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Struggling for Reparations in Northern Ireland

Luke Moffett*

Reparations are considered a key part in remedying gross violations of human rights and finding a political settlement to violent pasts in many transitional societies. However, in Northern Ireland, despite a protracted conflict with tens of thousands of victims, affording reparations has not been a central objective of the transitional justice process. The debate on dealing with the past has squarely concentrated on truth and accountability.¹ This is despite numerous claims for compensation, campaigns for redress and even a country report by the UN Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence, which identifies reparations as the ‘area of least achievement’ in the context of Northern Ireland and something that ‘should be tackled seriously and systematically.’²

Reparations are valued as victim-focused measures of redress. Their ambit has not been entirely lost on victims in Northern Ireland, but rather been stymied by the fragmented approach taken to dealing with the past along with political antagonism around who is considered a deserving victim. Nevertheless, there remains a role for reparations in dealing with the complex harm and continuing suffering caused by the conflict in and around Northern Ireland. Moreover, the experience of Northern Ireland is instructive for other transitional or post-conflict societies, where twenty years after the peace agreement, contests around hierarchies of victimhood, remedies being reduced to service provision and decades of campaigning, failed to mobilise sufficient political will to redress the past. These challenges might suggest that for most people in Northern Ireland, the violence is in the past and forgotten. However, for those bereaved and seriously injured, the past is their present and their families’ future. It also belies the fractures and sectarianism that still pervade Northern Ireland society, which is exemplified by the rhetoric of political parties and continuing violence by paramilitaries.

Most of the founding literature and practice concerning reparations for mass violations has concentrated on transitions from authoritarian or apartheid regimes. Post-conflict societies often face opposing communities trying to reconcile their own use and justification of violence. This is not to neglect or minimise the attachment and support such authoritarian regimes may continue to have or their ability to threaten future violence, but post-conflict countries have to build and live with an uneasy peace. As a result, who is recognised as a victim and deserving of reparations goes to the heart of the nature of violence, who was responsible and who suffered, beyond the simple binary of innocent victims and guilty perpetrators.³ As Ewald finds, ‘[s]uffering and victimisation in conflict and post conflict

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¹ NI Strategy for Victims and Survivors, Office of the First Minister and Deputy First Minister (2009).

² ‘Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his mission to the United Kingdom of Great Britain and Northern Ireland’, Pablo de Greiff, UN Doc. A/HRC/34/62/Add.1, 17 November 2016, paras. 60, 130.

³ See Tristan Anne Borer, ‘A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa’, (2003) 25(4) *Human Rights Quarterly* 1088.

societies, is highly politicised and instrumentalised to maintain or reconstruct basic value systems.’⁴ This is very apparent when it comes to discussing reparations in Northern Ireland.

This chapter examines the use of reparations in Northern Ireland in remedying the past. It traces the contested nature of victimhood, central to the continuing controversy surrounding the provision of reparations in Northern Ireland. It then summarises the current state of affairs in Northern Ireland in relation to the five main forms of reparations. This section also considers victims who have brought their reparation claims before the courts to seek redress, owing to the insufficiency of the *status quo* of reparations programmes in Northern Ireland. The final section concludes by finding that reparations offered to victims have been piecemeal, grossly insufficient in remedying their harm, and packaged as ‘services’ rather than rights. Instead, a rights-based approach to reparations is suggested alongside a truth process. As such, it is hoped that this analysis can offer insight into the challenges of introducing reparations into a protracted transitional justice context.

A. Reparations in Northern Ireland

1. A brief overview of the Northern Ireland conflict and responses to it

The conflict in and around Northern Ireland (‘the Troubles’) between 1969-1998 left over 3,700 people dead, 40,000-50,000 injured, hundreds tortured, 16 disappeared, over 40,000 people forced out of their homes, and 4,600 exiled.⁵ Such violence has had a ripple effect on families, communities and society in Northern Ireland whether through physical disability, caring responsibilities, mental health issues, or damaging economic development.⁶ The root of the conflict is between unionist Protestants who want to remain part of the United Kingdom and for decades dominated government institutions, and nationalist Catholics who campaigned for civil rights and equality, and would broadly wish to be reunited with the rest of Ireland, with loyalist and republican paramilitaries using violence to achieve their respective ends.⁷ There has also been questionable use of force and issues of collusion between paramilitary groups and the British and Irish governments.

The conflict ended with the signing of the 1998 Good Friday Agreement, which finalised the peace process between loyalist and republican paramilitaries, unionist and nationalist political parties, and the British and Irish governments. A devolved assembly and executive was created in Stormont, outside Belfast, as well as a number of British and Irish cross-border bodies.⁸ While there has been relative peace since 1998,⁹ dealing with the past in Northern

⁴ Uwe Ewald, ‘Victimisation in the Context of War – Some Aspects of a Macro-Victimological Research Project’, (2002) 10(2-3) *European Journal of Crime, Criminal Law and Criminal Justice* 90, 95.

⁵ See, Chris Thornton, Seamus Kelters, Brian Feeney and David McKittrick, *Lost Lives: The Stories of the Men, Women and Children Who Died as a Result of the Northern Ireland Troubles* (Edinburgh: Mainstream Publishing, 1999); Marie-Therese Fay, Mike Morrissey and Marie Smyth, *Northern Ireland's Troubles: The Human Costs* (London: Pluto Press 1999). See also, Police Service of Northern Ireland (PSNI), ‘Persons injured as a result of the Security Situation in Northern Ireland 1969-2003’; ‘Sutton Index of Deaths 1969-2002’, both available at <http://cain.ulst.ac.uk/sutton/> (accessed May 2019). Over 150 people have been killed by paramilitary and state forces since the peace agreement in 1998.

⁶ Kenneth Bloomfield, ‘We Will Remember Them’, Report of the Northern Ireland Victims Commissioner, Sir Kenneth Bloomfield, April 1998, para. 2.13.

⁷ For a background to the conflict see, David McKittrick and David McVea, *Making Sense of the Troubles: A History of the Northern Ireland Conflict* (London: Penguin 2001).

⁸ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, (the ‘Good Friday Agreement’) 1998.

Ireland has been more contentious. Uncovering the truth has been identified as a critical component of dealing with the legacy of the Troubles, with pursuit of accountability through the prosecution of some perpetrators.¹⁰ The issue of reparations has been raised in a number of studies and consultations.¹¹ A report by Kenneth Bloomfield, the first victims' commissioner, explored how greater recognition of victims' suffering during the Troubles and welfare for them and their families could be improved. The report recommended a range of memorials, a 'memorial fund' to support affected individuals and groups, a victim's champion, better advice and employment opportunities for victims, and a 'fitness for purpose' review of compensation.¹²

In light of the Bloomfield report and its recommendations of funds to support affected individuals and communities, the Northern Ireland Memorial Fund (NIMF) was established in 2001. The NIMF provided financial assistance to victims and survivors who had lost a spouse or partner, were seriously injured or were primary carers, through eight grants covering short breaks, chronic pain management, disability allowance, education and training, and other allowances.¹³ The NIMF was originally created as a benevolent fund, but in 2010 it changed to a conditional means-tested scheme due to financial constraints.¹⁴ From 2001–2012 some 11,000 victims and survivors availed themselves of the fund and were awarded some £17 million.¹⁵ Considering the number of victims of the conflict, the fund only helped a fraction of those affected. Yet, the NIMF was an important source of funding for those who did avail of it, in alleviating some of their financial and social hardship.

