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Submission
to
The Northern Ireland Affairs Committee
on
The Northern Ireland Troubles Act remedial order
(February 2025)

The Ulster Human Rights Watch (UHRW) was created in 2001 and its Chairman is Robert Campbell. The UHRW upholds and promotes human rights and fundamental freedoms and has been recognised as a major human rights organisation in Northern Ireland.

The work of the organisation has expanded so as to justify the development of an Advocacy Service dedicated to working with victims of terrorism. Terrorism has been and remains a major issue in Northern Ireland and the Advocacy Service serves the interests of victims of terrorism in Northern Ireland and across the United Kingdom of whatever background.

Introduction:

This submission to the Northern Ireland Affairs Committee will address the issues concerning (I) the Independent Commission for Reconciliation and Information Recovery (ICRIR), (II) the framework for the memorialisation of the Troubles, (III) the definition and process for reconciliation and (IV) the Remedial Order's provisions and lacunas.

I. The Independent Commission for Reconciliation and Information Recovery (ICRIR)

This section will deal with (1) the independence of the Independent Commission for Reconciliation and Information Recovery, (2) the ability of the ICRIR to conduct Articles 2 and 3 Convention-compliant investigations, (3) the replacement of inquests by investigations carried out by the ICRIR, (4) the involvement of the next-of-kin in investigations carried out by the ICRIR, (5) information disclosure in the context of national security, (6) the transparent cooperation required from the Republic of Ireland with the ICRIR and (7) building trust in the ICRIR.

1. The independence of the Independent Commission for Reconciliation and Information Recovery (ICRIR)

Both the trial judge and the Court of Appeal have analysed the operational structure of the ICRIR and have not detected a lack of independence.

The Court of Appeal has considered all the points made in support of the claim that the ICIR lacks independence and stated that it did not depart from the trial judge's finding on this issue.

The Court also considered the appointment terms for commissioners and the funding arrangements and decided that they were not unlawful or unusual. It concluded in agreement with the trial judge who found that these arrangements do not in themselves offend the principle of independence, given the fact that the ICIR is ultimately made up and staffed by independent investigators and decision makers including the commissioners.¹

As a result, the Court of Appeal dismissed this aspect of the cross appeal and recognised that the ICIR is an independent body.²

2. The ability of the ICIR to conduct Articles 2 and 3 Convention-compliant investigations

The major issue that could justify opposition to the work of the Independent Commission for Reconciliation and Information Recovery (ICIR), namely the immunity to be given to perpetrators, has been declared incompatible with the European Convention on Human Rights by the trial judge.

The trial judge decided that immunity from prosecution under section 19 and the related provisions of sections 7(3), 12, 19, 20, 21, 22, 39, 42(1) of the 2023 Act are in breach of articles 2 and 3 ECHR.³ The same conclusion was reached by the trial judge in relation to section 41.⁴ The Court of Appeal found no reason to depart from the conclusion reached by the trial judge and acknowledged that the Secretary of State for Northern Ireland had conceded that these provisions of the 2023 Act were in breach of the rights protected by articles 2 and 3 of the European Convention.⁵

The Court of Appeal in alignment with the trial judge recognised the wide powers of the ICIR and the benefit of having investigations placed within one body which is well-resourced and committed to providing outcomes within a reasonable time frame. The Court also noted that the ICIR has unfettered access to all information, documents, and materials as it reasonably requires in connection with a review. These powers said the Court cannot be criticised nor should they be underestimated.⁶

The trial judge and the Court of Appeal both recognised that the ICIR has the power to carry out articles 2 and 3 Convention-compliant investigations and states that it is an improvement on the situation in relation to inquests.⁷

¹ High Court Judgment *Dillon v. Secretary of State for Northern Ireland*, No: [2024] NIKB 11, COL12346, dated 28 February 2024, page 84, paragraph 284; Court of Appeal judgment *Dillon v. Secretary of State for Northern Ireland*, No: [2024] NICA 59, Ref: KEE12568, dated 20 September 2024, page 77, paragraph 212.

