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**Why negotiate when you can criminalise? Lessons for conflict transformation from  
Northern Ireland and South Africa**

Daniel Kirkpatrick

dk275@kent.ac.uk

School of Politics and International Relations, University of Kent, Canterbury, CT2 7NZ

# **Why negotiate when you can criminalise? Lessons for conflict transformation from Northern Ireland and South Africa**

## **Abstract<sup>1</sup>**

Research on negotiating with criminalised actors generally assumes the criminal label as a given, neglecting the significance of criminalisation itself. This article addresses this gap arguing that the processes of criminalisation and decriminalisation embody important incentive structures affecting peace negotiations. Specifically, for conflict transformation to effectively occur, criminalisation needs to be orientated away from a criminalisation of actors and on to specific acts to legitimise nonviolent political expression and negotiations. These arguments will be advanced through a comparative study of Northern Ireland and South Africa, adopting a conflict transformation framework, and drawing on sixty-three original interviews and archival material.

**Keywords:** conflict transformation, negotiation, criminalisation, non-violence, decriminalisation

## **Introduction**

Research on negotiating with the criminalised has predominantly accepted the criminal or terrorist label as a given even whilst the problems of definition and heterogeneity are acknowledged.<sup>1</sup> However these labels represent a much broader and under-researched

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process of (de-)criminalisation shaping actor relationships, structural constraints, and issue salience with direct implications for negotiations. Likewise, research on conflict transformation has discussed the potential for negotiations to facilitate possible transformation whereby ‘parties reach new understandings of their situation’<sup>2</sup> and move towards resolving the ‘root causes’<sup>3</sup>; yet it is not particularly clear what the mechanisms are which brings this about. This article seeks to draw together these bodies of research to explore how (de)criminalisation in the context of negotiations can facilitate conflict transformation. The intersection between these processes is important because they initially appear to be in tension. By negotiating with criminalised actors the state’s ‘high symbolic capital’ may enhance the ‘national and international’ legitimacy of a criminalised group,<sup>4</sup> whereas criminalisation is inherently a process designed to delegitimise these same actors.<sup>5</sup> Furthermore, conflict transformation advocates for the resolution of underlying causes whereas negotiations often involve parties seeking to maximise their bargaining power and achieve the best outcome for their interests.<sup>6</sup> Therefore understanding where these processes intersect is important to understand how criminalisation affects negotiations and conflict transformation.

This article accordingly argues that criminalisation embodies an important incentive structure which can facilitate conflict transformation in particular contexts, but also undermines it depending on its target and implementation. Specifically, focusing on the criminalisation of nonviolent political expression, this typically impedes, or at least constrains, conflict transformation. This is because it undermines dialogue, dehumanises actors, and embodies structural constraints. Therefore conflict transformation may be facilitated through some form of decriminalisation; the timing and nature of which varies depending on the wider context. However, this needs to be qualified, because decriminalisation can contribute towards

intergroup polarisation, alienating actors who perceive justice as being compromised. In other words, what is needed for conflict transformation to occur is not necessarily decriminalisation or criminalisation in general, but a reorientation of criminalisation away from actors and on to specific acts, thereby legitimising nonviolent political expression and negotiations.

Furthermore, it is important to disaggregate nonviolent political expression<sup>7</sup> into two categories: (1) the criminalisation of political identity (CPI); and (2) the criminalisation of political activities (CPA). This is because, whilst interrelated, they can have different implications for negotiations. CPI is targeted against actors themselves by restricting or banning groups, symbols, cultural practices, or ideologies; for instance communism or republicanism. In contrast, CPA is targeted against political behaviours through the banning of protests, strikes, political meetings and publications. This focus is also important to distinguish the criminalisation of political expression from ordinary crime, because criminalising political expression collectivises an offence beyond those who commit it, both formally and informally, criminalising the political ideology itself and those who support it.<sup>8</sup> These arguments are summarised in Table I and broken down across each of the levels of transformation for CPI and CPA.

The formal processes of criminalisation and decriminalisation are also contingent on their informal outworking. The criminalising of political expression frames legitimacy not simply through the law, but through the application of the law and its reception.<sup>9</sup> It creates a ‘social reality’<sup>10</sup> which will be bound up in the practices of criminalisation and how these are perceived by those subject to them. Because of the subjective and informal nature of such a process, this article utilises the multilevel framework of conflict transformation to understand the ‘complex and evolving conflict relationships’ which characterise peace negotiations.<sup>11</sup>

Table I. Relationship between criminalisation (CPA/CPI) and negotiations across the levels of conflict transformation

	<b>Criminalisation of Identity (CPI)</b>	<b>Criminalisation of Activity (CPA)</b>
<b>Structure</b>	<ul style="list-style-type: none"> <li>- Intergroup interaction is restricted as the communities associated with criminalised groups are alienated from the state.</li> </ul>	<ul style="list-style-type: none"> <li>- Forces groups underground, restricting opportunities to develop a nonviolent political base;</li> <li>- Groups may be reluctant to engage in negotiations so long as they continue to face sanctions for 'political' acts.</li> </ul>
<b>Issue</b>	<ul style="list-style-type: none"> <li>- Contributes towards issue polarisation along polemic 'criminal' narratives.</li> </ul>	<ul style="list-style-type: none"> <li>- (De-)Criminalisation embodies an issue itself to be negotiated in terms of political prisoners, reform of criminal justice and decriminalisation.</li> </ul>
<b>Actor</b>	<ul style="list-style-type: none"> <li>- Frames actor legitimacy for both state and non-state actors;</li> <li>- Contributes towards the dehumanisation of groups and embeds this across the wider population whereby reforms are perceived as giving in to criminality.</li> </ul>	<ul style="list-style-type: none"> <li>- The enforcement of such criminalisation may alienate law enforcement from targeted communities as they are perceived as repressing their political identity.</li> </ul>

This is done across the three primary levels of transformation within a conflict (actor, issue, and structure) discussing how criminalisation constrained or facilitated transformation for each of these levels<sup>12</sup>. From this perspective negotiations are part of a wider process of transformation. This article is evaluating what impact criminalisation may have in the transformation of the underlying causes of violent conflict across these levels.

The first section of this article will, therefore, explain the relationship between criminalisation and negotiations through the framework of conflict transformation. The

following sections will then apply this for each of the levels of conflict transformation through a two case comparative study of Northern Ireland and South Africa. This is specifically in terms of the formal negotiations leading up to the 1998 Good Friday Agreement and the 1994 South African elections. These cases represent two typical cases of this mechanism where negotiations took place alongside these processes of criminalisation.<sup>13</sup> The variation between the two cases in terms of the extensiveness of criminalisation/decriminalisation enables the formal legal processes to be contrasted in relation to their distinct implementation and consequences (see Table II for more). Therefore, understanding the informal impact of criminalisation requires considering the perceptions of these processes, which is done by drawing on sixty-three original interviews conducted by the author with actors from across Northern Ireland and South Africa, including representatives from law enforcement, politicians, politically motivated ex-prisoners, NGOs and academics<sup>14</sup>. These were supplemented by a further forty-eight interviews accessed from the Historical Research Archive based at the University of Witwatersrand and the Mayibuye Archive based at the University of Western Cape. Furthermore, archival republican and loyalist publications, *An Phoblacht* and *Combat* respectively, were accessed from the Political Collection at the Linen Hall Library in Northern Ireland. The range of data sources enables a triangulation of perspectives to control for their validity, supplemented by autobiographical accounts, government documents, and academic sources. This analysis will be followed by a discussion of possible policy implications, and suggested areas for future research.