In April 2012, as part of the Stormont executive's ten year Strategy on Victims and Survivors, the NIMF was subsumed within the newly created Victims and Survivors Service (VSS), with an allocated £36m annual budget, which is intended to coordinate and fund the provision of services to victims, including counselling, befriending, respite breaks, chronic pain management and retraining schemes. The VSS, since its establishment in 2013, has been criticised for its intrusive individual needs assessments and delays in funding to groups.¹⁶ With new management and reorientation of funding, the VSS has improved its perception amongst victims and survivors, but has a fixed annual budget meaning that funding can be reduced for individual claimants where a larger number of victims apply than the previous year.

Attention to dealing comprehensively with the past and the role of reparations beyond services was renewed in 2008-2009 under the Consultative Group on the Past (CGP). The final report of the CGP recommended a truth recovery body (the 'Legacy Commission'), which would help to facilitate information recovery, review and investigate historic cases and

⁹ Since the Good Friday Agreement over 180 people have been killed in relation to the conflict. For statistics, see CAIN: <http://cain.ulst.ac.uk/issues/violence/deathsfrom2002draft.htm> (accessed 20 February 2019).

¹⁰ Bloomfield (n 9), para. 5.37; Kieran McEvoy, 'Making Peace with the Past: Options for truth recovery regarding the conflict in and about Northern Ireland', *Healing Through Remembering (HTR)*, 2006; and Report of the Consultative Group on the Past (CGP) (2009), https://cain.ulster.ac.uk/victims/docs/consultative_group/cgp_230109_report.pdf (accessed May 2019).

¹¹ Bloomfield (n 9); Consultative Group on the Past report, *ibid*.

¹² Bloomfield (n 9), 50-52.

¹³ See Patricia MacBride, 'Reparations in Northern Ireland – A duty to victims?', Commission for Victims and Survivors Report, 16 November 2011.

¹⁴ In 2012/2013, the budget of the NIMF was £3,304,250 for 2,869 potential applicants. See Commission for Victims and Survivors, 'Comprehensive Needs Assessment', February 2012 (CVS 2012), 18.

¹⁵ *Ibid*, 60.

¹⁶ WKM Solutions, 'The Victims and Survivors Service: An Independent Assessment' (WKM 2014).

examine thematic causes and patterns of the conflict. Out of the thirty recommendations, only one refers to compensation, which was framed as a ‘recognition payment’ to the families of all bereaved. This recommendation, discussed further below, was met with protests and vilified in the media, resulting in the whole report being rejected. Despite this, seriously injured victims have been campaigning since 2012 for a pension to assist with their daily struggles and inadequate compensation, in a way a critique of the CGP, which ignored them in the recognition payment formulation.¹⁷ Subsequent talks and proposals to deal with the past resulted in the Stormont House Agreement in 2014, which focuses exclusively on mechanisms of truth and justice, i.e. a historical investigations team for prosecutions (Historical Investigations Unit) and a two-part truth recovery body (the Independent Commission for Information Retrieval and Implementation and Reconciliation Group).¹⁸ The issue of reparations is absent in the agreement, with only a brief paragraph deciding that the political parties should seek agreement on a pension for seriously injured victims. Since January 2017, the Northern Ireland Assembly and Executive have remained dormant, due to their collapse over allegations of corruption by one party.

It is interesting to note that reparations in Northern Ireland is a ‘dirty word’, rarely invoked and advocated for; the experience of the CGP and continuing debates on a pension for seriously injured victims attest to this. For some in the unionist community, the word reparations connotes responsibility; by virtue of reparations being provided by the State it is over-obliging the UK Government to take responsibility for all violence during the conflict, despite state forces being only directly responsible for around 10% of fatalities.¹⁹ Yet some republican ex-combatants have expressed to the author that reparations are ‘retributive’;²⁰ and some loyalists have expressed reluctance to claim reparations as against ‘claim culture’ from the state, in other words they knew the risks they were taking at the time. Political parties like Sinn Féin and the Social Democratic Labour Party (SDLP) have endorsed reparations as part of a rights framework to dealing with the past. This ‘green and orange’ division between Catholic-Protestant, Nationalist/Republican-Unionist/Loyalist reflects the politicisation of the past and responses to it, which have stymied progress in implementing transitional justice mechanisms. However, as of 2019 a coherent reparation mechanism, common to other transitional jurisdictions, has yet to emerge. A consultation on dealing with the past, i.e. implementation of the Stormont House Agreement, was initiated by the UK Government in 2018, but the provision of a pension for the seriously injured was left out of its draft legislation.

Perhaps the unique nature of Northern Ireland in comparison to other transitional societies, is that the violence occurred in a settled democracy which did not rise to the level of an internal armed conflict. As a result and during the conflict, the consequences of the violence were treated through normal criminal and civil justice mechanisms. This is apparent with the Criminal Injuries Compensation Scheme, discussed further below, which produced arbitrary results in the vicious climate that engulfed the country, such as reducing victims’ awards, denying them access to claim compensation and armed actors taking the money off victims. Similarly the provision of a replacement housing scheme and general public service provision

¹⁷ Stuart Magee, ‘Exploring Models for the Proposal of Special Pension Provision for those Injured in the Northern Ireland ‘Troubles’,’ WAVE Trauma Centre (2013).

¹⁸ Kieran McEvoy and Anna Bryson, ‘Justice, Truth and Oral History: Legislating the Past “from Below” in Northern Ireland’, (2016) 67(1) *Northern Ireland Legal Quarterly* 67.

¹⁹ This does not include incidents of indirect involvement, such as collusion with loyalist and republican paramilitary groups.

²⁰ Interview NI16, June 2018, Belfast (all interviews on file with the author).

to victims underlines the limitations of relying on ordinary justice mechanisms to deal with political violence in a victim-sensitive way.

2. Contest over victimhood and reparations

Reparations continue to be held back by contested notions of victimhood. To an extent this represents the continuation of the politicisation of the past, the transfer of the conflict into a ‘meta’ one in the political and legal sphere.²¹ However it also reveals deeper challenges of different actors facing their own responsibility in the conflict, in how violence was used by state and non-state actors against their own communities or colluded with one another. These contexts do not lend themselves to simple narratives of upholding the rule of law and defending community or resisting British occupation and unionist hegemony, but reflect the messy reality that the main political parties, governments and society as a whole are reluctant to face.

The Good Friday Agreement is silent on who is a victim of the conflict, and also fails to provide a definition on the ‘conflict’ itself.²² Defining victims has been a delicate task. The main statute on the issue, the Victims and Survivors Order 2006, defines a victim broadly as someone who,

- (a) is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident;
- (b) provides a substantial amount of care on a regular basis for an individual mentioned in paragraph (a); or
- (c) has been bereaved as a result of or in consequence of a conflict-related incident.

This definition is widely construed and consistent with international guidance.²³ Nevertheless, identification as a victim or ‘victimhood’ remains a hotly contested issue and some political parties have advocated and made some effort to have it repealed to include only ‘innocent’ victims.²⁴ As Morrissey and Smyth argue, there is a prevalent culture in Northern Ireland of ‘universal victimhood’, with both loyalist and republican paramilitaries justifying their violence on their victim status.²⁵ Loyalists consider themselves victims of the IRA with support of the Irish state, with republicans being victims of British imperialism and loyalist violence.²⁶ This is apparent in how such groups view victims in Northern Ireland. The Combined Loyalist apology in 1994 only expresses regret for ‘innocent victims’, with the Provisional IRA apology in 2002 apologising to ‘non-combatants’, making both apologies ambiguous to how remorseful they are or at least civilians got in the way, while at the same time justifying their use of violence.²⁷ Victimhood is also used as a moral basis in the

²¹ Kevin Hearty, ‘Legislating Hierarchies of Victimhood and Perpetrators: The Civil Service (Special Advisers) Act (Northern Ireland) and the Meta-conflict’, (2016) 25(3) *Social & Legal Studies* 333.

