented publicly, followed by private clarification discussions with combatant groups. Commission published interim findings. (Envisaged timeframe: 6 months)

Final Report published.

Mechanism

Specific parties to the conflict identified included:

- Republican (CIRA, RIRA, IRA, INLA), Loyalist (UVF/RHC, UDA/UVF and other loyalist groups), and State (British Army, British Intelligence, 26-County Forces).

- To investigate the role of various other institutions during the period of the conflict including: media, judiciary, civil service, churches, etc.

- To allow for the collation and cataloguing of Oral history testimonies.

- To provide a victim-friendly environment for the testimony-gathering process.

- Acceptance of Submissions. Commission would hold oral hearings, similar to those organised by the Patten Commission, travelling to different venues in the 6-counties. Commissioners would be allocated to chair these hearings. Written and oral submissions could be received from both individuals and groups. The Commission would then prepare an interim report for comment, detailing the issues and incidents it would address. (Envisaged timeframe: 6 months)

- Investigation. A series of investigative units would be established, each headed either by a particular Commissioner or all of them under the eye of another internationally-recognised appointee. Each investigation unit will liaise with a particular combatant group. This continuity of contact is designed to engender trust and rapport. Combatant groups will be presented with a list of incidents/policies attributed to them and asked to co-operate with the Commission in providing further detail. This might include 'operative detail', but with all names and the attribution of individual responsibility omitted. The Commission would provide quarterly updates on progress. (Envisaged timeframe: 12 months)

- There will be Four Parallel Processes. 1. Hearings on the role of Institutions during the Conflict will examine the role of such social institutions as the media, churches, civil service and judiciary, either in public or private. Stakeholders and NGOs will be invited to make submissions. 2. There will be a need to provide Emotional Support Structures for those either providing, or hearing, traumatic information. Any support structure should be properly resourced and monitored. It should also include community-based victims groups and statutory bodies working in partnership. 3. Oral History Testimony can also be collected and recorded in retrievable form for the benefit of future generations, with the consent of those providing their testimony. 4. The Amnesty Administration Process should be voluntary. Applicants will apply to an appointed panel and information they provide will be fed into the investigative process. Criminal records could thereby be expunged.

- Report to Commission outlining the findings of the investigators, presented publicly, followed by private clarification discussions with combatant groups. Commission published interim findings. (Envisaged timeframe: 6 months)

- Final Report published.

Outcomes

Group 3

Report on the causes and consequences of the conflict.

Addresses truth of circumstances in unresolved individual cases.
6. CONCLUSIONS AND QUESTIONS FOR CONSIDERATION

In developing the proposals for an official truth process the Eolas group considered a range of issues. These are covered in the questions outlined below. We put them forward as part of the process of consultation we have initiated with the release of this document. We are keenly interested in your answers to the questions and in all reactions to the document.

Questions about what is important to you

• What do we mean by truth and justice?
• Can truth and justice both be delivered simultaneously? Or does justice follow truth?
• What is your understanding of the issues you are dealing with?

Questions about where you are coming from

• Who are the people, role-players and/or groups you are concerned with?
• What are the most pressing needs as you see them?
• What might happen regarding the debate on truth and justice over the next five years?

Questions about the value of truth processes

• Do you think it is important to deal with the past and the issues of truth and justice in one way or another to build peace?
• How would delivering truth and justice assist victims/survivors, the society and peace process more generally?
• Do you think it is important to uncover the truth about past events from all sides of the conflict to build peace?
• Do you think the broad contextual truth is as important, less important or more important than truth solely in individual cases?

Questions about the value of an official truth process

• Do you think serious consideration should be given to an official truth recovery or investigative process that tries to find answers to unresolved cases in the past?
• Do you think truth needs to be forthcoming from active combatants and the British state? Do you think the truth needs to come from institutions (e.g. churches, media, judiciary, security forces, etc) too?
• Do you think a broad institutional focus is better than an individual focus when dealing with the issues of truth and justice? If this was the case, could there be any problems with this?
• Do you think a more non-judicial approach to truth and justice may be more helpful in the long run than focusing on courts and punishment of those involved? Or would such an approach be problematic? Why?

Questions about the model for an official truth process

• Do you think the framework of vision, mission and principles outlined in this document is a good base for developing an approach to truth and justice in our community? Is there anything you would like to add or subtract from this list?

• Do you think the sort of investigative model discussed in this document which implies the establishment of some sort of independent panel/commission which victims from all sides of the conflict could approach to seek answers to questions, reasons for death and injury and a greater level of understanding of what happened, has any value?

• Do you have any more thoughts on the idea of an investigative model as proposed here - in terms of who should be on it, how it could work and what are its key objectives?

• How could such an approach complement any ongoing cases or judicial approaches?

• Do you have any other thoughts on how the issue of truth and justice could be dealt with that may be different to this approach?

Conclusion

It is the belief of those in Eolas that an official truth process should deliver something specific and additional to other mechanisms for dealing with the past. The proposals outlined here are premised on the belief that a full acknowledgement and understanding of the human rights abuses of the past can assist all victims and contribute to building a just future for all. Rather than focusing on individual cases, in our view such a mechanism can only work if it is capable of addressing in any report the ‘nature, causes and extent’ of the conflict in a comprehensive way. We invite and welcome your views on this document.
REFERENCES

We include here some references to information that may be helpful to those seeking to explore the global debate on truth. It is not a prescriptive list and was not used by Eolas members during the process outlined in this document. It was provided to us by Brandon Hamber for the purposes of inclusion as a reference tool for this report.