### *Labelling crime or the crime of labelling*

Negotiation at its most fundamental level is a process whereby multiple actors engage in communication to resolve one or more issues. In the context of civil conflicts this may be over any number of issues, but this article is solely concerned about formal negotiations over a peace settlement. For such negotiations to be ‘successful’ from a conflict transformation approach it has been argued they must address ‘root causes’,<sup>15</sup> rather than simply the immediate causes of the conflict. Setting aside the challenge of identifying root causes, this arguably places too much responsibility on negotiations alone, and arguably a more effective framework would be that negotiations simply contribute towards a wider process of transformation. Single processes such as negotiations do not themselves complete conflict transformation, only contribute towards it.

From this perspective, conflict transformation's multilevel framework provides ‘a set of lenses’ through which to consider how this process - negotiations - takes effect and the variable impact that criminalising political expression can have on it, because ‘no one lens is capable of bringing everything into focus, we need multiple lenses to see different aspects of a complex reality.’<sup>16</sup> For each of the three levels of transformation criminalising political expression has a number of potential implications shaping formal negotiations, varying depending on their implementation as actors resist or accept them, and on their particular subject; whether it is CPI or CPA. Table I summarises how such interactions take place, but it is worth explaining first how this theoretical link is developed, before then considering it through the discussion of the case studies.



The structural level represents the system which embeds violent forms of conflict, where goals are no longer framed as incompatible, identities as polarised, and violence as the only - or most effective - means by which to address these.<sup>17</sup> This often involves a redistribution of power between actors, addressing underlying grievances, and opening up peaceful political avenues to displace violent ones. Criminal justice has a considerable role in such transformations, in framing not only what is legitimate, but also in establishing sanctions, or in providing opportunities for compromise. Yet the criminalising of nonviolent political expression, particularly CPA, embeds a number of structural barriers to negotiations, such as censorship and restrictions on movement, which may require some form of decriminalisation before actors may be willing, or even able, to engage in negotiations. CPI embeds and reinforces this by restricting opportunities for intergroup dialogue as expressions of political identities are reduced to criminality. So long as nonstate actors face the threat of sanctions for nonviolent political expression, they will be unlikely to trust the state's commitment to negotiations.<sup>18</sup> Accordingly, criminalised groups may be forced to operate covertly restricting their ability to develop a nonviolent political base or communicate their political objectives.

Issue transformation involves determining which issues are more salient, moving actors away from conflictual positions to issues where commonality can be found.<sup>19</sup> Criminalising political expression is closely linked to such issue framing, representing both an issue itself in terms of CPI, and a mechanism through which issues are framed because of CPA. Firstly the reverse of such criminalisation - decriminalisation - may be used as a bargaining tool to incentivise movement on other issues. The implications of such decriminalisation, however, are contingent on their informal outworking, as, although actors may be granted some form of formal pardon or amnesty, this will not address the embedded discourse of the criminal narrative. Whilst decriminalisation, whatever its form, may address the structural issues

described above, it will be unlikely to address informal criminalisation. Specifically for negotiations this means that decriminalisation will be interpreted differently across the various actors, fostering agreement and trust with some, whilst isolating others. This links into the second point, whereby the salience of the criminal 'issue' will frame how decriminalisation actually takes effect, as polemic criminal narratives determine how actors perceive the negotiation process itself. When group identities are labelled as criminal, this frames intergroup identities into dichotomies like victim/perpetrator.<sup>20</sup> Negotiations in such contexts are defined by these identities, with actors framing their positions along these polarised lines - for example that they will not negotiate with terrorists. This is because narratives of victimisation tend to 'minimise the context and extend the time frame of the event forward and backward in time', whereas perpetrators tend to 'attribute the event to outside causes, minimize the impact on the victim and see the event as a moment in time'<sup>21</sup>. Consequently, issues under negotiation will be defined by the label - terrorist or criminal - and so a polarised label will lead to polarised ways of addressing them.<sup>22</sup> This can be problematic for negotiations, as issues under negotiation are embedded in a zero-sum framework, so some reframing of these identities away from criminals or terrorists towards political actors may help facilitate the development of trust and dialogue.<sup>23</sup>

The transformation of actors refers to changes in leadership, goals, or power relations between groups in such a way that will change the nature of the conflict itself.<sup>24</sup> Whilst this may involve a change in the actors themselves, criminalisation primarily impacts actors in terms of how they are perceived: their framing. CPI frames their political ideologies as illegitimate and polarises intergroup relations, determining which actors are deemed legitimate or not. This relates to both the state and nonstate actors, as an oppressive criminal justice system may undermine the legitimacy of the state within certain communities, whilst

the state's criminal framing may likewise undermine nonstate actors.<sup>25</sup> Secondly, CPI reduces actors to simple characterisations as the criminal other, effectively de-humanising individuals and groups, rather than recognising their inherent emotional, political, and social identities.<sup>26</sup> These characterisations vary considerably between and within cases because they are contingent on the communities whom actors derive support from and their relationship with the state. It is through the enforcement of CPA that such characterisations become realised. The legitimacy of criminal justice will therefore depend on this implementation.

Individually each of these levels identifies specific ways the criminalisation of political expression may impact upon negotiations which, when brought together, illustrate the complexity of the relationship. This article is not seeking to resolve these complexities, but merely consider their development and potential implications for negotiations. Taking conflict as an opportunity, and viewing negotiations as an important mechanism of transformation, conflict transformation provides an effective framework through which to consider the complexities of criminalisation through the case studies of Northern Ireland and South Africa. The two cases are themselves distinct with respect to the level of criminalisation, but both provide typical examples of how CPI and CPA may operate in the context of negotiations. Table II summarises these issues in relation to the two case studies. The remainder of this article will consider each these arguments across the levels of transformation.

Table II. Comparison of CPI/CPA between Northern Ireland and South Africa in relation to negotiations

		<b>Criminalisation of Identity (CPI)</b>	<b>Criminalisation of Activity (CPA)</b>
<b>Structure</b>	Northern Ireland	- Proscription or restricting of certain cultural symbols (i.e. flags and emblems).	- Censorship of Sinn Fein.
	South Africa	- Most political organisations opposed to the state were banned.	- Meetings, publications, and protests were severely restricted/banned.
<b>Issue</b>	Northern Ireland	- Political (nonviolent) republicanism and loyalism delegitimised as criminal because of links with paramilitaries.	- Decriminalisation embodied a crucial issue itself to be negotiated in terms of political prisoners and the reform of criminal justice.
	South Africa	- Communism label used to delegitimise many non-state political groups.	
<b>Actor</b>	Northern Ireland	- Linkages between political groups and violent counterparts embedded the terrorism/criminal label for both.	- Law enforcement perceived as a unionist institution and distrusted by many within republican communities.
	South Africa	- De-humanisation of groups through the communist label.	- Non-whites and anti-state activists feared the use of force by law enforcement.

## *Structural transformation: Criminalisation as a barrier or enabler*

### *Criminalising political groups*

South Africa prior to the formal negotiations which began in 1990 represents a context in which there was widespread criminalisation of political expression. At this time it was illegal to be a member of any proscribed group, communicate their political views, meet together, finance, or support in any form, punishable with custodial sentences.<sup>27</sup> For this reason the African National Congress (ANC) made the unbanning of itself alongside other political groups - the Pan Africanist Congress (PAC) and the South African Communist Party (SACP) - a non-negotiable prerequisite to formal negotiations as it was considered a clear and unassailable impediment. For example, 'from around late 1986 onwards' almost every uMkhonto weSizwe (MK) operative entering South Africa from Zimbabwe was allegedly 'killed or arrested within 24 hours.'<sup>28</sup> The ANC vocalised their position in the Harare Declaration where they put forward their preconditions for entering into formal negotiations with the National Party (NP). It explained that the ANC would go on ceasefire if the State ended the state of emergency, released political prisoners, de-proscribed political organisations, and withdrew troops from black townships.<sup>29</sup> The fear of being arrested, imprisoned, or otherwise punished was an ever-present reality for ANC negotiators. Mandela explained their rationale in his response to being offered conditional release if the MK went on ceasefire: 'What freedom am I being offered while the organisation of the people remains banned...What freedom am I being offered when my very South African citizenship is not respected? Only free men can negotiate. Prisoners cannot enter into contracts.'<sup>30</sup> So long as nonstate actors face the threat of imprisonment they will face issues of credible commitment distrusting the state.