²² Christine Bell, ‘Dealing with the past in Northern Ireland’, (2003) 26 *Fordham Intl LJ* 1095, 1122.

²³ Principles 1 and 2, UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, UN Doc A/RES/40/34; and Principle 8, ‘UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (Basic Principles and Guidelines), Principle 15, A/RES/60/147, 16 December 2005.

²⁴ Democratic Unionist Party, ‘Response to Government Consultation on Addressing the Legacy of Northern Ireland’s Past’, 5 October 2018, 5.

²⁵ Fay, Morrissey and Smyth (n 8) 5.

²⁶ *Ibid*, 5.

²⁷ Bell (n 25) 1124-1125.

political narratives of each community. Unionist political parties have used a ‘rule of law’ discourse to distinguish IRA ‘terrorists’ who are harmed from ‘innocent’ civilian victims and state forces who were just doing their duty, to avoid moral equivalence between the two groups.²⁸ Nationalist political parties emphasise a human rights approach to ensure equality reflected in the 2006 Order and avoid a hierarchy of victimhood, but to highlight the responsibility of state forces.²⁹ The contested notion of victimhood is to hide, exclude or justify violence against certain victims, such as individuals subjected to punishment attacks.³⁰

Such tensions of who is a victim and eligible for reparations have not been apparent across the border in the Republic of Ireland, where a Remembrance Commission was established to support victims and survivors of the Troubles. Between 2003 and 2008 it provided €3.9m in acknowledgement payments to some 309 beneficiaries (on average €5,300 each) as well as over €2m for support services to victims within the country.³¹ These payments were made on grounds of social solidarity with the victims, many of whom were in Northern Ireland, and did not exclude those who were former members of armed groups or had convictions. As such, who is a victim is not a legal problem, but a political one that political parties in Northern Ireland capitalise upon for their own gain, but at the cost of victims waiting for redress.

In Northern Ireland, competing notions of victimhood and victim recognition have also resulted in a discourse about a hierarchy of victims, whereby a distinction is made between ‘innocent’ civilian victims and members of a paramilitary organisation/security forces, depending on the narrative. Many members of the security forces resent being placed in the same category as paramilitaries who were killed during the conflict.³² As a result, victim recognition can be dependent on the community, where victimised by the ‘other side’ crimes are recognised, but those individuals victimised by their own community are ignored.³³ There are victim groups, such as FAIR, which seeks justice for (only) the ‘innocent victims’ of IRA terrorism.³⁴ Some groups are focused on state (only) violence e.g. Relatives for Justice, some on (only) violence by ‘terrorists’ such as South-East Fermanagh Foundation, whereas others are more cross-community, e.g. Wave Trauma Centre.

The tension of contested notions of victimhood and eligibility for reparations is well demonstrated with the CGP proposal for a ‘recognition payment’ of £12,000 be paid to the relatives of those killed during the conflict.³⁵ This proposal was trounced by the media and protested by innocent victim campaigners, as it equated victims with perpetrators by offering

²⁸ See Cheryl Lawther, Truth, *Denial and Transition: Northern Ireland and the Contested Past*, Routledge 2014.

²⁹ Amaia Álvarez Berastegi and Kevin Hearty, ‘A context-based model for framing political victimhood: Experiences from Northern Ireland and the Basque Country’, (2019) 25(1) *International Review of Victimology* 19.

³⁰ See Colin Knox, ‘The ‘Deserving’ Victims of Political Violence: ‘Punishment’ Attacks in Northern Ireland’ (2001) 1(2) *Criminology and Criminal Justice* 181.

³¹ MacBride (n 16), 4-5. Payments were also made to spouses/dependents (34 individuals on average €13,566 each), those rendered permanently disabled (48 individuals on average €13,458 each), treatment of injuries (28 individuals on average €2,472 each) and for exceptional medical expenses (77 individuals on average €13,539 each).

³² Fay, Morrissey and Smyth (n 8) 8.

³³ See Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering* (Polity Press, 2010) 96-97.

³⁴ Families Acting for Innocent Relatives (FAIR). Fay, Morrissey and Smyth (n 8) 9.

³⁵ CGP report (n 13) 92.

the same amount of compensation to paramilitaries, security forces and civilians.³⁶ As Peter Robinson, former First Minister for Northern Ireland and leader of the DUP stated, the party had ‘consistently opposed any equation between the perpetrator of crimes during the Troubles and the innocent victim.’³⁷ Nevertheless, the Northern Ireland Human Rights Commission agreed with the use of a recognition payment as part of a rights-based approach to dealing with the past, but criticised the CGP report for failing to account for wider compensation structures in its other recommendations, such as those injured.³⁸ The controversy over the recognition payment buried the CGP report and set back talks on dealing with the past for years.

The debate over victimhood also plagued the subsequent campaign by seriously injured victims to obtain a pension since 2012. At the heart of this debate is whether a few dozen disabled former combatants should be eligible for this pension – the view of many being that ‘guilty’ perpetrators should not be equated with ‘innocent’ civilian *and* state forces.³⁹ This is despite many individuals not having been prosecuted for conflict-related violence, including state forces involved in collusion or in notable incidents such as the Bloody Sunday or Ballymurphy massacres. The touchstone of conviction as exclusion from reparations beyond reducing these human beings to guilty perpetrators, also neglects that many state and non-state actors were never prosecuted. Moreover, it sends the message that such suffering caused to victimised perpetrators was somehow morally justified.

As a result of the competing narratives of victimhood, the current situation of reparations in Northern Ireland reinforces a hierarchy of victims by unequally recognising and providing reparation measures to certain groups of victims over others.⁴⁰ For instance, there is greater compensation for members of the security forces and more investigations and inquests into the death of contentious killings involving state actors. Moreover, the gender dimension of victimisation has been neglected.⁴¹

3. The provision of reparations

There are five types of reparations generally recognised in transitional justice and human rights law: restitution; compensation; rehabilitation; satisfaction and guarantees of non-repetition.⁴²

Despite this legal formalism, in societies emerging from conflict or authoritarianism there can be thousands, tens of thousands even millions of victims who have suffered gross violations of human rights or international crimes. The demand for redress can exceed a fragile country’s financial supply of reparations. Alternative priorities of economic stability, security and reconstruction can make it unfeasible and unaffordable to provide reparations to a large victim universe. Nonetheless, in light of international obligations, but also as a means to

³⁶ ‘Government Axes £12k for victims of troubles’, *Belfast Telegraph*, 25 February 2009.

³⁷ ‘Troubles victims’ payment planned’, *BBC News*, 23 January 2009.

³⁸ Northern Ireland Human Rights Commission, ‘Response to Northern Ireland Office consultation on the report of the Consultative Group on the Past’, (2009), para. 24.

³⁹ Luke Moffett, ‘A pension for injured victims of the Troubles: reparations or reifying victim hierarchy?’ (2016) 66(4) *Northern Ireland Legal Quarterly* 297.

⁴⁰ Mary O’Rawe, ‘Truth and Justice’, in Brandon Hamber and Mary Wilson (eds), *Recognition and Reckoning: The Way Ahead on Victims Issues*, Democratic Dialogue, Report 15, 2003, 52, 53.

⁴¹ Catherine O’Rourke and Aisling Swaine, ‘Gender, Violence and Reparations in Northern Ireland: A Story Yet to be Told’, (2017) 21 *International Journal of Human Rights* 1302.

