

Inquiry into the Consultative Group on the Past

Evidence submitted by Jim Allister QC MEP

Chapter 1: Summary of main points

- The recommendations of the CGP are fundamentally flawed because the definition of “victim” which they adopt is totally unacceptable. This pollutes the Report in its entirety.
- While many have welcomed the Secretary of State’s announcement that the recommendation to award a £12,000 payment to the nearest relative of all those killed during the Troubles will not be implemented I believe it would have been better if the payment was made to innocent victims while those who died while engaged in criminality were excluded.
- The crimes committed during the Troubles should be a matter for the criminal justice system. The Legacy Commission proposed by the CGP would be totally unsuited to perform the functions envisaged for it.
- The Quigley – Hamilton recommendations should not, as the CGP suggests, be incorporated into statute. They are an unwarranted and unnecessary sop to terrorists and an insult to innocent victims. Secondly, they perpetuate the IRA myth that there is a difference between terrorism and “ordinary” crime.
- I reject any suggestion of a shared memorial or shared day of reflection.
- There should be no question of an amnesty for terrorists.

The Specifics of the Report

Chapter 2: Developing a Road Map for the Future

2. *“A reconciled society takes collective responsibility for the past instead of attributing blame and avoiding responsibility”* (page 50).

This sentence could have come straight out of a Sinn Fein policy document which attempts to suggest that everyone is to blame for the Troubles and the finger should not be pointed at those responsible - the terrorists who took up the gun and the bomb. Only an insurrectionist and criminal minority in Northern Ireland engaged in terrorism and violence. This statement it is an insult to the vast majority of the Province’s population who were and are law-abiding.

3. *“The past should not be allowed to continue to shape the future in a way which is unhelpful and divisive”* (page 56).

Again the thinking behind this statement is pro-terrorist. The implication is that one who opposes the elevation of Sinn Fein/IRA to government because of their involvement in violence is being “unhelpful”. The innocent victims of the Troubles should never be forgotten. Nor should the fact that people who now hold Ministerial office made them victims. The uncomfortable realities of the “peace process” should not be swept under the carpet.

4. *“Since NI now has a justice system as worthy as any other society, and will soon have more local control over it, people who claim justice from the system cannot have their claims denied”* (page 57).

To suggest that victims are more likely to have their claims for justice met when policing and justice powers are devolved to Stormont is quite simply ludicrous. No terrorist inclusive executive is going to pursue those of their own who spent thirty years killing and maiming the people of Northern Ireland.

5. *“Many people privately felt that drawing a line in some way might be the best way forward but could not bring this out publicly because members of their community were still pressing for prosecutions of the “other side”* (page 58).

(a) Many in Northern Ireland have been profoundly disturbed by the suggestion that there were those who said one thing to the CGP behind closed doors and another to the public. Since the Report’s publication, Jarlath Burns of the Eames/Bradley Commission has alleged that prominent Unionist politicians, who have publicly protested about the contents of the report, were supportive in private.¹ It is appalling if some, for the sake of public consumption and approval, have trotted out condemnation while all the time encouraging Eames/Bradley down this path. This truly would be duplicitous.

(b) Under no circumstances should the Committee give any credence to this point in the Report. Those who express one view point in private and another in public deserve nothing but contempt.

6. “[*The Group*] recognises that the very demand for justice can mitigate against the main goal of reconciliation.... A long and determined pursuit of penal justice could be viewed as a means of continuing the conflict rather than enabling healing” (page 58).

(a) Innocent victims will be outraged by this suggestion. Justice is a fundamental in any society. Indeed, this passage of the report flies in the face of the passage quoted in Paragraph 4 of my response. How can the Report’s authors simultaneously argue that “*people who claim justice from the system cannot have their claims denied*” (page 57) and also say that a pursuit for justice has a negative impact upon society?

(b) Secondly, those who seek justice for their loved ones will be grossly offended by the suggestion that their demands are a “*means of containing the conflict*”. It is internationally recognised that obtaining justice for those who suffered unjustly is a key aspect of bringing closure to the victim and enabling healing. The fact that criminals have been allowed to get away with their actions is often the most difficult aspect of the entire process for victims.