² Court of Appeal judgment *Dillon v. Secretary of State for Northern Ireland*, No: [2024] NICA 59, Ref: KEE12568, dated 20 September 2024, page 77, paragraph 213.

³ High Court Judgment *Dillon v. Secretary of State for Northern Ireland*, No: [2024] NIKB 11, COL12346 page 56, paragraph 187.

⁴ *Idem*, page 64, paragraph 207-208.

⁵ Court of Appeal judgment *Dillon v. Secretary of State for Northern Ireland*, No: [2024] NICA 59, Ref: KEE12568, dated 20 September 2024, pages 58-59, paragraphs 172 and 173.

⁶ *Idem*, page 76, paragraph 210.

⁷ Judgment *Dillon v. Secretary of State for Northern Ireland*, No: [2024] NIKB 11, COL12346, page 91, paragraph 319 and page 101, paragraph 370.

Therefore, once the immunity provisions have been removed from the 2023 Act, the ICIR will be able to carry out article 2 and 3 Convention-compliant investigations.

3. The replacement of inquests by investigations carried out by the ICIR

The Court of Appeal considered the issue of the replacement of inquests under Section 14 of the Coroners Act (Northern Ireland) 1959 by investigations carried out by the ICIR under the 2023 Act.

Based on the decision *Re Hawthorne* [2018]⁸ referring to the McKerr group of cases, which led to the UK Government setting up measures to remedy identified breaches of the Article 2 procedural obligation to investigate suspicious deaths⁹, the Court of Appeal stated that article 2 and 3 investigative obligations can be satisfied by a range of investigative means. The Court went on to say that article 2 compliance does not require an inquest in every case and an inquest is not the only method which may be deployed by a national authority. Therefore, deaths may be examined by different means by national authorities. The Court concluded that the ICIR has the capability to replicate investigations that were previously the responsibility of the Police Ombudsman for Northern Ireland and the Police Service of Northern Ireland.¹⁰

The Court of Appeal noted that the trial judge stated that the ICIR has more powers than a coroner (at paragraph 308) and that disclosure powers are an improvement on inquests (at paragraph 319).¹¹ The Court stated that the ICIR has a greater ability to take into account information which previously has been subject to a claim for public interest immunity (PII) material and that this is undoubtedly an enhancement compared to the regime that applied to legacy inquests.¹²

UHRW would not dissent from the Court of Appeal assessment in its evaluation of the ICIR capability to conduct in-depth investigations that would deliver better results than inquests under the 1959 Act. Terrorists caused the large majority of troubles-related deaths. However, the experience to date is that the application of legacy inquests shows a completely disproportionate focus on apportioning blame to those who prevented civil war in a process with a lower standard of proof than that of a criminal trial. UHRW would expect the ICIR to be able to address this imbalance and deliver satisfactory outcomes for victims of terrorism during the Troubles.

There is at present a clear two-tier approach to dealing with legacy cases: on one hand inquests (if they were to be re-instated) and Public Inquiries; and on the other investigations carried out by the ICIR. This leads to effectively a piecemeal approach that generates confusion and frustration.

Since the Court of Appeal stated that the ICIR has the capability to provide in-depth investigations that did not require inquests, the UHRW oppose the reinstatement of inquests, which would be a misuse of public money, since the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

⁸ Thomas Ronald Hawthorne and Raymond White v Police Ombudsman NIQB 5, Ref: McC10504, dated 19 January 2018.

⁹ Court of Appeal judgment *Dillon v. Secretary of State for Northern Ireland*, No: [2024] NICA 59, Ref: KEE12568, dated 20 September 2024, pages 77, paragraphs 215.

¹⁰ *Idem*, pages 79-80, paragraph 216.

¹¹ Court of Appeal judgment *Dillon v. Secretary of State for Northern Ireland*, No: [2024] NICA 59, Ref: KEE12568, dated 20 September 2024, page 82, paragraphs 223.