⁴² UN Basic Principles and Guidelines (n 28)

forge a new society based on values such as reconciliation, social solidarity and the rule of law, reparations represent a new commitment to redress the violations of the past. Countries can commit to reparations at substantial cost, but this tends to be rare. Instead in many post-conflict countries there are a range of partial reparation measures, assistance and development programmes, alongside victims self-repairing their harm, which may result in the conceptual coherence of such measures being blurred. For the purposes of this section, reparations are measures which intend to remedy and acknowledge victims' suffering, at best they should be used comprehensively, but as we will see in Northern Ireland can often respond to a particular form of harm, need or incident, rather than provide holistic redress. This can leave victims frustrated, and feeling like 'beggars' by being dependent on the charity of the state.

a) Restitution

Restitution is about restoring a victim to the position they were in before the crime or violation.⁴³ In Northern Ireland, the Good Friday Agreement reinstated a number of legal entitlements by enabling individuals to claim their Irish or Ulster Scots identities and celebrate their cultural heritage, as well as to claim citizenship of Ireland and/or the United Kingdom. However, as MacBride points out these rights are not victim-centred as they apply to the whole community, and thus cannot be explicitly viewed as reparations.⁴⁴

There have been some efforts to more explicitly restore rights, in particular property in Northern Ireland. During the Troubles tens of thousands of individuals and families were forced to leave their homes, land, and businesses, because of paramilitary intimidation and violence, which continues to occur.⁴⁵ In response, the Northern Ireland Housing Executive purchases homes of those intimidated by paramilitaries, under the Scheme for the Purchase of Evacuated Dwellings (SPED).⁴⁶ This programme did not involve restoration of the original property, but rather restitution in kind through replacement housing in an area similar to their community background, i.e. protestant or catholic. This forced displacement has resulted in community harm that has not been addressed. Violence also impacted people's way of life, which had different implications for those living in rural areas, especially to farmers who are 'wedded to their land'.⁴⁷ Violence in the countryside often targeted protestant farmers, resulting in some of them joining security forces or loyalist paramilitary groups to protect their families and community.

Impromptu auctions of family land during conflict often meant that individuals did not receive sufficient compensation for the value of the land, further entrenching their loss. In somewhat comparable circumstances, the Inter-American Court of Human Rights has found that governments are responsible to ensure the safe return of individuals to their communities.⁴⁸ This may be difficult to achieve in Northern Ireland with community

⁴³ Principle 19, UN Basic Principles and Guidelines (n 28).

⁴⁴ MacBride (n 16) 3.

⁴⁵ Donna Deeney and Adrian Rutherford, '2,000 households forced out of their homes - paramilitaries blamed for 73% of cases', *Belfast Telegraph*, 5 January 2019.

⁴⁶ Section 29, Housing (Northern Ireland) Order 1988.

⁴⁷ Interview NI17 – the interviewee's brother was shot dead on his farm.

⁴⁸ *Moiwana v Suriname* (Preliminary Objections, Merits, Reparations and Costs) Ser C No.124 (IACtHR, 15 June 2005), para. 212.

segregation and over 60 peace walls, which have homogenised some communities in Belfast, Derry and other areas, which the compensation of land and rehousing reinforce.⁴⁹

The issue of restitution of rights has also been neglected for the over 4,600 individuals forced into exile from Northern Ireland, who have been unable to return because of fear of reprisals.⁵⁰ Returning individuals and communities to certain areas in Northern Ireland could facilitate wider transitional justice goals of reconciliation and prevent the recurrence of victimisation. The Consultative Group on the Past did propose facilitating the return of exiles to Northern Ireland,⁵¹ but there has been little effort to implement this. There remains the real risk of violence to individuals who have been forced into exile by paramilitary groups. The absence of a comprehensive approach to restore rights and address paramilitary violence has prevented a large group of victims from coming home.

b) Compensation

Compensation has been more readily provided to certain victims of the conflict in Northern Ireland. Originally, compensation had to be claimed before the courts before a statutory administrative body was introduced under the Criminal Injuries Compensation Scheme, which provided monetary awards to victims based on common law equity principles determined by the courts.⁵² However, this scheme did not acknowledge victims' pain or the loss of bereavement.⁵³ Only in 1988 was a bereavement payment made available to spouses and parents of those killed.⁵⁴ This was replaced in 2002 by a tariff scheme, where the Compensation Agency would determine the amount of compensation on a statutory basis, removing the discretion of the court, and allowing appeals of compensation awards to an independent panel.⁵⁵ The 2002 tariff scheme also included that compensation was to be calculated 'to acknowledge the grief and sorrow caused by the death of that person and the loss of that person's care, guidance and society', but this is only for prospective victims, not those already victimised during the Troubles.⁵⁶

Bloomfield reports that from 1969 until 31 March 1998, the Compensation Agency had paid out some £186 million to victims of terrorist violence in Northern Ireland, with £26 million paid to relatives of those killed, and £160 million to those injured.⁵⁷ A subsequent report by the Compensation Agency detailed that £658,362,957 was paid out for criminal injuries between 1968-2003, and £990,372,313 for criminal damage during the same period.⁵⁸ Although this may seem like a high amount of compensation paid to injured victims, estimates put the number of injured victims between 47,500-100,000 individuals.⁵⁹ The Cost of the Troubles Study found that only 9.4% of their respondents received adequate

⁴⁹ *Towards Sustainable Security: Interface Barriers and the Legacy of Segregation in Belfast*, Community Relations Council (2008).

⁵⁰ CGP Report (n 13), 80.

⁵¹ Ibid

⁵² See Criminal Injuries (Compensation) (Northern Ireland) Order 1977.

⁵³ MacBride (n 16) 4.

⁵⁴ S. 9, Criminal injuries (Compensation) (Northern Ireland) Order 1988.

⁵⁵ Criminal Injuries Compensation (Northern Ireland) Order 2002.

⁵⁶ S. 4(2)(d), Criminal Injuries Compensation (Northern Ireland) Order 2002.

⁵⁷ Bloomfield (n 9), para. 5.6.

⁵⁸ Appendix 1, 'Memorandum submitted by the Northern Ireland Office and the Compensation Agency', Northern Ireland Affairs - Fourth Report, Session 2003-2004.

⁵⁹ Marie Breen-Smyth, 'The needs of individuals and their families injured as a result of the Troubles in Northern Ireland', WAVE 2012, 94-95.

compensation, with the majority of them (89.7%) being dissatisfied with the amount received.⁶⁰ It is important to note that the statutory compensation scheme only arose in 1977, by which time more than half of all accounted deaths and many of those seriously injured had already taken place and were reliant on the courts.⁶¹

The compensation schemes have been criticised. Relatives of paramilitaries killed during the conflict were denied compensation under the schemes, due to their membership in an unlawful organisation or engagement in terrorist activities at any time in the past or present.⁶² This exclusion also resulted in a denial of compensation to the relatives of those paramilitaries who had served their sentences and were subsequently killed upon their release.⁶³ Victims who were injured also faced their compensation being cut after 16 years, despite their health deteriorating and dependency increasing as they became older.⁶⁴ Furthermore, compensation amounts awarded were seen as insufficient as they were based on income and not need. For instance relatives of those killed in the 1970s were awarded a few hundred pounds to cover only funeral costs.⁶⁵ In addition, victims' life expectancy was underestimated, and as they were unable to work as a result of their injuries the compensation awarded prevented their subsequent benefit allowance.⁶⁶ Victims also had deductions from their compensation payments for the costs of legal counsel and for any claimed benefits while they were in hospital or before their claim was settled.⁶⁷ Accordingly, compensation that was paid to victims was unfair, unequal and based on their income value rather than remedying their harm.