Chapter 3: The Conflict and Society

7. When discussing Republicans the report states: *“Lives were lost in the course of active service. Many thousands spent years in prison; their families were inevitably affected and their suffering was rarely noted outside their own community”* (page 63).

(a) The use of the term *“active service”* to describe terrorists engaged in murderous criminality in a press release issued by OFMDFM, when a member of the Victims’ Commission was discussing how her brother lost her life while attempting to murder, has already provoked huge outrage among innocent victims in Northern Ireland.² Its use suggests that terrorists were military personnel engaged in a war rather than the reality – vile terrorists bent on murder and mayhem. I deeply regret that the CGP has, by employing the term, sought to sanitise the murders of Republican terror squads.

(b) Secondly, to highlight what the Report describes as the *“suffering”* of the prisoners would also be deeply offensive to those who lost loved ones at the hands of terrorists. While innocent victims were cut down without warning, those who were arrested and served time were, scandalously, treated differently from *“criminal”* prisoners, being allowed to wear their own clothes and freely associate with other prisoners on the wings, and ultimately, and shamefully, released under the Belfast Agreement.

8. When talking about members of the security forces the report states: *“They were emphatic that history should not reflect any equivalence between the actions of terrorists and the response of the forces of law and order”* (page 64).

I fully support this point which was evidently the unanimous position of the of the security force personnel who gave evidence to the CGP. Sadly the CGP has rejected this suggestion. The shared day of reflection (page 100), suggestions about a shared memorial (page 103), the proposed £12,000 payment to all who lost relatives during the Troubles, etc all make it evident that the CGP disregarded this position and refused to draw a distinction between those who fought to uphold the rule of law and those who opposed it.

9. (a) On pages 66 to 68 the CGP Report deals with victims’ issues. It is here that the core of the problem with this Report can be found. Without a proper definition of *“victim”* all of the recommendations relating to that group will be flawed.

(b) I deeply regret that the Report’s authors saw fit to accept the definition contained within the 2006 Victims and Survivors Order. I repudiate this definition as it defines a victim or survivor as someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident, thus puts the terrorist injured by his own bomb on a par with the innocent victims of Enniskillen, Claudy and La Mon. The primary blame for this definition lies with those who introduced it and the failure of the devolved administration to do anything to rectify it but ultimately the CGP are responsible for accepting this flawed definition. This is to its eternal shame. If they had

really wanted to help victims they would have recommended change to this statutory definition.

10. *“In the course of the consultation a number of people drew attention to the difficulties experienced by those with conflict-related convictions. In particular, ex-prisoner groups noted that applying for jobs, obtaining a mortgage and even lesser forms of credit are problematic where the applicant has a criminal record. Many expressed a desire to put their past, and the actions they committed as part of paramilitary organisations, behind them and to lead normal lives. Some wanted to give something worthwhile back to their community. The implications of their criminal record for conflict-related offences make it difficult to secure a permanent occupation and so provide for their family.*

“The Group is persuaded that more should be done to allow those with conflict-related convictions to become integrated into society by affording them equality of access to jobs, goods and services. Many have played active and positive roles in conflict transformation” (page 81).

(a) I have long been an opponent of terrorist convicts being treated differently from others convicts when it comes to employment.³ The murders, robberies and other crimes committed by terrorist organisations – both Republican and Loyalist – should be treated as the crimes they really are. This recommendation, as with so many others in the report, would if implemented help to legitimise and sanitise terrorism.

(b) The suggestion that many former prisoners have *“played active and positive roles in conflict transformation”* is grossly offensive to those who suffered at the hands of terrorists. The Report ignores the fact that if former prisoners and their colleagues who evaded capture had not engaged in violence we would not have had a conflict in the first place! Secondly, the lauding of former prisoners like Gerry Kelly and Martin McGuinness for their supposed role in *“conflict transformation”* is deeply upsetting to many who suffered during the Troubles.