¹² *Idem*, page 82, paragraph 223.

provides more beneficial arrangements for historical investigations to be carried out than there are under Section 14(1) of the Coroners Act (Northern Ireland) 1959.

4. The involvement of the next-of-kin in investigations carried out by the ICRIR

The Court of Appeal had some reservations around next-of-kin participation under the 2023 Act in circumstances where the ICRIR purports to replace inquests.

The Court analysed whether there could be proper involvement of the next-of-kin under the current ICRIR structure, which is dependent on the existing provisions of the 2023 Act, and identified two issues.¹³

First, the Court found that families should be able to choose their own lawyers and that they should be independent of the adjudicatory body. Secondly, the Court also noted that there was no provision in the 2023 Act that required disclosure of sensitive materials to the next-of-kin (see comment in section 5 below).

For these reasons, while the trial judge had adopted a wait-and-see approach due to the on-going work being carried out by the ICRIR to develop appropriate procedures, the Court of Appeal decided that a declaration of incompatibility on both these issues should be made.¹⁴

5. Information Disclosure in the context of national security.

The Court of Appeal stated that there is insufficient victim' involvement in relation to disclosure of sensitive material because the Secretary of State for Northern Ireland has an effective veto over whether and how the ICRIR can share this sensitive material with the next-of-kin.¹⁵ It also appeared that the ICRIR did not have the freedom to release even the gist of sensitive material to the next-of-kin of its own volition.¹⁶

The Court of Appeal stated that the new regime for disclosure under the 2023 Act was going beyond the coronial practice under the 1959 Act. Sensitive information as mentioned in Schedule 6 of the 2023 Act is defined as a much wider category than public interest immunity (PII) materials that is currently considered under the Coronial legislation. Having analysed the arrangements under the 2023 Act, the Court concluded that the ICRIR must effectively seek permission from the Secretary of State for Northern Ireland to share sensitive information. Therefore, the Court found that the Secretary of State for Northern Ireland has the final say on matters of disclosure.¹⁷

The Court said that this raises an issue that has the potential to affect all cases where inquests are to be replaced by the ICRIR under the 2023 Act. The Court disagreed with the trial judge's approach of waiting and seeing how the provisions would operate in practice, in the knowledge that the ICRIR is

¹³ *Idem*, pages 80, paragraph 218.

¹⁴ Court of Appeal judgment *Dillon v. Secretary of State for Northern Ireland*, No: [2024] NICA 59, Ref: KEE12568, dated 20 September 2024, pages 81, paragraphs 222.

¹⁵ *Idem*, page 82, paragraphs 224-225.

¹⁶ *Idem*, page 82, paragraphs 228.

¹⁷ *Idem*, page 82, paragraphs 232-234.

currently trying to address this issue to develop procedures that are Convention-compliant.¹⁸ Consequently, the Court of Appeal declared incompatible with the European Convention all relevant disclosure provisions.

6. The transparent cooperation required of the Republic of Ireland with the ICIR

One of the major issues which is of serious concern and that remains to be addressed urgently is the absence of cooperation by the Republic of Ireland with the ICIR in order to successfully address the legacy of the past in a number of cases.

During the Troubles there were major incidents with cross-border involvement such as in the cases of the Kingsmill massacre, Narrow Water massacre, La Mon Hotel atrocity, Enniskillen bombing and many others. In many cases explosives would have been made in the Republic of Ireland and perpetrators from the Republic crossed the border to commit acts of terrorism in Northern Ireland before returning to a safe haven in the Republic. Having access to all material and information from the Garda Síochána, Ireland secret services and the Irish army would assist in providing answers to next-of-kin and solving investigations.

The lack of structures to deal with legacy issues in the Republic of Ireland is a considerable deficiency when it comes to accountability. In order to remedy this deficiency, the ICIR should be given access to all relevant information held by the authorities of the Republic of Ireland along with the power to compel the authorities in the Republic of Ireland to deal with the legacy of the past.