There have also been funding schemes established by the British government to compensate certain groups of victims.⁶⁸ However, as MacBride demonstrates, a substantial amount of compensation has been paid to British government forces, such as the Ulster Defence Regiment/Royal Irish Regiment and the Royal Ulster Constabulary. Some argue that this amount is justifiable based on these individuals' service to their community and the harm, injury or death they suffered as a result of paramilitary violence.⁶⁹ Yet, the exclusion of the many civilians who suffered as a result of the conflict creates inequality amongst those who have suffered. This can inflict secondary victimisation on those harmed by state forces. There can also be disparity amongst victims who succeed in claiming large compensation sums, such as the recent award of £625,000 in respect of one victim killed in the Blood Sunday massacre.⁷⁰ While this represents the tenacity of victims who for years campaigned for vindication of their family member's name as an innocent civilian, it raises difficult questions

⁶⁰ Mike Morrissey, Marie Smyth and Marie Therese Fay, 'The Cost of the Troubles Study - Report on the Northern Ireland Survey: the experience and impact of violence', INCORE 1999, 89-90.

⁶¹ By the end of 1977 1,909 people had been killed in the Troubles since 1969 according to the Sutton Index.

⁶² S. 6(3), Criminal Injuries (Compensation) (Northern Ireland) Order 1977; and s. 5(9), Criminal Injuries (Compensation) (Northern Ireland) Order 1988. See also, MacBride (n 16) 4. This was only changed in 2009 under the Criminal Injuries Compensation Scheme, which allows the Secretary of State to reduce or refuse any award based on the actions of the claimant (para. 14).

⁶³ MacBride (n 16) 4.

⁶⁴ Ibid; and Breen-Smyth (n 76) 9.

⁶⁵ CGP report (n 13) 91; and Breen-Smyth (n 76) 10.

⁶⁶ CGP report (n 13) 91; and Breen-Smyth (n 76) 10.

⁶⁷ Interview with IR07, March 2017; and IR21, April 2017.

⁶⁸ MacBride (n 16) 4-6. Such as the UDR/Royal Irish Regiment Special Payments, RUC Hearing Loss Claim Fund, NI Police Fund, RUC Reserve Gratuity Payment Scheme, RUC Pre-1982 Widows package November 2000, and the RUC bereaved/seriously injured fund November 2000.

⁶⁹ Bloomfield (n 9), para. 5.18.

⁷⁰ 'Bloody Sunday victim Gerry McKinney's widow awarded £625,000 damages', Irish News, 1 October 2018.

as to why victims of this massacre and not others - such as the Ballymurphy, Kingsmills, or La Mon Hotel - should not receive something similar.

One injured victim remarked that,

originally my compensation was meant to last me a lifetime but people weren't meant to live so long back then either ... With inflation the way it has gone, the compensation wouldn't last.⁷¹

Many victims who were compensated received a lump sum and used this to buy a house.⁷² However, investing their compensation in a house meant that they were left with very little money to live off, forcing them to mortgage their home or incur other debts to survive. The lack of sufficient compensation and financial support to injured victims is a 'major stressor' for them.⁷³ As many victims were seriously physically or psychologically injured they were unable to return to work or build up an occupational pension to last them into old age, meaning that many are now universally 'benefit dependen[t]'.⁷⁴ The compensation process itself as Bloomfield found, was equally problematic:

many of those victims to whom I spoke found the procedures complex, baffling, frustrating and on occasion humiliating.... Some felt that they had faced an invidious choice between acceptance of an unsatisfactory award and the consequences of further delay, perhaps leading to a court appearance and the prospect of adversarial cross-examination. A number of victims felt they had endured an unreasonable struggle to secure advances of compensation, in circumstances where their tragically changed condition called for early expenditure, for example to adapt a family home in order to cope with physical handicap.⁷⁵

Other victims recounted being forced to stand in a room in their underwear as barristers and others looked over their body and argued the amount of appropriate compensation. Some victims also spoke of the trauma in dealing with the legal system in claiming compensation and pressure exerted to get claimants to settle. One victim injured in the 1970s recalled that,

The very morning before I went into court, my barrister came in. We were living in England so I came back over again for it. I wasn't going to court, we settled. He said, '[victim's name], they've reduced it by £5,000'. I said, 'Why?' and he said, 'They've just decided they've peaked it too high'. I can't remember the language used. I said, 'Right, I'm going to court'. I was so angry. It was Crumlin Road Court. I remember going into the courthouse and sitting there and my solicitor came out and said, '[victim's name], I wouldn't go in there. The judge is in very bad form and he'll reduce it' ... there was some guy in a motorbike accident before me and he said, 'He's not in good form. He's reduced his compensation. I would not go in there' ... I said, 'Okay, where's the paper?' and I signed it. It's not as if you were happy with what you got. It was ridiculous the amount of money people got.⁷⁶

⁷¹ Interview with IR03, March 2017.

⁷² Interview with IR07, March 2017.

⁷³ Breen-Smyth (n 76) 10.

⁷⁴ Breen-Smyth *ibid*, 31.

⁷⁵ Bloomfield (n 9), para. 5.9.

⁷⁶ Interview with IR07, March 2017.

This sort of adversarial and insensitive treatment of victims echoes the findings of Sir Kenneth Bloomfield in his report nearly twenty years ago, which still has not been addressed.⁷⁷ That said there was some good experience of compensation by some victims we interviewed, as one carer said after their partner was seriously injured in a bombing,

I know we got a lot more compensation than a whole lot of others. We had a very good barrister ... and our solicitor was also very good. They did their very best. We were very happy at the time. ... We were told to invest it very wisely which we have done so. We have built our own house, we do generally have a nice life, as such, it's not certainly a lavish life by any means, but we certainly don't live in poverty either and we've always made sure of that. But it's only meant to do for 16 years and it's 26 years there past in January [2018].⁷⁸

This perspective reflects that lump sum compensation payments, rather than long term support, require self-responsibility of victims and a measure of luck to manage and maximise the compensation award for the rest of their life. Not all victims may have the capacity to do so - they may be seriously traumatised, or see their health deteriorate.

For those subjected to paramilitary attacks the compensation and court system caused further victimisation by blaming the victim and in some cases denying or reducing the amount of compensation. In the case of Andrew Peden, who was tortured for 10-12 hours by the UVF and then shot in both legs with a shotgun in 1999, requiring a double amputation,⁷⁹ his compensation of £475,000 was rejected as he failed to cooperate with the police in identifying those responsible, due to fear of them killing his family.⁸⁰ In the *McCabe* case where the victim was shot in the back of both his kneecaps, Judge MacDermott found that the victim 'would not have been shot if he had lived a blameless life and in that sense his anti-social behaviour led to him being injured', with his compensation being reduced by a third from £3,000 to £2,000.⁸¹ Similarly the criminal injuries compensation scheme engaged in victim blaming, contrary to their right to reparations for unlawfully caused suffering. Other victims, including the families of persons killed, have been denied compensation where the victims were understood to be members of a proscribed organisation, based on security intelligence or past convictions unconnected to the death or injury.⁸²

One victim group caseworker reported that victims of punishment attacks suffer further humiliation for the compensation they received, speaking about an individual who was shot in both legs by a paramilitary group,

he really struggles even with the whole stigma of who he is as a person, his compensation money that he got was taken off him by paramilitaries because whenever they give out punishment beatings they don't let you go and collect your

⁷⁷ Bloomfield (n 9), para. 5.9.

⁷⁸ Interview with NI08, May 2018.

⁷⁹ John Mullin, 'What ceasefire?', *The Guardian*, 19 January 1999.

⁸⁰ 'Gun victim loses appeal', *BBC News*, 9 November 2001.

⁸¹ *McCabe v Secretary of State for Northern Ireland*, Northern Ireland Unreported Judgments 1 March 1985.