Entering negotiations incurs a risk for these groups, so unless they trust that they will not end up imprisoned, or otherwise sanctioned - that they can be sure they will survive their 'initial vulnerability' - they will be unlikely to engage in negotiations.<sup>31</sup> This is particularly relevant when conflicts are protracted, as actors will be even less likely to trust their opponents,<sup>32</sup> and criminalising political activities presents one mechanism through which this distrust becomes embedded. The very structure of criminal justice was designed to engage with these groups as criminals, not as political actors. Indeed, when announcing the reversal of the proscription of these groups De Klerk implied as much - even whilst he denied such an implication - stating: 'The unconditional lifting of the prohibition on the said organisations places everybody in a position to pursue politics freely.'<sup>33</sup> The inference being that previously the liberation organisations had been unable to pursue politics freely because of the criminal sanctions and restrictions.

But decriminalisation also served a more pragmatic end, as it facilitated a re-balancing of power relations between the ANC and the National Party whereby 'ANC leaders could legitimise the move to negotiation in terms of its position of strength.'<sup>34</sup> De-proscription enabled the ANC to raise awareness of its political position in white communities, as previously censorship had meant many still viewed them as a criminal organisation.<sup>35</sup> These limitations are, however, contingent upon their implementation; although they can restrict a group's voice on a national level, this may not be the case for intra-group or external communication. It can actually force groups to externalise their voice by developing an international communicative strategy as happened in both of these cases; in the anti-Apartheid movement and Irish-American critique of the British policy.<sup>36</sup>

Removing the criminal sanction began the process of challenging intergroup characterisations opening up opportunities for dialogue where previous criminalisation had closed them off. Conflict transformation was, therefore, partially facilitated through this transformation of criminalisation as the structural barriers embodied in the criminal sanctions were addressed, and as new opportunities emerged for nonviolent political expression.

Conversely in Northern Ireland negotiations took place without any formal decriminalisation of political groups, but this was because the British government had not formally criminalised political organisations, as had been the case in South Africa. Whilst the Irish Republican Army (IRA), Ulster Volunteer Force (UVF) and (after 1992) the Ulster Defence Association (UDA) were all criminalised, the communities they represented also had political, nonviolent organisations to which each of these proscribed groups were unofficially affiliated: Sinn Fein, the Progressive Unionist Party, and the Ulster Democratic Party.<sup>37</sup> Not criminalising those engaged in political violence would have potentially risked the state being viewed as weak, or resulted in a more repressive militarised response, but by limiting it to violent groups this kept open important political channels.<sup>38</sup> Nonviolent political groups were not only legal, but they also had varying electoral mandates, providing a legitimate alternative to political violence. These groups provided the British government with alternatives to terrorist groups, meaning they could enter into negotiations without the same backlash associated with audience costs.<sup>39</sup> For instance, an IRA ex-prisoner explained: '[T]hey didn't need to de-proscribe the IRA in order to have negotiations, because they could negotiate with Sinn Fein and that was the way around it.'<sup>40</sup> Peaceful political expression was not restricted in the same way it was in South Africa in terms of having political representation enabling groups to enter negotiations without formally being decriminalised. Yet this does not preclude that a form of secret parallel negotiations took place with the paramilitaries, albeit often indirectly,

and indeed had done so periodically since the 1970s.<sup>41</sup> These back-channel contacts were particularly important in the context of such criminalisation because they ‘permit negotiation on the question of legitimacy without conceding legitimacy’; taking effect similarly in South Africa between Mandela and representatives of the NP.<sup>42</sup>

### *Censoring expression*

Whilst political activities were not criminalised to the same extent in Northern Ireland, there were still restrictions on political expression in terms of censorship, evident in the censorship of Sinn Fein publications and public statements from 1988 until the IRA ceasefire in 1994.<sup>43</sup> This was done through the broadcasting ban whereby the British Government censored political expression of both illegal and some legal organisations. Instead of engaging with the men and women responsible for continuing violence, censorship ‘demonised’ them and their organisation so that sections of the public were not really aware of their political goals.<sup>44</sup> This was problematic for conflict transformation because whilst many rejected the political violence of the IRA, a significant proportion of the Catholic population shared at least some of the political aspirations of Sinn Fein.<sup>45</sup> Mitchell McLaughlin, the former General Secretary of Sinn Fein, explained: ‘[The British Government] silenced the voice of controversy so that all you got was a kind of a monologue.’<sup>46</sup> Resisting this then took the form of murals and other symbols, as an IRA ex-prisoner described: ‘[G]raffiti...was important at the time because the state were in total control of all other expressions of citizenship’.<sup>47</sup> Therefore, decriminalising political activities was important for conflict transformation in terms of legitimising dialogue as an alternative to political violence. But it played a further - perhaps more important - symbolic role as this censorship represented a wider denouncing of their political identity.



Following the 1994 IRA ceasefire the British Government decided to end the broadcasting ban. Previously censorship had been justified on the basis of criminalising ongoing political violence,<sup>48</sup> but once a ceasefire was announced, amongst other contextual factors like Gerry Adams' visit to the USA, it became politically problematic to maintain. Criminalisation's role in constraining negotiations was supplanted by wider political pressures domestically and internationally. This meant that those involved in the negotiations would be able to communicate their positions openly ending years of censorship. So whilst CPI and CPA can be in tension with dialogue and negotiations, its reform is contingent upon the state's ability and willingness to separate peaceful or legitimate political activities - providing the means for this to take place - from violent or illegitimate alternatives.

### ***Issue transformation: Criminality or political identity***

#### *Criminalisation as a bargaining issue*

Criminalisation serves an important role as an issue itself, not simply in its ability to frame issues, but acting as an incentive structure shaping negotiations. The state will usually have imprisoned a number of political actors representing a barrier to negotiations as described above, but on the other hand its reversal has the potential to foster trust and provide considerable movement on other issues. For instance in Northern Ireland prisoner releases were used strategically as a bargaining chip by the British Government 'to try and prise concessions from the two sides'; a third of the discussions during the initial meetings between the paramilitaries and the British Government were focussed on prison and prisoner issues.<sup>49</sup>

Likewise, republicans had resisted criminalisation since its inception, and so shortly after the 1994 IRA ceasefire Sinn Fein President Gerry Adams called for the abandonment of ‘the whole range of repressive legislation’ and the release of all political prisoners.<sup>50</sup> In the same way the republican publication *An Phoblacht* [*Republican News*] later published a list of all ‘Irish Republican Political Hostages’ calling for their release.<sup>51</sup> Indeed a comparative study completed by the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) in 1995 concluded that: ‘[W]e would argue that, until the question of prisoners is agreed then nothing, that will create a final solution, is agreed.’<sup>52</sup> Such was the prominence of political prisoners as a key issue in the negotiations that if not properly addressed the likelihood for a sustainable peace agreement would greatly diminish. Similarly, for loyalists ‘a review of prison sentences would have been a way to counter the overall perception that there has been no real movement.’<sup>53</sup> For these reasons the key security legislation - the Emergency Powers Act and Prevention of Terrorism Act - were repealed on 25 August 1996 and 19 February 2001 respectively, and rules on remission were revised.<sup>54</sup> Such concessions signalled a willingness to reach a mutually acceptable agreement contributing towards inter-party trust in the negotiations.