7. Building trust in ICIR.

Once the remedial order has corrected all incompatibilities with the European Convention on Human Rights as identified by the High Court and the Court of Appeal, there would be no justified reason to oppose the work of the ICIR. Building trust can best be done via engagement and ultimately by results.

Given previous actions of successive governmental legislation, there is much troubles-related evidence that is off-limits for criminal investigators. Confidence has been lacking in the past due to the lack of funding for the LIB and PONI to carry out effective investigations within a reasonable time frame. Therefore, having in one Convention-compliant organisation such as the ICIR with sole responsibility to investigate may well be the solution.

II. The framework for the memorialisation of the Troubles

The memorialisation of the past should be built on a (1) clear distinction between victims of crime and perpetrators of acts of terrorism, (2) the necessary distinction between terrorist violence and the use of force and (3) produce an effective process for recording a history of the Troubles.

¹⁸ Idem, page 82, paragraphs 236.

1. Clear distinction between victims of crime and perpetrators of acts of terrorism

The definition of victim in the context of the terrorist campaign known as the ‘Troubles’ is a key issue that is not addressed in the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. Victims of crime must be dissociated from perpetrators in order to ensure that the memorialisation of the Troubles delivers for the victims of crime and does not benefit perpetrators.

A major lacuna of the 2023 Act is that it does not make any distinction between victims of terrorism and perpetrators of acts of terrorism during the ‘Troubles’, which is a euphemism used to designate the campaign of Terrorism. The definition of victim of crime, provided for in the Justice Act (Northern Ireland) 2015, should constitute the basis for the memorialisation of the troubles. Those who were involved in acts of terrorism should not be confused with victims of crime under the guise that they should be considered and treated as victims on a par with innocent victims of terrorism.

The Victims and Survivors (Northern Ireland) Order 2006 does not provide a definition of victims and survivors but only an interpretation¹⁹. This wide interpretation of victims and survivors applies to perpetrators of acts of terrorism as well as to innocent victims of acts of terrorism. However, innocent victims of terrorism, who constitute the largest category of victims of the ‘Troubles’, must not be confused with perpetrators of acts of terrorism. The majority of cases of murder or physical/psychological injuries or both resulted from acts of terrorism perpetrated during the terrorist campaign against innocent civilians, politicians, judges, police officers and soldiers. A clear and unambiguous definition of victim of crime including victim of terrorism is therefore required so as to establish an appropriate process for the memorialisation of the troubles, which is victims of terrorism-centred and benefits society as a whole. The definition of victim of terrorism prepared by the UHRW²⁰ is in line with the United Nations Human Rights Council Framework principles for securing the human rights of victims of terrorism²¹ and the legislation and guidance provided by the European Union in relation to victims of terrorism.²²

¹⁹ Article 3 of the Victims and Survivors (Northern Ireland) Order 2006 bears as a title: ‘Interpretation: “victim and survivor”’.

²⁰ Ulster Human Rights Watch Advocacy Service Information Booklet, Truth and Justice for Victims and Survivors of Terrorism, 2018:

“‘victim of terrorism’ means:

- 1. A natural person who was killed as the direct result of a terrorist act and was never engaged in any form of terrorist activity and the close relative or a dependent of such a person;*
- 2. A natural person who has suffered physically and/or psychologically as the direct result of a terrorist act and was never engaged in any form of terrorist activity and the close relative or a dependent of such a person;*
- 3. A natural person who was killed or has suffered physically or psychologically as a result of finding him/herself in proximity to a terrorist act being committed or who has been wrongly associated with the perpetration of such an act;*
- 4. A natural person who has suffered physically and psychologically as a result of bringing assistance to a victim of a terrorist act.”*

²¹ United Nations Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HR/20/14), 4 June 2021.