⁸² *Ann Marie McCallion and Others, Re Application for Judicial Review* [2004] NIQB 54; *Carson's (Eileen) Application (Leave Stage)* [2016] NIQB 3.

compensation and sail off into the sunset, they actually come round and actually take your compensation money as well.⁸³

Some victims consider the payment of compensation as ‘blood money’, to assuage the responsible party’s guilt or to ‘buy the victims’ silence’.⁸⁴ One family who lost a loved one in a massacre by British soldiers was offered £250 in 1974, viewed it as an “insult” and rejected the money.⁸⁵ Accordingly, while compensation offers the promise of giving victims new opportunities and agency to spend it as they see fit, how it is framed in terms of who benefits, the claims process, and the amount can have the opposite effect, and can condemn them to poverty, vulnerability and even further victimise them.

c) *Rehabilitation*

In Northern Ireland, the National Health Service, which provides free healthcare, has been the main provision of rehabilitation to victims, but is equally available to all citizens, with no priority or specialisation for those affected by gross violations of human rights. Specialist services for victims have since April 2012 been coordinated by the Victims and Survivors Service (VSS). The VSS assesses victims’ and survivors’ needs in order to provide tailored care and assistance, and funds community victim organisations that offer services and support. Under the previous funding scheme through the NI Memorial Fund in 2012, 89 community victim organisations provided a range of assistance to victims and survivors through counselling, physical health assistance, legal assistance, benefit advice, befriending, respite care, remembrance, training and education, amongst others.⁸⁶ By 2018 after funding provision was reformed, only 25 victim organisations are supported through the VSS (through European Union funding). The issue of funding has transformed these victim organisations, many of which started out as informal community support and advocacy groups, to now being service providers. This has caused tension amongst some groups, and forced others to close, as they were unable to provide services or compete with other neighbouring groups.

There continues to be a perception amongst injured victims that the funds are not meeting their needs. The amount of money provided by the VSS to seriously injured victims, while important, is insufficient to enable them to live a dignified quality of life. One seriously injured victim recounted how they used to get deep vein massage to help blood flow to their paralysed legs, but due to the increase in the number of people claiming support from the VSS that money has been cut. As a result with the £1,500 they received, they spend it on 35 physiotherapy sessions a year and £750 on rates, but that meant they had no money to heat their house.⁸⁷

There are also questions of the long-term strategy of looking after injured victims, particularly with an aging population and benefits reform. Some victims are annoyed with the lack of transparency and accountability in the way in which money is provided through the VSS. There remains some frustration amongst victims that they could not spend the money

⁸³ Research team interview with IR06, March 2017.

⁸⁴ Marie Breen-Smyth, *Truth Recovery and Justice After Conflict: Managing Violence Pasts*, (Routledge 2007), p88.

⁸⁵ Interview with NI04, Northern Ireland, March 2018.

⁸⁶ Though only 72 organisations appear actively involved in supporting victims. See Commission for Victims and Survivors, *Analysis of Current Service Providers* (2011).

⁸⁷ Interview with IR07, March 2017.

they received as they saw fit, in particular that siblings and grandchildren had been excluded from VSS support. In the view of some seriously injured victims, they were too old to start a new job, learn new skills or go to college or university, but wanted their grandchildren to benefit from such schemes.⁸⁸

Although many users regard these community groups as more accessible in terms of their location, there remain issues around security and community background,⁸⁹ and the real or perceived political or community loyalties of certain organisations, or the locations of their offices may be daunting to some. For example, some victims groups in rural areas are held in the community hall of one particular community, such as the unionist Orange Order, which can be off-putting to certain victims.⁹⁰ In recent years the VSS has been conscious to fund more general support services to victims who are not community aligned.⁹¹

Yet there remains a lack of widespread awareness of what groups are available. Breen-Smyth highlights that those not ‘plugged into’ victims’ groups or social networks have less chance of having their needs met: ‘Interviewees often reported difficulty in getting the help they needed, not knowing what was available or where to get it, or in some cases having needs that services did not cater for.’⁹² This has also historically been the case, with one interviewee reporting that with regards the Northern Ireland Memorial Fund, ‘nobody knew about it, unless you were connected to groups or anybody who knew what happened.’⁹³ Groups are a ‘major conduit for people,’ so for those not members of groups, knowing what services are available to them can be challenging, especially when their support is not advertised and ‘to open the doors fully the service wouldn’t be able to cope.’⁹⁴

Most victims receive rehabilitative services through ‘ordinary’ statutory services covering housing, benefits, and healthcare, that are available to anyone who needs them, rather than being victim specific. These services are not victim-orientated, and psychological support and counselling are not routinely available. As one victim recounted after being left disabled in a paramilitary shooting,

The doctor came to me and said, ‘... do you see that wheelchair, son?’ I said, ‘Yes, Doc’. He said, ‘Get used to it. You’ll be in it for the rest of your life’. I was like, ‘What?’ That was it. That was the statement. You were left to either sink or swim and many a man sank.⁹⁵

Since the Good Friday Agreement there has been greater emphasis on the need for counselling services. Access to services may nevertheless be limited or only available after an inordinate delay. One victim support worker commented that, ‘in our local area here ... the waiting list is between 50 to 70 weeks to meet a clinical psychologist, well that’s not really acceptable.’⁹⁶ Another interviewee remarked of Musgrave Limb Fitting Centre that,

⁸⁸ Interview with IR09, March 2017.

⁸⁹ Commission for Victims and Survivors, ‘Impact of the Victim Support Programme’, February 2015.

⁹⁰ Breen-Smyth (n 76).

⁹¹ See CVS, Minimum Practice Framework for Services being provided within the Non-Statutory Sector, October 2011.

⁹² Breen-Smyth (n 76) 36, 160.

⁹³ Interview with IR07, March 2017.

⁹⁴ Interview with IR01, March 2017.

⁹⁵ Interview with IR07, March 2017.

⁹⁶ Interview with IR12, March 2017.

What happened was there was no money for you to get a limb. The Memorial Fund would have paid up to £5,000, but it only lasted one year ... It's five years since they sent for me ... I just want a normal limb.⁹⁷

Another seriously injured victim said it had been 17 years since his last check-up.⁹⁸ These experiences were shared by other victim groups, with one caseworker commenting that injured victims are 'falling to the wayside', with two of their members being in 'really bad financial difficulties because they have to go through private clinics to get their prosthetic limbs, because the health service gives you the basic leg and it's not what they need for the movement.'⁹⁹

Others who lost their homes were placed into Housing Executive housing, but these did not meet their needs. One victim recounted that in one of these houses,

There were 12 steps from the road to the house. I'm a double amputee, there are 12 steps. ... at some point in the day you have to take your legs off and normally at night get into the shower and do all of these things. Or, if you have a sore and can't wear your prosthetics. I'm a victim of a no-warning UVF bomb explosion. ... I'm being put into the heart of a Loyalist estate.¹⁰⁰

UN Special Rapporteur Pablo de Greiff identified the inequality and inadequacy of rehabilitation between provision for ex-members of the security services and civilians, and between those in rural and urban areas.¹⁰¹ Again, like the provision of compensation, not all victims are treated equally or have equal access to remedies.

Being unable to work and without access to long-term rehabilitative services, many injured victims were left entirely or partly dependent on the welfare system.¹⁰² This also has impacted family members who have often taken up the role of full time carers for loved ones who are seriously injured. Many women, often spouses, sisters, mothers and daughters have taken on carer roles, sacrificing their own dreams, lives and careers to do so or trying to manage by themselves as the sole breadwinner, parent and carer. In addition, caring creates risks for carers, who may be out of employment for a long time, and can face being denied caring allowance once the injured person dies. Some people are both carers and injured themselves, which is rarely financially acknowledged.¹⁰³

The provision of rehabilitation and compensation through the VSS are packaged as services. Services are discretionary, at the mercy of political decisions, rather than protected in law as rights, which can be a duty for the state to provide and a legal entitlement for victims. Services equate the current provision to assistance or charity rather than reparations. As discussed further below, the lack of a comprehensive vision of reparations or measures to provide victim-sensitive statutory rehabilitation leads to a drip-feeding effect to mollify victims, instead of redressing their harm. Ultimately the services provided to victims are inadequate to ensure their social, legal and medical rehabilitation so that they can actively

⁹⁷ Interview with IR07, March 2017.