(c) As a future deterrent it is right that resort to terrorism should bear a life-long disincentive. To remove from a terrorist the price of his voluntary pursuit of terrorism, while his victim has no life to lead, would be a further monstrous injustice.

Chapter 4 Victims and Survivors

11. “One important part of the work of the CVSNI will be the establishment of a Victims and Survivors Forum. Although this will initially face some resistance from those who do not want to interface with groups traditionally hostile or at least suspicious of each other, it will be the best place to begin to address the process of reconciliation” (page 89).

(a) The CGP’s views on the Forum are, frankly, insulting. Innocent victims oppose being grouped with those who made them victims. Paragraph 20 of OFMDFM’s *Outline Draft Strategic Approach for Victims and Survivors* states that the Forum must “be representative of victims and survivors”. The present iniquitous statutory definition of victim means perpetrators of terrorism will have parity with their victims. This is obscene and innocent victims are quite correct to oppose it. It would have been much better if the CGP had taken a stand for innocent victims instead of expressing a hope that their position will change over time.

(b) It is important to note that Martin McGuinness will play a key role in the establishment of the Forum (the Commission is required to “obtain the First and deputy First Minister’s agreement to the costs of the work programme” (*Outline Draft Strategic Approach for Victims and Survivors*, Paragraph 22). McGuinness, by his own admission, was a commander in a terrorist organisation.⁴ How can any innocent victim have any confidence in such a system?

12. I cautiously welcome the Secretary of State’s announcement that the proposed £12,000 payment to the nearest relative of all those who met their deaths during the Troubles (pages 90 – 94) will be dropped. However, it would have been much better if the Secretary of State had decided to award the payment to innocent victims while excluding terrorists. This would have laid down a clear marker that there is a difference between innocent victims and terrorists.

Chapter 5 Remembering

13. *“People should [not] necessarily undertake the process of telling and listening to stories in the presence of those whom they believe are responsible for their hurt. Rather, those involved in storytelling should accept the importance of all sectors of society telling their stories. How and when this acceptance develops into active listening and understanding is an issue for each individual to address. While it is this listening which could ultimately help contribute to reconciliation in our society, such a process will not be easy for those who have experienced great suffering during the conflict.*

*“Individuals participating in storytelling projects must be able to tell their story freely in a private context, **but should be able to omit information which may put them at risk - either from prosecution or retaliation - before their story is put in the public domain**” (page 99).*

(a) This is another adoption of an IRA/Sinn Fein proposal, propagated as their best means to rewrite history. I reject it.

(b) The closet amnesty which it contains is repugnant.

(c) Innocent victims want and deserve justice, not story telling.

14. (a) Innocent victims will be deeply offended by the proposed “shared day of reflection”. The suggestion that there is some sort of parallel between acts of Remembrance on 11th November and celebration of an Uprising on Easter Sunday is outrageous. Easter Sunday is a day when Republican terrorists are commemorated while 11th November is a day when those who died in the fight for freedom in two world wars and, indeed, those who died to defend freedom in more recent conflicts, are remembered.

(b) The suggestion that the First and deputy First Ministers could jointly address the Assembly on an agreed date (page 101) is also unacceptable. The deputy First Minister remains unapologetic about his role in a terrorist organisation and is therefore supremely unfitted to lead tributes to those who suffered and died during the Troubles.⁵

15. The proposal that at some time in the future a shared memorial could be created (pages 102 to 105) is something which all fair minded people will reject. No one could reasonably expect Michelle Williamson to be happy about her parents who were killed in the Shankill bombing being commemorated alongside Thomas Begley who was killed planting the bomb. I submit that this proposal, like the entire Report, should be binned as it draws no distinction between victim and perpetrator.

Chapter 6 Legal Processes: The Arguments for Change

17. *“On the basis of its consultation, the Group does not believe that the present legal processes are fully meeting society’s needs. There is a tendency to re-fight the conflict through the courts; to pursue truth through litigation; to deal with the past without a perspective for the future.*

“Public inquiries have proved protracted and expensive with a narrow focus on a very few cases. The issue of the promised Inquiry into the death of Patrick Finucane remains unresolved.