²² EU Handbook on Victims of Terrorism 2021, https://ec.europa.eu/info/policies/justice-and-fundamentalrights/criminal-justice/victims-rights_en

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, established minimum standards on the rights, support, and protection of victims of crime and provides in Article 2 a definition of victim of crime that includes victims of terrorism which reads as follows:

“(a) ‘victim’ means:

- (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;*
- (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death;*
- (iii) ‘family members’ means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim.”*

The Directive was transposed into the national legislation of all European Union member states. As a result, all nations of the United Kingdom and the Republic of Ireland have the same definition of victim of crime, including victim of terrorism, which is provided in Northern Ireland in Section 29 of the Justice Act (Northern Ireland) 2015, and in the Republic of Ireland in the Criminal Justice (Victims of Crime) Act 2017.

The definition of victim of crime is a sound foundation on which the memorialisation of the Troubles can be built.

2. The necessary distinction between terrorist violence and the use of force

It appears that in a number of documents dealing with the legacy of the past such as the Operational Design of the ICIR, reference is made only to ‘violence’ but not to terrorism, although this is clearly the major issue that needs to be dealt with in relation to dealing with the past and the memorialisation of the Troubles. Nor does this document mention the use of force stated in Article 2, paragraph 2 of the European Convention on Human Rights, which must also be distinguished from violence.

The primary duty of a state actor, particularly a member of the security forces, is to use force and this is legitimate and legal, in defence of any person, against unlawful violence, or in order to effect a lawful arrest, or to prevent the escape of a person lawfully detained. State actors do not use violence but it is their use of force that needs to be assessed on the basis of the principle of proportionality to ascertain whether or not it is lawful.

The approach taken to the memorialisation of the Troubles should make an unambiguous distinction at all times between terrorists who used violence with the aim of achieving their aims and members of the security forces who used force to combat terrorism, protecting people and properties during the Troubles.

3. Produce an effective process for recording a history of the Troubles.

An effective process for recording a history of the Troubles should deliver a truthful account of what happened during the Troubles based on reliable evidence.

The Ulster Human Rights Watch Advocacy Service has produced an effective process in creating the Legacy of the Past Record (LPR) with the support and cooperation of the Public Record Office of Northern Ireland (PRONI) under Article 5 of the Public Order (Northern Ireland) Act 1923.

The Legacy of the Past Record is dedicated to receiving narratives and audio-visual recordings from victims of terrorism in Northern Ireland.

The process for setting up and operating the Legacy of the Past Record consists of (1) the UHRW Legacy of the Past Record Agreement between PRONI and UHRW-Advocacy Service, which is the framework agreement between our organisations, (2) the UHRW's Legacy of the Past Record Guidelines and cataloguing guide, (3) the information leaflet for written narrative and audio/video recording by victims of terrorism, the (4) agreement between UHRW Advocacy Service and the victim of terrorism, once the victim of terrorism agrees to provide a narrative or an audio-visual recording and (5) the deposit Agreement in relation to UHRW's Legacy of the Past Record by which a collection of narratives or audio-visual recordings are transferred by UHRW to PRONI. In order to facilitate access to the UHRW Legacy of the Past Record, two leaflets have been made available: (6) the general information leaflet on the UHRW's Legacy of the Past Record for victims of terrorism and (7) the guidance leaflet on the UHRW's Legacy of the Past Record for victims of terrorism.

III. The definition and process for reconciliation

Reconciliation needs to be defined and its process outlined in the context of the recent history of Northern Ireland. We will consider the (1) definition of reconciliation and the (2) process to achieve reconciliation.

1. Definition of reconciliation

There is a serious lacuna in the 2023 Act, which is the absence of a definition of what 'reconciliation' is, although this is the main objective to be pursued and promoted by the Independent Commission for Reconciliation and Information Recovery (ICRIR) and the Designated Person dealing with the memorialisation of the legacy of the past.

Broadly speaking, the term "reconcile" is defined as follows: "to re-establish friendly relations; to bring to agreement, to make compatible; to resolve",²³ or elaborating a little further, to "harmonise (conflicting beliefs etc.); bring back into friendship or cause to accept (an unpleasant situation)".²⁴ The need for reconciliation therefore, presupposes that the respective relationship broke down at some point in the past.