This prioritisation of decriminalisation is not surprising considering the key role which prisoners played in the negotiations themselves. For example in 1997, following the assassination of Loyalist Volunteer Force (LVF) leader Billy Wright, the UDA prisoners took a vote in prison and two thirds voted against the peace process. The significance of the vote is evident in how both Ulster Unionist Party leader, David Trimble, and later the Secretary of State for Northern Ireland, Mo Mowlam, visited the Maze Prison to negotiate with the prisoners.<sup>55</sup>

Similarly in South Africa prisoner releases were used to facilitate trust and encourage dialogue; beginning with the unbanning of political groups and the releases of certain individuals. In announcing these changes De Klerk explained: ‘With the steps the Government has taken it has proven its good faith.’<sup>56</sup> Over the course of the negotiations during 1990-91 indemnity was granted to various categories of offenders; sentences were shortened for others; and others were simply released with no clear legal justification.<sup>57</sup> The NP also had serious concerns over state actors being taken to court over past actions under the Apartheid regime evident in the Further Indemnity Act 151 (1992), which De Klerk argued was ‘to level the playing field between the government and opposition group.’<sup>58</sup> So not only was the issue of political prisoners under considerable negotiation, but so too were amnesties. Eventually the debate moved towards the proposal that became realised in the Truth and Reconciliation Commission, of conditional amnesties granted in exchange for truth recovery. So whilst concessions on decriminalisation can build trust acting as ‘a radical new political opportunity structure’, they also embody a narrative ‘battlefield’, as actors on all sides seek to legitimise their narrative through decriminalisation.<sup>59</sup> Conflict transformation in this sense is constrained by the inter-party bargaining dynamics. But the role it has in reframing the issues themselves is arguably of greater significance.

### *Polarising issues*

Whilst decriminalisation can be used as a bargaining issue facilitating movement at the negotiation table, this must be understood in the context of its implications beyond the negotiators themselves. The framing of nonstate actors as criminals or terrorists contributes towards a narrative of conflict which denies the political legitimacy of the actors involved.

This means that criminalisation functions as ‘one of the many ways to construct social reality’,<sup>60</sup> and so polarises political actors along polemic lines embedding fundamentally divergent perspectives. This is problematic for conflict transformation in respect of CPI and CPA, because it delegitimises not only nonviolent political expression, but also the political ideology and actors themselves.

Decriminalisation may, therefore, be perceived as both a mechanism facilitating a transition towards peace by some, whilst simultaneously as acquiescing to criminality by others. Indeed, decriminalising political identity can exacerbate intergroup relations, as those within the state's communal group may perceive it as giving into terrorism or criminality, directly relating to the role of audience costs associated with criminalisation.<sup>61</sup> This is because one of the fundamental reasons behind such criminalisation, the delegitimising a political group, becomes problematic when the state decides to reform it. Referring to these pro-state actors and their perspective, the Director of the Committee on the Administration of Justice, Brian Gormally, explained: ‘[T]here were those who supported the policy of criminalisation, who see law as a weapon against this terrorist criminality, and reforms undermine this view.’<sup>62</sup> Indeed an IRA ex-prisoner implied the challenge this presented to the negotiations stating: ‘Luckily for us whenever we were doing the heavy lifting in the negotiations it wasn't with the unionists, it was with the British.’<sup>63</sup> Criminalisation itself was only one mechanism contributing towards the de-legitimation of these actors; others - not least political violence - make it difficult to deduce precisely its direct implications on intergroup narrative. But at the very least it had a significant role as its reversal – decriminalisation - was seen by some to be selling out justice for peace; letting 'criminals' get away with their crimes. Hazlett Lynch, a former project co-ordinator with the victims' group for security force personnel called West Tyrone Voice, explained that he felt certain individuals are ‘above the law’,<sup>64</sup> and a

community worker of a victims and survivors NGO explained how many are asking: ‘How much more do we need [to give up] to buy peace?’<sup>65</sup> By bargaining the ability to prosecute, or for lower sentences, it gives rise to perceptions of justice being compromised for at least some individuals. Indeed this decriminalisation process will be constrained by a wider discursive battleground as each side seeks to legitimise its own position.

This was echoed in South Africa where individuals raised frustration over an elite-driven approach resulting in many historical crimes going unaddressed. Majorie Jobson, Director of the victims' organisation Khulumani, explained: ‘The reason the state won't pursue these prosecutions of Apartheid criminals is that they've got too much to hide themselves.’<sup>66</sup> The perception is that justice for state crimes was traded away, whereas many of those who were criminalised under the Apartheid system continue to suffer the consequences in terms of trauma and widespread poverty. Whilst the challenge of addressing such issues should not be underestimated, many feel that the task has never been properly acknowledged, and so will never be addressed: ‘[...] the people who've carried all the sacrifices and damage [are unable] to get a foothold in the economy; as a result, you can just be ignored.’<sup>67</sup> Decriminalisation, therefore, can have serious long-term implications, especially on the post-settlement phase, and actually undermine conflict transformation in the long-term.<sup>68</sup>

### ***Actor transformation: Distinguishing the 'criminals' from the 'negotiators'***

#### *Criminalising legitimacy*

As explained in the introduction, there is considerable debate around the importance of legitimacy for negotiations, particularly in relation to terrorism<sup>69</sup>, but for actor transformation this legitimacy needs to be understood as an interactive process. For on the one hand criminalising political expression is often explicitly about delegitimising the target; ruling out any form of formal dialogue because from the state's perspective. Brian Gormally explained, referring to the state's rationale: '[Y]ou don't negotiate with criminals, you subject them to the criminal law.'<sup>70</sup> The state will use criminalisation to legitimise itself, contrasting its 'legal' practices with those of the criminalised. For example the Minister of Justice in South Africa stated, when announcing the Terrorism Act: 'We are not going to reply to their violent assault with machine guns, but are going to try them in our courts in accordance with the norms of a civilised community.'<sup>71</sup> Likewise, in announcing the introduction of the Prevention of Terrorism Act, the Home Secretary Roy Jenkins stated: 'These powers...are Draconian. In combination they are unprecedented in peacetime. I believe they are fully justified to meet the clear and present danger.'<sup>72</sup> Because of the 'campaign of indiscriminate murder' these powers were deemed necessary to 'protect the innocent public.'<sup>73</sup>

Yet by using the criminal justice system in this way, it can develop or reinforce the state's illegitimacy for those subject to it. This is because 'the state can only confer legitimacy upon an entity for itself,'<sup>74</sup> so it is often unable to extend it beyond this, and may actually contribute towards the reverse. Whilst the state may label a nonstate actor 'criminal' to delegitimise them, its impact will be contingent on the enforcement of this labelling and the wider legitimacy the state holds. This is particularly problematic when linking a political identity to a criminal narrative, as it informally criminalises those communities which espouse these identities.<sup>75</sup>

Consider how in Northern Ireland the legitimacy of the state was contested from its inception by many of those from within the republican community. An IRA ex-prisoner explained: ‘The justice system was already undermined from the foundation of the state because we saw this as the Orange state.’<sup>76</sup> From this perspective the criminalising of political expression was regarded simply as a ‘weapon in [the state’s] arsenal to defeat...the republican movement.’<sup>77</sup> Rather than delegitimising these actors it was perceived as ‘corrupting the judicial process’ because it ‘criminalised an entire community.’<sup>78</sup> Loyalist paramilitaries similarly rejected the label of criminalisation but from a different perspective, as they regarded the state as legitimate, but it was the enforcement of criminalisation and its denial of their identity which they rejected. For instance a UVF ex-prisoner explained how such criminalisation ‘was to strip you of any identity’, and that the practices of security personnel ‘undermined my sort of view of my own state and the police.’<sup>79</sup> Likewise another UVF ex-prisoner stated: ‘the problem that I see was that they tried to treat the conflict as a massive crime wave and...what they succeeded in doing was corrupting the criminal justice system.’<sup>80</sup> What is interesting is how similarly those criminalised in South Africa regarded the legitimacy of the criminal justice system, as an MK ex-prisoner explained: ‘The justice system of this country under Apartheid was rotten and controlled by the military’ later going on to say ‘in this country there was no justice.’<sup>81</sup> Another former political prisoner echoed this stating: ‘We didn’t even in a sense think about...whether [political violence] was legitimate or not; this state was illegitimate.’<sup>82</sup> As was the case for republican and loyalist paramilitary groups in Northern Ireland, the criminal label held no legitimacy and actually served to embed state illegitimacy.