⁹⁸ Interview with IR07, March 2017.

⁹⁹ Interview with IR11, March 2017.

¹⁰⁰ Interview with IR21, April 2017.

¹⁰¹ de Greiff (n 2) paras. 64-65.

¹⁰² Breen-Smyth (n 76) 31.

¹⁰³ Ibid, 36-37.

engage in society. This broadly reflects the limitations of using ordinary justice and welfare institutions to redress victims' harm.

d) Measures of satisfaction

Satisfaction initiatives have focused on particular types of victims or specific incidents, rather than taking a comprehensive approach to redress the moral harm victims have suffered. For instance, in 1999 the British and Irish governments created the Independent Commission for the Location of Victims' Remains to locate the remains of the 16 disappeared by republican paramilitaries during the conflict.¹⁰⁴ As of early 2019, 13 of the disappeared have been recovered based on anonymous information, offering some closure to their relatives.¹⁰⁵ While the Disappeared Commission can be viewed as an effective mechanism to address the particular needs of their families, it represents a small percentage of all victims affected.

Broader measures to acknowledge, uncover and disclose the past remain fragmented through historical investigations, inquests and civil litigation, discussed further below. While the criminal justice system in Northern Ireland was relatively functional during the conflict, over 2,000 deaths remain unsolved with allegations of collusion or ineffective investigations involving killings by state and paramilitary actors.¹⁰⁶ In 2005 the Historical Enquiries Team (HET) was established within the Police Service for Northern Ireland (PSNI) to re-investigate all conflict related deaths so as to provide a measure of 'resolution' to those families of the victims and encourage confidence in the wider community.¹⁰⁷ It has been reported that 90.5% of the families who engaged with the HET were satisfied or very satisfied with its work.¹⁰⁸ However, the HET was criticised for its lack of independence from the police service, the absence of transparency, incomplete disclosure, and more favourable treatment for those deaths which involved security forces.¹⁰⁹ As a result of a number of investigations, the HET was closed in September 2014, in particular around its differentiated approach to investigating state forces to paramilitary murders. Since then investigations have been carried out by the PSNI's Legacy Investigation Unit, but this unit suffers from a lack of resources and independence to make it Article 2 compliant.

There are several other investigatory mechanisms with competence over the actions of the security forces in Northern Ireland. The Police Ombudsman (OPONI) has carried out investigations into deaths involving the RUC during the conflict, with some 127 historic cases. However, some of its investigations have been severely criticised by relatives, such as the investigation of the Loughinisland massacre in 1994, where six men were murdered by loyalist paramilitaries. The OPONI found there was little evidence of collusion by the RUC in the massacre, but with the appointment of a new ombudsman in 2012 a new investigation

¹⁰⁴ Northern Ireland (Location of Victims' Remains Act) 1999 and its Irish counterpart, the Criminal Justice (Location of Victims' Remains Act) 1999. Fifteen by the IRA and one by the INLA.

¹⁰⁵ See Independent Commission for the Location of Victims Remains: <http://www.iclvr.ie/> (accessed May 2019).

¹⁰⁶ Bell (n 25), 1098.

¹⁰⁷ Section 2.2, Standard Operating Procedure, Historical Enquiries Team (2005). See Patricia Lundy, 'Can the Past be Policed?: Lessons from the Historical Enquiries Team Northern Ireland', (2009) 11(2) *Law and Social Challenges* 109.

¹⁰⁸ Owen Paterson, Secretary of State for Northern Ireland, House of Commons Hansard Debates vol. 536 col. 919, 30 November 2011.

¹⁰⁹ See Lundy (n 139).

was announced.¹¹⁰ Its subsequent report in 2016 found that the protection of informants, catastrophic failure of the police investigation and destruction of evidence amounted to collusion.¹¹¹ The coroner is also holding some 52 inquests involving 93 deaths during the conflict, which relate to contentious deaths involving state forces. The impetus for these historic investigations is due to a number of decisions of the European Court of Human Rights, which have found the United Kingdom responsible for violating the procedural obligation to investigate in right to life cases as a result of force used by state agents.¹¹²

Several public inquiries have also been established to investigate contentious deaths during the conflict. The most famous of these is the Bloody Sunday inquiry into the killing of thirteen civilians in Derry in 1972 by the British Army. Despite claims by the British Army that those killed were involved in terrorist activity, the inquiry's final report found that they were in fact innocent civilians and the soldiers had been unjustified in their use of force.¹¹³ There have also been inquiries in Northern Ireland and the Republic of Ireland into deaths with suspected collusion.¹¹⁴ Relatives of those killed in other circumstances have also called for additional inquiries to be held, such as into the murder of Pat Finucane, the Ballymurphy massacre and the Omagh bombing. However, the British Government is reluctant to hold further public inquiries on the grounds of cost; the Bloody Sunday inquiry by itself cost over £190 million, but it does little to build civic trust or uncover the truth of the past by dragging its feet on legacy issues.

These various mechanisms resulted in different outcomes – HET and OPONI investigations could lead to the prosecution of those responsible, with inquests determining how a person died, without any civil or criminal implications.¹¹⁵ Not all crimes could possibly be prosecuted, due to the passage of time and its impact on evidence. This is apparent with HET, which having completed half its caseload only two convictions resulted and two further murder trials are pending.¹¹⁶ The HET, OPONI and inquests have been beset with delays, with their efficacy questioned.¹¹⁷ For instance, the inquest into the deaths of eleven people killed in the 'Ballymurphy massacre' in 1971 only began hearings in 2018.

On a more substantive level, these different approaches to truth recovery do not provide a holistic inquiry into the past, where facts are verified, analysed within the context of the conflict of Northern Ireland, and the truth publicly disclosed. This is evident with the HET

¹¹⁰ Barra McCaffrey, Police Ombudsman opening new investigation into Loughinisland, *The Detail*, 19 December 2012.

¹¹¹ 'Statutory Report Relating to a complaint by the victims and survivors of the murders at the Heights Bar, Loughinisland', 18 June 1994, OPONI (2016).

¹¹² See, e.g., *Jordan et al. v UK*, Appl No. 24746/94, 4 May 2001; *Finucane v UK*, Appl No. 29178/95, 1 July 2003; *McShane v UK*, Appl No. 43290/98, 20 August 2002; *Brecknell et al. v UK*, Appl No. 32457/04, 27 February 2008.

¹¹³ 'Report of the Bloody Sunday Inquiry', HC 29 2010-11, 15 June 2010.

¹¹⁴ Based on para. 18 of the Weston Park Agreement 2001 and the subsequent findings of Justice Cory, a number of inquiries were established into the deaths of Robert Hamill, Rosemary Nelson and Billy Wright in Northern Ireland, and in the Republic of Ireland an inquiry (the Smithwick Tribunal) into the deaths of Chief Superintendent Breen and Superintendent Buchanan, but not Pat Finucane despite Justice Cory's recommendation.

¹¹⁵ As of August 2011, the HET completed 1,227 cases of which 778 have been delivered to victims' families and 26 individuals have been charged.