²³ The New English Dictionary (Geddes and Grosset Ltd., 1994) (Revised and reprinted 1995).

²⁴ Collins Gem English Dictionary (Harper Collins, 1994).

While at one end of the scale, it may be the case that a relationship has broken down due to a simple misunderstanding on the part of one, or more of the parties involved, whereupon an honest discussion will go some way to re-establishing friendly relations; at the other end of the scale, it is more often the case that relationships have broken down as the result of wrongdoing, again on the part of one or more parties. Reconciliation in this situation therefore becomes more complicated in that there may very well be a need for the wrongdoer(s) to recognise the offence and to commit to not reoffending before reconciliation can be achieved.

In a democratic society acts of terrorism are never justified. The Troubles is a euphemism for the campaign of terror started in Northern Ireland in 1969. At the time, the United Kingdom had subscribed to the European Convention on Human Rights, and had given all individuals the right to lodge a petition with the European Court of Human Rights for alleged violation(s) of his/her human rights by the United Kingdom government. In any case of serious and sustained violations of human rights, there was always a legal remedy available to seek redress and there was no justification for engaging in terrorism because of alleged violations of human rights or discrimination.

Regardless of allegations of religious discrimination, the real reason for waging a campaign of terrorism was to achieve a united Ireland by way of the forced integration of Northern Ireland into the Republic of Ireland. Terrorist violence was intended to overthrow democracy. Since WWII the principle constantly applied was that of auto-determination. According to this principle any people residing on a particular territory could choose to gain independence or have their country integrated into the territory of another State if the majority consented to this. Therefore, a united Ireland could only be achieved by way of consent of the majority of the people of Northern Ireland and them alone. Since there has never been, at any time from partition in 1921, a majority of the people of Northern Ireland willing to join the Republic of Ireland, a united Ireland was not achievable. Terrorism could not overcome democracy or the principle of consent and was never justified in attempting to achieve a political aim against the will of the majority of the population of Northern Ireland.

It is in this context that the definition of what reconciliation is can be provided on the basis of the Judeo-Christian principles that constitute the foundation of Northern Ireland society.

Those who were involved in terrorism must accept that orchestrated violence that resulted in heinous murders and serious injuries perpetrated against innocent civilians and members of the security forces was totally wrong and unjustified. This is required to satisfy the actual desire for a reconciled relationship in that, for reconciliation to be achievable there must be a willingness on the part of all parties to achieve that goal. When we further bear in mind that in Northern Ireland today, neither of the two opposing communities, Irish Nationalists or Northern Ireland Unionists, are experiencing any significant impoverishment, disadvantage, or threat of violence, from each other, it becomes apparent that it is only the attitude to terrorist violence that creates the barrier. Remove that barrier, and there is every possibility that reconciliation can take place, even though some, in the short term at least, may have to accept what they now perceive to be “an unpleasant situation”, but which in the long term can open the door to a brighter future free from the baggage of the past.

What then would this remorse, or to use a Judeo/Christian term, “repentance” actually entail? So often today repentance is downplayed with the result that it amounts to little more than an apology. Christian theologian and author John MacArthur highlights the important distinction: “Genuine repentance always involves a confession of wrongdoing and a willingness to make things right,

[whereas] an apology often takes the form of an excuse".²⁵ A genuine desire for reconciliation therefore, will first and foremost be evident by virtue of the fact that wrongdoers avoid making excuses, acknowledge the wrong of terrorism and are first reconciled with the principle of democracy which implies the use of democratic means to seek redress for alleged violations of human rights and for achieving a political end whatever it is, such as a united Ireland.