“The Police Service of Northern Ireland (PSNI) has found it increasingly difficult to service the demands of historical inquiries. While both the Historical Enquiries Team (HET) and the Police Ombudsman’s Unit are dealing with historical cases, such investigation has become an increasing burden on both the PSNI and the Police Ombudsman respectively. Neither the PSNI nor the Police Ombudsman can build for the future if they are burdened by the past” (page 124).

(a) The pursuit for truth and justice in relation to crimes committed during the Troubles should now be an exceedingly easy task as the political wing of the IRA now supposedly supports the criminal justice system in Northern Ireland! One cannot be said to support the rule of law and conceal knowledge of unsolved crimes. So, those who now hold government office could solve multiple crimes at a stroke. However, hundreds of IRA murders in Northern Ireland remain unsolved and will remain so, not just because Eames/Bradley wants to move away from the pursuit of justice but because it is no longer politically expedient to pursue the terrorist killers of a party of government. .

(b) Any attempt to take the investigation of crimes committed during the Troubles outside the criminal justice system will be resolutely opposed by victims who still demand their right to a day in court.

18. While recognizing the burden which investigating historic cases places upon the PSNI and Police Ombudsman’s Office I am deeply concerned about the proposal to remove the investigation of historic cases from the PSNI and give it to the proposed new Legacy Commission. This would represent an unwelcome attempt to take the investigation of crimes committed during the Troubles out of the remit of the criminal justice system.

19. *“At the end of its mandate the Commission would make recommendations on how a line might be drawn so that Northern Ireland may best move to a shared future. This might embrace a procedure whereby historical cases, including those against ‘on the runs’, would no longer be actively pursued” (page 126).*

“An amnesty now would have the advantage of removing some of the anomalies and inconsistencies in the handling of historical cases. It would avoid some of the expense of a new mechanism. It would allow greater focus on information recovery. It would take account of the fact that the chances of successful prosecutions in historical cases are fast receding. It would avoid problems arising from criminal case reviews. It might be one way of encouraging society to move on.

“An amnesty may not necessarily contravene rights under the European Convention of Human Rights (ECHR) if there are exceptional circumstances surrounding the peaceful resolution of a conflict. But the current jurisprudence of the European Court of Human Rights (ECHR) and the developing practice of international law points strongly against amnesties.

“The Group has concluded that a general amnesty would not be appropriate in the present situation. Many families may need to adjust their expectations of criminal justice. But there was a strong view expressed by both politicians and victims in the Group’s consultation that the route of investigation and prosecution should be kept open.

“The Group accepts this argument but recommends that the proposed Commission should make recommendations on how a line might be drawn at the end of its five-year mandate so that Northern Ireland may best move to a shared future” (132) .

(a) Were it not for the furore provoked by the £12,000 payment this would, undoubtedly, have been the one proposal which would have produced an explosive reaction. Imagine the outcry if, a decade after the war, it had been proposed that Nazis involved in the Holocaust who fled to South America should no longer be perused. Yet a proposal tantamount to that has been put forward by the CGP. This is totally outrageous. It would be utterly unacceptable anywhere else in the United Kingdom and so it is in Northern Ireland. All criminals should be perused by the forces of law and order until they are brought to justice.

(b) However, it would be a mistake not to recognise that the Provisional Movement has been given a de facto amnesty by those who have deemed them fit for government.

(c) I do not share the CGP’s view that an amnesty may not contravene rights under the European Convention of Human Rights. Article 13 clearly states that “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority”. The most basic and fundamental human right is the right to life (“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”, ECHR Article 2).⁶ Terrorists in Northern Ireland deprived over 3,000 people of this right.⁷ It is scandalous that the CGP should seek to deny them justice.