For negotiations legitimising both the state and nonstate actors may, therefore, require some form of decriminalisation, formal and informal. In South Africa this was enabled partially by the ending of the Cold War, as terrorism had nearly always been expressed in terms of the

Communist threat. The NP needed some way to 'sell' decriminalisation, as 58% of the white population opposed government-ANC negotiations as reported in a survey from 1988.<sup>83</sup> Therefore the decline of Communism was fortuitous, as noted by Justice Minister Kobie Coetsee, as 'an opportunity to normalise.'<sup>84</sup> enabling the NP to frame decriminalisation as the result of the decline of communism: the ANC was no longer the 'communist threat' it had been. Displacing the communist characterisation of CPI facilitated the humanisation of the ANC and other groups, as they were no longer defined principally by the single criminalised ideology, but by their wider political goals and objectives. This in turn complemented the negotiation process as Pik Botha, Minister of Foreign Affairs at the time, explained: '[P]eople did get to know each other for the first time as human beings, as fellow South Africans [and] that their struggle from their point of view [was] driven also by their love for their country.'<sup>85</sup> Instead of characterising those across the table as communists, their political objectives were defined in their own terms, as Botha continued: 'This is also their country and not just a country for the whites. They want a fair share in it.'<sup>86</sup> Reframing identities contributed towards this building of empathy and shared understanding which are both understood to be important foundations for conflict transformation.

In Northern Ireland this reframing was more problematic because the links between political republicanism and loyalism and the 'terrorist' or 'criminal' elements were perceived as intertwined, and in some ways were.<sup>87</sup> If any of the illegal organisations had been de-proscribed it may have been perceived as legitimising political violence across both communities, alienating many especially within unionist political parties who would have regarded such a concession as a sign of acquiescing to criminality and terrorism, a pattern which is common for most proscribed groups.<sup>88</sup> An IRA ex-prisoner referred to this stating: 'In terms of negotiations...the British obviously had to keep them very secret because they



couldn't be seen to be speaking to people they were labelling as terrorists.'<sup>89</sup> This is indicative of the challenge criminalising politics embeds; framing political activities as criminal and embedding this over decades not only impacts elite discourse and policy, but also intergroup perceptions throughout communities.<sup>90</sup> Another IRA ex-prisoner explained: 'You even heard political leaders talking about periods of decontamination and the need to be housetrained.'<sup>91</sup> Because of the embeddedness of the criminal identity, the 'housetraining' of actors refers as much to the normalisation of republican politicians as it does their renunciation of violence.

This is why decriminalisation is the focus as opposed to de-proscription specifically; the latter proffers a contextually-bound proscriptive solution, whereas decriminalisation allows for a much wider range of options. The formal de-proscription of a group will not necessarily reverse the informal perception of that group as criminal as it does not need to be accepted, whereas an informal decriminalisation requires much more comprehensive transformation and support from the bottom-up. For instance there could be a more informal process of unlabelling these groups in order to facilitate trust and re-legitimise nonviolent republicanism. For instance the Northern Ireland Office Political Director at the time, Quentin Thomas, explained that the process of negotiations itself 'de-demonised' Sinn Fein beyond the republican community.<sup>92</sup> Negotiations conferred a level of legitimacy on to the political credentials of these actors. Yet it was balanced with the continuing criminalisation of their violent counterparts in the IRA, UDA and UVF. Instead of reversing the political discourse of criminalisation, a half-way measure was pursued to balance the political divide whereby the political elements within these groups were given legal means to express their identity, whilst political violence remained firmly criminalised.

Such legitimisation affected loyalist paramilitaries differently from republicans, as many within unionist and loyalist communities continued to view them as illegitimate.<sup>93</sup> Whilst some loyalist communities viewed the paramilitaries with some legitimacy, for many it was the police and army who represented the legitimate defenders of their community, with paramilitaries being viewed as undermining the rule of law. For instance a unionist politician explained: ‘[Y]ou grew up to respect...law and order...and that's why the UDA, which had at one time 50,000 people, couldn't get anybody elected.’<sup>94</sup> The relative legitimacy that loyalist paramilitaries held, therefore, did not necessarily translate into electoral support. Whilst the reasons behind this are complex, the implications are quite clear, as a senior UDA ex-prisoner explained: ‘You know we're there for a specific thing. We're there to do the dirty work. We're the skeletons in the cupboard. But it's the suit and the tie that they vote for and that's the way it's always been.’<sup>95</sup> However, this was not the case for all in these communities as certain unionist actors had a very uneasy relationship with the police. This was evident for instance around the Anglo-Irish accord, and then again at the Drumcree protests. Indeed in some communities loyalist actors developed an electoral mandate, evident in the support for the Progressive Unionist Party and the Ulster Democratic Party.<sup>96</sup> Actor transformation through informal decriminalisation, therefore, varied considerably across unionist and loyalist communities. For instance, a UDA ex-prisoner referred to how such criminalisation still continues even today informally in the media and political discourse: ‘What's happening here and now is the criminalisation of individuals that were involved in that political struggle, to de-legitimise their future going forward, so they don't have a future.’<sup>97</sup> Transforming the political identities of actors was complex and variable, demonstrating how the impact of criminalising political expression varies depending on its subject - across and within pro/anti-state groups.

Balancing these issues of legitimacy is crucial for the wider legitimisation of criminal justice following a negotiated settlement in fostering the buy-in of the main political groups. Decriminalising nonviolent political expression resolves a number of fundamental formal barriers, but must also be accompanied by the informal support of communities. Without entering the debate within transitional justice over how such re-legitimisation should take place, in terms of negotiations there is an important link between building support for decriminalising nonviolent political expression and the re-legitimisation of the criminal justice system. The challenge, which is beyond the scope of this article, is how do you then ensure this elite level narrative is translated down through to the communities they represent, and on the other hand, how you reconcile the old narrative with the new without alienating large sections of the state? These are questions for further research, but this article provides an introduction to some of the key challenges shaping them.

### *Conclusion*

This article has discussed the potential implications which the criminalisation of nonviolent political expression can have on negotiations, and consequently for conflict transformation. It argued that the processes of criminalisation and decriminalisation embody important incentive structures affecting peace negotiations, and that for conflict transformation to effectively occur criminalisation needs to be orientated away from a criminalisation of actors and on to specific acts; thereby legitimising nonviolent political expression and negotiations.

These arguments relate to the particular nature of criminalisation, because its implications depend on its target and implementation. By distinguishing the criminalisation of political

identity (CPI) from the criminalisation of political activities (CPA) these implications begin to become clearer. Table I outlines these distinctions across the levels of conflict transformation, and Table II maps them across the two case studies. Specifically, CPA appears to function as a barrier to peace negotiations, as nonstate actors will fear possible sanctions, and be forced to operate covertly, distrusting the state's commitment to dialogue. These issues then come to embody bargaining issues, themselves to be negotiated, but if left unaddressed, their enforcement will likely contribute to the greater alienation of the state from within targeted communities. Similarly, CPI may undermine the negotiations by polarising intergroup identities into oppositional categories. Identities are reduced to simple characterisations which frame political beliefs and ideologies as criminality or terrorism. This polarisation displaces underlying political objectives, embedding negotiations into zero-sum terms which de-humanise participants and limit the potential for a stable agreement. Therefore, from a policy perspective, criminalising political expression in a civil conflict presents a serious challenge for formal negotiations to take place. It compounds the credible commitment of the state, creates information breakdown, and increases audience costs associated with political compromise, effectively increasing the costs of negotiations for both the state and nonstate actors. These are very general points because of the inherently complex processes under discussion, but they provide at least an initial theoretical framework for considering this complexity.