2. The process to achieve reconciliation

Christian counsellor Ken Sande produces a comprehensive seven-point guide called the Seven A's, which provide a process for genuine repentance leading to reconciliation. The guidelines come under the following headings:

- **Address Everyone Involved:**
Generally speaking, the sin should be confessed to everyone who has been affected by the wrongdoing.
- **Avoid If, But, and Maybe:**
Confession is not really confession if the desire is to shift the blame onto others, or if an attempt is made to minimise or excuse guilt.
- **Admit Specifically:**
The more detailed and specific one is when making a confession, the more likely the response will be positive.
- **Acknowledge the Hurt:**
If, by confessing, the true desire is for a positive response, make a point of acknowledging remorse and sorrow for the hurt you have caused. It is important to show that you have genuine empathy for the other person's feelings as a consequence of your actions.
- **Accept the Consequences:**
Accepting any and all consequences for your actions is another way of demonstrating the genuineness of your confession.
- **Alter Your Behaviour:**
Sincere repentance is also marked by a desire to change your behaviour in the future and in the context of Northern Ireland there should also be a commitment never to reoffend by re-engaging in acts of terrorism.
- **Ask for Forgiveness (and Allow Time):**
This should also be accompanied in the context of what happened during the Troubles with the offer of an appropriate form of reparation.

Ken Sande concludes that when we go to confess a wrong, we should always bear in mind that we are serving the other person and not simply confessing to gain comfort for oneself.²⁶

Mention should also be made of the specific nature and context of the terrorist campaign and its wider impact. John MacArthur highlights this important point: "The arena of the confession should be as large as the audience of the original offence. Public transgressions call for public confession."²⁷

²⁵ John MacArthur, *The Freedom and Power of Forgiveness* (Crossway Books, Illinois, USA, 1999), 84.

²⁶ Ken Sande, *The Peace Maker A Biblical Guide to Resolving Personal Conflict*, (Baker Books, Grand Rapids, MI, 2004), 126-134.

²⁷ John MacArthur, *The Freedom and Power of Forgiveness*, 185.

Again, in light of the fact that the Northern Ireland conflict was played out in front of the world's media, and in many instances, deliberately so, it is only fitting and proper that any subsequent repentance for the crimes committed during that same conflict should address that same audience, not least with a view to stemming the flow of propaganda that is deliberately used to keep old animosities alive.

In the context of unjustified violent conflict, lasting reconciliation will only be achieved when the wrongs committed are recognised for what they were. Of course, any long-term political and constitutional aspirations can continue to be pursued by those who wish to see a united Ireland by way of democratic means while promoting and maintaining a reconciled society.

IV. The Remedial Order's provisions and lacunas

The High Court and the Court of Appeal both have recognised that the ICIR has the potential to carry out Convention-compliant investigations.

The incompatibilities that were identified by the courts and need to be addressed to be fully Convention-compliant are: the removal of all immunity provisions, and the need for proper arrangements to provide for the involvement of next-of-kin in investigation processes, by way of representation by lawyers of their choice and attendance at public hearings, and all while ensuring that there will be adequate disclosure of sensitive material held by the ICIR.

The Remedial Order as it stands deals mainly with the following issues:

- The removal of provision relating to immunity from prosecution;
- The removal of restrictions on admissibility in civil proceedings of material obtained by the ICIR;
- The removal of bars on bringing civil claims relating to the Troubles.

Therefore, the Secretary of State for Northern Ireland must consider the necessary arrangements to be put in place in legislation in order to guarantee the involvement of the next-of-kin in investigations, so that they may be represented by their lawyers during public hearings. Consideration must also be given to the disclosure of sensitive material that should be equivalent to that which is currently provided in the coronial legislation.

Furthermore, the government of the United Kingdom must ensure that the government of the Republic of Ireland cooperate fully with investigation processes carried out by the ICIR, so that all relevant information held by the Irish authorities in relation to cross-border Troubles incidents are made fully available to the ICIR.

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Charity Registration: NIC 101384 Company No: NI 43494



A project supported by PEACEPLUS, a programme managed by the Special EU Programme's Body (SEUPB)



Northern Ireland Executive



Rialtas na hÉireann
Government of Ireland