DEALING WITH THE PAST & TRUTH COMMISSIONS
INTERNET RESOURCES

Compiled by Brandon Hamber
E-mail: mail@brandonhamber.com
September 29, 2003

Online Bibliographies

Address: http://www.usip.org/research/rol/tjmandela.html

Ford Foundation: Selected Bibliography on Truth Commissions and Transitional Justice
Address: www.fordfound.org/truth/

Thematic Guide to Truth and Reconciliation - INCORE: Covers a wide range of truth and reconciliation resources on the Internet. Deals with several countries.
Address: http://www.incore.ulst.ac.uk/cds/themes/truth.html

Online Publications

Past Imperfect: Dealing with the Past in Northern Ireland and Societies in Transition: On-line book explores whether Northern Ireland should have a truth commission. It draws on chapters from authors in South Africa, Guatemala and Northern Ireland.
Address: http://www.brandonhamber.com/pubs_pastimperfect.htm

Address: http://www.csvr.org.za/pubsdist/pubstrc.htm

Brandon Hamber: Papers and work of Brandon Hamber on Dealing with the Past, Mental Health and Truth Commissions.
Address: http://www.brandonhamber.com/publications.html

Address: http://www.idea.int/conflict/reconciliation/
Projects

Truth Commissions.Org: On this website research on past Truth Commissions is organised in a manner that is oriented towards decision making, to enable designers of future Commissions to identify the critical factors and potential solutions relevant to their societies.
Address: http://www.truthcommission.org

The United States Institute for Peace: The library keeps records on truth commissions and peace agreements.
Address: www.usip.org/library/truth.html

CAIN (Conflict Archive on the Internet - Northern Ireland): Valuable resource of information and source material on the Northern Ireland conflict.
Address: http://cain.ulst.ac.uk

Legacies of Authoritarianism Project: This project explores the way authoritarianism remains embedded in institutions, culture, and identities.
Address: http://wiscinfo-nt.doit.wisc.edu/globalstudies/LOA/index.htm

Dealing with Past: Site of War Resisters International: WRI's project aims to evaluate the experience of such a traumatic past by looking into different ways of dealing with it - truth commissions or war crimes tribunals are only two examples.

Organisations

Centre for the Study of Violence and Reconciliation: A Centre set up in 1988 and holds over ten years of research online about the South African Truth and Reconciliation, as well as papers and documents on societies in transition.
Address: http://www.csvr.org.za

Institute for Justice and Reconciliation: An institute set up after the South African TRC to grapple with the legacy of the past and promote reconciliation.
Address: http://www.ijr.org.za/index.html

International Centre for Transitional Justice: A centre founded in New York in March 2001 to assist societies pursuing accountability for human rights abuse arising from repressive rule, mass atrocity or armed conflict.
Address: http://www.ictj.org
Country Specific Truth Commissions

NeverAgain.net - Truth Commissions Worldwide
Information on truth commissions worldwide.
Address: http://www.neveragain.net/common/?Category=80

Truth and Reconciliation Commissions in Latin America: Provides information about the Truth Commissions of Argentina, Bolivia, Brazil, Chile, Paraguay and Peru (in Spanish).
Address: http://www.derechos.org/koaga/iii/1/cuya.html

Chilean Truth Commission Rettig Report: This site contains the full text of the Report from the Chilean Truth Commission, the Rettig Report.
Address: http://www.derechoschile.com/english/resour.htm

East Timor Truth Commission: Information on the East Timor Truth Commission
Address: http://www.easttimor-reconciliation.org/

Sierra Leone Truth Commission: Information on the Sierra Leone Truth Commission.
Address: http://www.sierra-leone.org/trc.html

Peru Truth Commission: Information on the Comisión de la Verdad y Reconciliación
Address: http://www.cverdad.org.pe/


Specific Issues and Causes

Memoria y Justicia: A site about the cases against Pinochet in Chile, but interesting and useful information on the Chilean process.
Address: http://www.memoriayjusticia.cl/english/en_home.html

The Vanished Gallery: This site is an attempt to bring the voices of the disappeared of Argentina to the world.
Address: http://www.yendor.com/vanished/index.html

Chronology of “Victim” Issues in Northern Ireland: A chronology of some of the recent events and policy developments concerning victims and survivors of political violence in Northern Ireland.
Address: http://www.brandonhamber.com/chronology.html

Bloody Sunday Trust: History and educational project which aims to commemorate the events of Bloody Sunday in 1972, Derry.
Address: www.bloodysundaytrust.org/

Relatives for Justice: Support and campaign group for victims of state violence during the conflict in Ireland.
Address: www.relativesforjustice.com

Coiste na n-Iarchimí: National network for republican ex-prisoners throughout Ireland.
Address: www.coiste.ie

Source: www.brandonhamber.com
For an internet version of this list with active links go to:
www.brandonhamber.com/resources_trc.htm