In many ways these findings are intuitive; that by criminalising nonviolent political expression the state restricts opportunities for negotiation. But the implications of this are of great importance for conflict transformation. Table III summarises a number of ways (de)criminalisation can facilitate conflict transformation which follow from the discussion above. Instead of arguing for a binary reliance on criminalisation or decriminalisation, the

findings suggest that the two processes can complement one another if orientated away from actors and on to actions. In other words, decriminalising nonviolent political expression (both CPI and CPA) can open up opportunities for negotiation, and reorienting criminalisation on to violent acts delegitimises violence as an alternative to negotiation. But this central argument needs to be qualified by a number of issues which follow from the cases.

Table III. (De)criminalisation as a mechanism of conflict transformation

**Levels**

<p><b>Structure Transformation</b></p>	<ul style="list-style-type: none"> <li>- Decriminalise nonviolent political activities to remove the structural barriers they represent for negotiations; removing the deterrent of sanctions, and the restrictions on communication and nonviolent mobilisation;</li> <li>- Open up intergroup political dialogue to address ‘criminal’ characterisations both at the elite level and at the grassroots.</li> </ul>
<p><b>Issue Transformation</b></p>	<ul style="list-style-type: none"> <li>- Decriminalising political identity to re-humanise groups so that they are no longer defined solely by their 'crimes', but by their political objectives;</li> <li>- Use decriminalisation to build trust between groups and a willingness to reach a mutually beneficial agreement;</li> <li>- Negotiate an intergroup policy of criminalising political violence to ensure the buy-in of all (or at least most) parties.</li> </ul>
<p><b>Actor Transformation</b></p>	<ul style="list-style-type: none"> <li>- Decriminalise political groups so that they can openly engage in nonviolent political dialogue;</li> <li>- Maintain the criminalisation of violent acts to delegitimise it as a form of political expression;</li> <li>- Transition away from using criminal justice to delegitimise political actors, and seek to develop political support for these institutions.</li> </ul>

The comparison between the two cases was important, as it unpacked how the variation in the nature of criminalisation may constrain its implications for conflict transformation. For

instance in South Africa decriminalising political groups was regarded as a non-negotiable prerequisite to negotiations because of the oppressiveness of sanctions and extensiveness of restrictions on political expression, whereas in Northern Ireland political groups were generally able to operate with greater freedom, as nonviolent groups were not formally criminalised - albeit there were some restrictions in terms of censorship. In other words, so long as there are viable and favourable alternatives to political violence, the importance of criminalising political expression will likely diminish. Furthermore, the variation across pro- and anti- state groups in Northern Ireland illustrates the contingency of criminalisation upon the communities it seeks to impact. Pro-state communities will be much more inclined to incorporate and accept the state narrative of criminalisation due to the legitimacy they ascribe to law and order, whereas communities alienated from the state may view it as a further intrusion on their identity. This means criminalisation needs to be regarded not simply as a legal top-down process, but also as a bottom-up one. For conflict transformation, therefore, the above reorientation will depend on the bottom-up buy-in of communities; otherwise the reorientation itself might be resisted by those who accepted the prior status quo.

For further research it would be important to consider whether these findings are generalisable beyond Northern Ireland and South Africa. Although these cases are illustrative and provide an important contribution to our understanding of negotiations and conflict transformation, they are temporally and contextually bound to the 1990s. Further research into contrasting cases beyond this would be necessary to see if the arguments apply to contemporary cases. Furthermore, the focus on nonviolent political expression was necessary for the coherence and scope of this article, but research into criminalising political violence and the interaction between nonviolent and violent political expression would be an important area to develop; how criminalising violence may impact the negotiation process.

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<sup>1</sup> Navin Bapat, 'State Bargaining with Transnational Terrorist Groups', *International Studies Quarterly* 50(2006), pp. 213-229; Adam Dolnik and Keith M. Fitzgerald, 'Negotiating Hostage Crises with the New Terrorists', *Studies in Conflict & Terrorism*, 34(2011), pp. 267-294; Dean Pruitt, 'Negotiation with Terrorists', *International Negotiation* 11(2006), pp. 371-394; I William Zartman, 'Negotiating with Terrorists', *International Negotiation* 8(2003), pp. 443-450. In terms of those criminalised as terrorists and those as political criminals, the distinctions between these labels can often be more of design rather than substance, because whether it is done specifically under counterterrorist legislation or other 'security' laws, the implications in terms of negotiation are of similar effect. What this article is discussing then is not the specific labels themselves, but the process through which these labels become applied.

<sup>2</sup> Linda L. Putnam, 'Transformations and Critical Moments in Negotiations', *Negotiation Journal*, 20(2) (2004), p 276.

<sup>3</sup> Robert Lloyd, 'Conflict Resolution or Transformation? An Analysis of South African and Mozambican Political Settlements', *International Negotiation*, 6(2001), pp. 303-329.

<sup>4</sup> Harmonie Toros, *Terrorism, Talking and Transformation: A Critical Approach* (London: Routledge, 2012), p.46; Harmonie Toros, "'We Don't Negotiate with Terrorists?': Legitimacy and Complexity in Terrorist Conflicts', *Security Dialogue*, 39(4) (2008), pp. 407-426.

<sup>5</sup> Brian Gormally, Kieran McEvoy and David Wall, 'Criminal Justice in a Divided Society: Northern Ireland Prisons', *Crime and Justice*, 17(1993), pp. 51-135; Gail Super, 'The Spectacle of Crime in the "New" South Africa: A Historical Perspective (1976-2004)', *The British Journal of Criminology*, 50(2010), pp. 165-184.

<sup>6</sup> For instance see Barbara F. Walter 'The Critical Barrier to Civil War Settlement', *International Organization*, 51(3) (1997), pp 335-365; Robert D. Putnam, 'Diplomacy and domestic politics: the logic of two-level games', *International Organization*, 42(3) (1988), pp. 427-460.

<sup>7</sup> This article is not discussing the criminalisation of political violence because the implications of this are different to non-violence and would extend the discussion beyond the limits of an article.

<sup>8</sup> Marie Breen-Smyth, 'Theorising the 'Suspect Community': Counterterrorism, Security Practices and the Public Imagination', *Critical Studies on Terrorism* 7(2) (2014), pp. 223-240.

<sup>9</sup> Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice', *Journal of Law and Society*, 34(4) (2007), pp.411-40; Nicola Lacey, 'Historicising Criminalisation: Conceptual and Empirical Issues', *The Modern Law Review*, 72(6) (2009), pp.936-960; Bill Rolston and Phil Scraton, 'In the Full Glare of

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English Politics: Ireland, Inquiries and the British State'. *British Journal of Criminology*, 45(2005), pp.547-564;

Roger A Shiner, 'Theorising Criminal Law Reform', *Criminal Law and Philosophy* 3(2009), pp. 167-186.

<sup>10</sup> Louk HC Hulsmán, 'Critical criminology and the Concept of Crime'. *Contemporary Crises* 10(1986), p. 71.

<sup>11</sup> Feargal Cochrane, 'From Transition to Transformation in Ethnonational Conflict: Some Lessons from Northern Ireland', *Ethnopolitics*, 11(2) (2012), p. 184.