Chapter 7 The Legacy Commission

20. I could not support the Legacy Commission as outlined by the CGP. It seems to me that the body will be totally unsuited to perform the role envisaged for it (i.e. to help reconciliation, review and investigate historic cases, conduct a process of information recovery and examine linked or thematic cases) because

(a) the Commission will be jointly appointed by the London and Dublin Governments. Dublin should have no role in this process because it should have no jurisdiction in Northern Ireland and, indeed played an active role in harbouring Republican terrorists during the Troubles and

(b) the Report suggests that the approval of the First and deputy First Ministers should be sought before the Commissioners are appointed (page 136). The farce surrounding the appointment of the Victims' Commissioner(s) should have made this obvious.

21. *“During its consultations the Group met with some representatives of some of the Omagh families and, as with other victims and survivors of the conflict, were moved by their suffering and their efforts to secure justice. The families the Group met did not want the Group to bring the Omagh case within its process and the Group respects this. The Group has taken the Agreement (Belfast) as the end limit for its definition of a historical case, although that would not prevent cases falling after that date, which are closely linked to historical cases, being dealt with by the new Commission”* (page 155).

I fully support the campaign of the Omagh families to obtain justice for their loved ones. However, I believe that other victims are also entitled to this. This section makes it clear that the CGP do not envisage the new Commission being able to deliver this. The Commission is obviously, therefore, proposing to continue the process which will see us move from an effort to obtain justice for victims to a selective information recovery process.

22. *On the Runs*

“This is a sensitive issue on which the Group has sought to find a way forward. But it is difficult to devise a scheme which both preserves the spirit of the previous solution and avoids the criticisms levelled against the Northern Ireland Offences Bill. If a privileged procedure is accorded to one group of people accused of crimes relating to the conflict, it would be difficult to deny that procedure to others accused of conflict-related crimes.

“The case for a special solution is also weakened by the fact that prima facie evidence of criminality exists in respect of relatively few people classified as ‘on the run’. In the case of ‘on the runs’, the Group therefore proposes that, if there was sufficient evidence, a case should be referred to the DPPNI on whether to proceed to trial in the normal way.

“However, the Group envisages, as outlined in Chapter 7, that the proposed new Commission should make recommendations on how a line might be drawn at the end of its five-year mandate; and that this might embrace a procedure for dealing with historical cases in respect of ‘on the runs’” (Page 157).

Again, it is difficult to see these proposals as anything other than an attempt to whitewash terrorists and allow them to get away with their crimes. Any amnesty for OTRs, under whatever guise, is totally unacceptable.

Conclusion

23. It is my belief that the CGP has shown itself to be a miserable failure. Its recommendations have done nothing to heal the hurt of innocent victims. Indeed they have only served to open up raw wounds. The outcry which greeted the Report’s publication demonstrated that its recommendations patently do not command support among innocent victims.

24. While the proposed £12,000 payment provoked the most vocal opposition, when one looks at its other provisions it is evident that they are based upon the same flawed premise that there should be no distinction between the terrorist and the innocent victim.

25. It is therefore my belief that the Report should be binned in its entirety.

Notes

¹ *Unionists 'dishonest' on report*, BBC 1.2.09

http://news.bbc.co.uk/1/hi/northern_ireland/7863686.stm

² *'Volunteer' row rocks Victims' Commission*, News Letter 30.1.08

<http://www.newsletter.co.uk/news/39Volunteer39-row-rocks-Victims39-Commission.3723610.jp>

³ *Allister slams OFMDFM silence*, press release 14.6.07

<http://www.jimallister.co.uk/default.asp?blogID=669>

⁴ *Profile: Martin McGuinness*, BBC 29.4.01

http://news.bbc.co.uk/1/hi/northern_ireland/1303355.stm

⁵ *McGuinness: 'I would have killed'*, BBC 23.2.08

http://news.bbc.co.uk/1/hi/northern_ireland/7260541.stm

⁶ *European Convention of Human Rights*,

<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

⁷ McKittrick, David, Seamus Kelters, Brian Feeney, Chris Thornton and David McVea. *Lost Lives* page 1534 Mainstream Publishing, Edinburgh, 2004