<sup>12</sup> Context has not been included because criminalisation is contingent upon changes in the context and so these will be taken into account in analysing the other three levels of transformation.

<sup>13</sup> John Gerring, *Case Study Research: Principles and Practices* (Cambridge: Cambridge University Press, 2007), p. 91.

<sup>14</sup> These were facilitated through various organisations such as Coiste na n-Iarchimí, the Robben Island Museum, Khulisa, Lisburn Prisoners Support Project, amongst others.

<sup>15</sup> Lloyd, 'Conflict Resolution or Transformation?'

<sup>16</sup> John Paul Lederach, *Little Book of Conflict Transformation* (Intercourse: Good Books, 2003), pp. 16-17.

<sup>17</sup> Cochrane, 'From Transition to Transformation in Ethnonational Conflict'; Hugh Miall, 'Conflict Transformation: A Multidimensional Task', in: A. Austin, M. Fischer, & N. Ropers (ed.) *Transforming Ethnopolitical Conflict. The Berghof Handbook* (Berlin: Berghof Research Centre for Constructive Conflict Management, 2004), pp. 67-90; R Väyrynen, 'To Settle or to Transform? Perspectives on the Resolution of National and International Conflicts', in: R. Väyrynen (ed.) *New Directions in Conflict Theory: Conflict Resolution and Conflict Transformation* (London: Sage, 1991), pp. 1-25.

<sup>18</sup> Shanna A Kirschner, 'Knowing Your Enemy: Information and Commitment Problems in Civil Wars', *Journal of Conflict Resolution*, 54(5) (2010), pp. 745-770; David A Lake and Donald Rothchild, 'Containing Fear: The Origins and Management of Ethnic Conflict', *International Security*, 21(2) (1996), pp. 41-75.

<sup>19</sup> Cochrane, 'From Transition to Transformation in Ethnonational Conflict'; Miall, 'Conflict Transformation: A Multidimensional Task'; Väyrynen, 'To Settle or to Transform?'

<sup>20</sup> Michael V Bhatia, 'Fighting Words: Naming Terrorists, Bandits, Rebels and other Violent Actors', *Third World Quarterly* 26(1) (2005), pp. 5-22.

<sup>21</sup> Antony Pemberton and Pauline G. M. Aarten, 'Narrative in the study of victimological processes in terrorism and political violence: An initial exploration', *Studies in Conflict & Terrorism*, forthcoming, p.6.

<sup>22</sup> Linda L Putnam, 'Negotiation and Discourse Analysis', *Negotiation Journal*, 26(2) (2010), p. 148.



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- <sup>23</sup> KM Fierke, 'Special Section: Terrorism and trust in Northern Ireland', *Critical Studies on Terrorism*, 2(3) (2009), pp. 497-511; Roger Fisher and William Ury. *Getting to Yes: Negotiating an Agreement Without Giving In*. 3rd Edition (New York: Penguin Books, 2011).
- <sup>24</sup> Cochrane, 'From Transition to Transformation in Ethnonational Conflict'; Miall, 'Conflict Transformation: A Multidimensional Task'.
- <sup>25</sup> Bhatia, 'Fighting Words'.
- <sup>26</sup> Toros, 'Terrorism, Talking and Transformation'.
- <sup>27</sup> John Dugard, *Human Rights and the South African Legal Order* (Princeton: Princeton University Press, 1978).
- <sup>28</sup> Thula Simpson, 'Toyi-Toyi-ing to Freedom: The Endgame in the ANC's Armed Struggle, 1989-90', *Journal of Southern African Studies*, 35(2) (2009), pp. 508-9. This is according to Garth Strachan who was based in the ANC operation structures in Zimbabwe at the time.
- <sup>29</sup> Simpson, 'Toyi-Toyi-ing to Freedom', p. 511.
- <sup>30</sup> Nelson Mandela, *Long Walk to Freedom* (London: Abacus, 1994), p. 623.
- <sup>31</sup> Navin Bapat, 'Insurgency and the Opening of Peace Processes', *Journal of Peace Research*, 42(6) (2005), p. 699.
- <sup>32</sup> Kirschner, 'Knowing Your Enemy', p. 760.
- <sup>33</sup> South Africa. Parliament: House of Assembly. 'State President's Opening Address'. Cols. 15-16, Vol. 16. (Cape Town: Government Printer, 1990).
- <sup>34</sup> Daniel Lieberfeld, 'Getting to the Negotiating Table in South Africa: Domestic and International Dynamics', *Politikon*, 27(1) (2000), p.32.
- <sup>35</sup> Daniel Lieberfeld, 'Evaluating the Contributions of Track-Two Diplomacy to Conflict Termination in South Africa, 1984-90', *Journal of Peace Research*, 39(3) (2002), p. 366.
- <sup>36</sup> Feargal Cochrane, 'Irish-America, the End of the IRA's Armed Struggle and the Utility of "Soft Power"', *Journal of Peace Research*, 44(2) (2007), pp. 215-231; Christabel Gurney, "'A Great Cause": The Origins of the Anti-Apartheid Movement, June 1959-March 1960', *Journal of Southern African Studies*, 26(1) (2000), pp. 123-144.
- <sup>37</sup> Graham Spencer, 'Containing Dialogue: The British Government and Early Talks in the Northern Ireland Peace Process', *The British Journal of Politics and International Relations*, 10(3) (2008), pp. 454-471.

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<sup>38</sup> The problem was it was not limited to political violence alone particularly regarding restrictions on cultural symbols and censorship. See Table II.

<sup>39</sup> Daniel Byman, 'The Decision to Begin Talks with Terrorists: Lessons for Policymakers', *Studies in Conflict and Terrorism*, 29(5) (2006), pp. 403-414.

<sup>40</sup> IRA ex-prisoner B. *Interview with Author on 10 October 2016*, Belfast.

<sup>41</sup> Niall Ó Dochartaigh, 'Together in the Middle: Back-channel negotiation in the Irish Peace Process', *Journal of Peace Research*, 48(6) (2011), pp. 767-780; Tony Craig, 'Laneside, Then Left a Bit? Britain's Secret Political Talks with Loyalist Paramilitaries in Northern Ireland, 1973-1976', *Irish Political Studies*, 29(2) (2014), pp. 298-317.

<sup>42</sup> Ó Dochartaigh, 'Together in the Middle', 768; Lieberfeld, 'Getting to the Negotiating Table in South Africa'.

<sup>43</sup> Shane Kingston, 'Terrorism, the media, and Northern Ireland', *Studies in Conflict & Terrorism*, 18(3) (1995), pp. 203-231; Jonathan Powell, *Great Hatred, Little Room: Making Peace in Northern Ireland* (London: Vintage Books, 2008).

<sup>44</sup> Powell, 'Great Hatred, Little Room', p. 166.

<sup>45</sup> E. Moxon-Browne, 'The water and the fish: Public opinion and the provisional IRA in Northern Ireland', *Terrorism*, 5(1-2) (1981), pp. 41-72.

<sup>46</sup> Mitchell McLaughlin. *Interview with Author on 6 June 2016*, Northern Ireland.

<sup>47</sup> IRA ex-prisoner A. *Interview with Author on 10 June 2016*, Northern Ireland.

<sup>48</sup> For instance Prime Minister John Major linked illegal IRA violence directly to Sinn Fein: 'Sinn Fein has been challenged to give up violence - it has not done so' (HC Deb 03 February 1994, vol 236 col 1024).

<sup>49</sup> Spencer, 'Containing Dialogue', p. 469.

<sup>50</sup> *An Phoblacht [Republican News]*. Linen Hall Library Political Collection, 8 September (1994a).

<sup>51</sup> *An Phoblacht [Republican News]*. Linen Hall Library Political Collection, 24 November (1994b).

<sup>52</sup> Brian Gormally and Kieran McEvoy, *Release and Reintegration of Politically Motivated Prisoners in Northern Ireland: a Comparative Study of South Africa, Israel/Palestine, Italy, Spain, the Republic of Ireland and Northern Ireland* (Belfast: Northern Ireland Association for the Care and Resettlement of Offenders, 1995), p. 43.

<sup>53</sup> Kirsten Schulze, 'The Northern Ireland Political Process: A Viable Approach to Conflict Resolution', *Irish Political Studies* 12(1) (1997), p. 106; Powell, 'Great Hatred, Little Room'.

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<sup>54</sup> However many of the powers and aspects of these laws became rewritten in the Terrorism Act 2000, raising questions about whether the repeal of these laws was anything more than symbolic.

<sup>55</sup> George Mitchell, *Making Peace: The Inside Story of the Good Friday Agreement* (London: William Heinemann, 1999); Powell, 'Great Hatred, Little Room'; Peter Shirlow, Jonathan Tonge, James McAuley & Catherine McGlynn, *Abandoning Historical Conflict? Former Political Prisoners in Northern Ireland* (Manchester: Manchester University Press, 2010).

<sup>56</sup> South Africa. Parliament: House of Assembly. 'State President's Opening Address', Cols. 15-16, Vol. 16. (Cape Town: Government Printer, 1990).

<sup>57</sup> Louise Mallinder, 'Indemnity, Amnesty, Pardon and Prosecution Guidelines in South Africa', *Beyond Legalism: Amnesties, Transition and Conflict Transformation*, Working Paper No.2 (2009), p. 30.

<sup>58</sup> Mallinder, 'Indemnity, Amnesty, Pardon and Prosecution Guidelines', p. 40.

<sup>59</sup> Colm Campbell and Ita Connolly, 'The Sharp End: Armed Opposition Movements, Transitional Truth Processes and the Rechtsstaat', *The International Journal of Transitional Justice*, 6(1) (2012), p. 11.

<sup>60</sup> Hulsman, 'Critical criminology and the concept of crime', p. 71.

<sup>61</sup> Chungshik Moon and Mark Souva, 'Audience Costs, Information, and Credible Commitment Problems', *Journal of Conflict Resolution* 60(3) (2016), pp. 434-458.

<sup>62</sup> Brian Gormally, Director of the Committee of the Administration of Justice. *Interview with Author on 13 April 2016*, Belfast.

<sup>63</sup> IRA ex-prisoner C. *Interview with Author on 10 October 2016*, Belfast.

<sup>64</sup> Hazlett Lynch, Former Project Co-ordinator, West Tyrone Voice. *Interview with Author on 7 June 2016*, Northern Ireland.

<sup>65</sup> Community Worker, Victims' NGO in Northern Ireland. *Interview with Author on 17 July 2016*, United Kingdom.

<sup>66</sup> Marjorie Jobson, Director of Khulumani. *Interview with Author on 15 August 2016*. Johannesburg.

<sup>67</sup> *Ibid.*

<sup>68</sup> For more discussion on this see Fionnuala Ní Aoláin and Colm Campbell, 'The Paradox of Transition in Conflicted Democracies', *Human Rights Quarterly*, 27(2005), pp. 172-213.

<sup>69</sup> Bapat, 'State Bargaining with Transnational Terrorist Groups'; Cronin, 'When Should We Talk to Terrorists'; Pruitt, 'Negotiation with Terrorists'; Spector, 'Negotiating with Villains Revisited'; Toros, 'We Don't Negotiate with Terrorists'; Zartman, 'Negotiating with Terrorists'.

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- <sup>70</sup> Gormally, *Author Interview*; Gormally, McEvoy and Wall, 'Criminal Justice in a Divided Society'.
- <sup>71</sup> South Africa. Parliament: House of Assembly. 'Terrorism Bill Second Reading' (Cape Town: Government Printer, 1967), Col. 7024.
- <sup>72</sup> UK Parliament, *Terrorism*. 25 November 1974, HC 882, c35.
- <sup>73</sup> UK Parliament, *Bomb Explosions*. 22 November 1974, HC 881, c1671.
- <sup>74</sup> Toros, 'We Don't Negotiate with Terrorists', p. 413.
- <sup>75</sup> Breen-Smyth, 'Theorising the 'suspect community'.
- <sup>76</sup> IRA ex-prisoner D, *Interview with Author on 10 October 2016*. Belfast.
- <sup>77</sup> *Ibid.*
- <sup>78</sup> McLaughlin, *Author Interview*.
- <sup>79</sup> UVF ex-prisoner B. *Interview with Author on 3 June 2016*. Belfast.
- <sup>80</sup> UVF ex-prisoner A. *Interview with Author on 12 April 2016*. Belfast.
- <sup>81</sup> MK ex-prisoner. *Interview with Author on 29 August 2016*. Cape Town.
- <sup>82</sup> South African political ex-prisoner. *Interview with Author on 1 September 2016*. Cape Town.
- <sup>83</sup> Lieberfeld, 'Getting to the negotiating table in South Africa', p. 22.
- <sup>84</sup> *Ibid.*, p. 23.
- <sup>85</sup> Pik Botha, University of Witwatersrand Historical Papers Collection, *Interview with Patti Waldmeir on 18 November 1994*.
- <sup>86</sup> *Ibid.*
- <sup>87</sup> For instance a senior UDA ex-prisoner stated: 'I've no doubt there are people within loyalist paramilitaries who have always been criminals if you like under a flag of convenience' (UDA ex-prisoner A, 2016); a UVF ex-prisoner explained: '[Criminality's] probably been going since the paramilitaries first started because, sadly human beings being what they are, once people see there's a means of making money or whatever people come in' (UVF ex-prisoner B, 2016). In contrast republican ex-prisoners explicitly denied any form of criminality, but some referred to unjustifiable incidents, albeit ones linked to warfare not crime: 'That is not to say that everything that the IRA were involved in was right because it patently wasn't and there was all sorts of slaughter and mayhem...so I wouldn't even attempt to justify any of those horrendous actions by the IRA' (IRA ex-prisoner C, 2016).

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<sup>88</sup> Dean Pruitt, 'Negotiation with Terrorists', *International Negotiation*, 11(2006), p. 381; Julie Browne and Eric S Dickson, "'We Don't Talk to Terrorists': On the Rhetoric and Practice of Secret Negotiations', *Journal of Conflict Resolution*, 54(3) (2010), pp. 379-407.

<sup>89</sup> IRA ex-prisoner B, *Author Interview*.

<sup>90</sup> James McAuley and Neil Ferguson, "'Us" and "Them": Ulster Loyalist Perspectives on the IRA and Irish Republicanism', *Terrorism and Political Violence*, 28(3) (2016), pp. 561-575.

<sup>91</sup> IRA ex-prisoner A, *Author Interview*.

<sup>92</sup> Toros, 'Terrorism, Talking and Transformation', p. 125.

<sup>93</sup> Claire Mitchell, 'The Push and Pull between Religion and Ethnicity: The Case of Loyalists in Northern Ireland', *Ethnopolitics*, 9(1) (2010), pp.53-69; Shirlow et al., 'Abandoning historical conflict'.

<sup>94</sup> Unionist Politician. *Interview with Author on 15 April 2016*, Belfast.

<sup>95</sup> UDA ex-prisoner A. *Interview with Author on 3 June 2016*, Belfast.

<sup>96</sup> Steve Bruce, 'Terrorism and Politics: The Case of Northern Ireland's Loyalist Paramilitaries', *Terrorism and Political Violence*, 13(2) (2001), pp. 27-48.

<sup>97</sup> UDA ex-prisoner B. *Interview with Author on 11 October 2016*, Belfast.