¹¹⁶ See, 'Submission to the Committee of Ministers from the Committee on the Administration of Justice (CAJ) & the Pat Finucane Centre (PFC) in relation to the supervision of Cases concerning the action of the security forces in Northern Ireland', (2012).

¹¹⁷ CVS, 'Research on Historical Investigations & Information Recovery', (2012).

and OPONI investigations, which involve limited public disclosure, and do not canvass the responsibility of institutions, organisations and states. Despite the plethora of procedures, no one was ever held to account for such high profile murders, such as the Bloody Sunday massacre or Omagh bombing. The reliance on ordinary justice mechanisms to uncover the truth and provide measures of satisfaction to victims has been grossly ineffective and piecemeal, leaving most victims without any acknowledgment of their harm and without identifying those responsible.

More symbolic reparations have been made, such as memorials and apologies. The CAIN archive has documented some 640 memorials to those killed and injured in the conflict, the majority of which were established by communities, organisations and individuals.¹¹⁸ Healing through Remembering, a cross-community organisation established to work towards dealing with the past, began a Private Day of Reflection on 21 June 2007 and held every subsequent year to ‘acknowledge the deep hurt and pain caused by the conflict, to reflect on our own attitudes, on what more we might have done or might still do, and to make a personal commitment that such loss should never be allowed to happen again’.¹¹⁹ Kenneth Bloomfield in his 1998 report also recommended that a memorial building should be constructed alongside a memorial garden.¹²⁰ The CGP similarly suggested a shared memorial to remember the conflict.¹²¹ Nevertheless, memorialisation in Northern Ireland remains contested, which still does not have a collective memorial for all the victims and survivors of the conflict or any officially endorsed days of remembrance.¹²²

Different actors in the conflict have made apologies. Apologies can be remorseful acknowledgements of victims’ suffering by those responsible.¹²³ In light of the Bloody Sunday inquiry report, British Prime Minister David Cameron apologised for the Army’s use of force declaring it ‘unjustified and unjustifiable’.¹²⁴ Additionally, he apologised over the level of collusion found in the De Silva review of the murder of lawyer Pat Finucane. This apology was considered insufficient in satisfying the Finucane family’s request for a more independent and extensive examination into his murder through a public inquiry.¹²⁵ The Irish Government has so far refused to apologise for the alleged role of government ministers in supporting the emergence of the IRA in the 1970s and issues of collusion.¹²⁶ Paramilitary groups have also issued apologies. The Combined Loyalist Military Command apologised in 1994 for the conflict and the Provisional IRA issued a similar apology in 2002.¹²⁷ MacBride asserts it is questionable whether an apology from an organisation or state is sufficient in satisfying victims’ needs, particularly when a truth process has not been engaged with.¹²⁸ The Inter-American Court of Human Rights has found that an apology is insufficient unless

¹¹⁸ See CAIN Physical Memorials to those killed in the Conflict, at: <http://cain.ulst.ac.uk/victims/memorials/> (accessed May 2019).

¹¹⁹ See Day of Reflection website: <http://www.dayofreflection.com/> (accessed May 2019).

¹²⁰ Bloomfield (n 9), para. 7.13-16.

¹²¹ CGP Report (n 13) 2009, 104-105.

¹²² MacBride (n 16) 7. The former Maze/Long Kesh prison is to be rehabilitated into a conflict transformation centre and exhibition space, but its progress remains under discussion.

¹²³ Principle 22(e), UN Basic Principles and Guidelines (n 28).

¹²⁴ Henry McDonald and Owen Bowcott, ‘David Cameron apologises for “unjustifiable” shootings’, *The Guardian*, 15 June 2010.

¹²⁵ Henry McDonald and Owen Bowcott, ‘David Cameron admits “shocking levels of collusion” in Pat Finucane murder’, *The Guardian*, 12 December 2012.

¹²⁶ ‘Robinson wants Ireland IRA apology’, *Irish Independent*, 14 September 2012.

¹²⁷ ‘Combined Loyalist Military Command Ceasefire Statement’, 13 October 1994; and ‘Irish Republican Army (IRA) statement of apology’, 16 April 2002.

¹²⁸ MacBride (n 16) 7.

coupled with other types of reparations, such as a full public inquiry into the past, as well as for those responsible to publicly admit their specific responsibility in atrocities.¹²⁹

Taken together the various measures of satisfaction have offered some acknowledgement for the families of those who were killed; however, victims who were injured feel that they have not been taken seriously and acknowledged in the same way.¹³⁰ In addition, investigatory measures such as inquiries, OPONI, and inquests concentrate on the actions of the state security forces, and are considered as unfairly one-sided. This is due to security forces only being responsible for a tenth of all deaths during the conflict, leading unionist politicians to call for investigations into the responsibility of republican paramilitaries.¹³¹

e) Guarantees of non-repetition

Guarantees of non-repetition are meant to address the causes of victimisation and prevent their recurrence. They have been the most significant reparations in Northern Ireland, but they are not framed as reparations *per se*. The Good Friday Agreement is a source of reforms, including the devolution of governance in Northern Ireland with the creation of the Stormont assembly and executive. The Agreement itself recognises the forward-looking goals of Northern Ireland political institutions in light of the ‘tragedies of the past’ stating that,

we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all. ... The achievement of a peaceful and just society would be the true memorial to the victims of violence.¹³²

This standpoint continues throughout the Agreement with the creation of the Human Rights Commission (NIHRC) and Equality Commission to promote human rights and equality law.¹³³ These reforms help redress past discrimination in housing, employment and benefits. Nonetheless, the Good Friday Agreement has been criticised for its weak and ambiguous reference to victims. It pronounces that it is ‘essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation’ and victims ‘right to remember and to contribute to a changed society’.¹³⁴ However, there is no mention of victims’ substantive rights to truth, justice or reparation. The emphasis is on ‘reconciliation’ rather than remedy. Continuing discussions over a Bill of Rights for Northern Ireland intends to further entrench a rights culture and put victims’ rights on a statutory footing.¹³⁵ However, the Bill has yet to be adopted and its victim provisions suffer from the same ambiguity as the Good Friday Agreement.¹³⁶

The Patten Commission recommended a number of changes to the Royal Ulster Constabulary, which resulted in the creation of the Police Service of Northern Ireland,

¹²⁹ *Moiwana v Suriname* (n 64), para. 216.

¹³⁰ Breen-Smyth (n 76) 35.

¹³¹ Stephen Gamble, ‘Legacy unit imbalance “is clear for all to see”’, *The Newsletter*, 2 March 2019.

¹³² Declaration of Support, para. 2; and Rights, Safeguards and Equality of Opportunity: Human Rights, para. 12.

¹³³ Rights, Safeguards and Equality of Opportunity: Human Rights, paras. 5 and 6. See also Ron Dudai, ‘Closing the gap: symbolic reparations and armed groups’, (2011) 883 *International Review of the Red Cross* 783.

¹³⁴ Part 6, paras. 11-12, Good Friday Agreement 1998.

¹³⁵ ‘A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland’, NIHRC, 10 December 2008, 106-112.

¹³⁶ Brice Dickson, ‘Victims’ rights’, in Hamber and Wilson (eds), *Recognition and Reckoning* (n 47) 47, 50.

including a quota system to encourage more Catholics to join the service.¹³⁷ These reforms were seen as important in remedying the perceived bias of the police as a Protestant dominated organisation and issues of collusion with loyalist paramilitaries. However, there was no lustration or removal of abusive police officers; rather a new human rights oath and training programme were adopted, geared towards preventing future violations.¹³⁸ An independent police ombudsman (OPONI) was established in 2000 to examine complaints against the PSNI.¹³⁹ Similarly the criminal justice system has been reformed with the establishment of the Attorney General for Northern Ireland, the Public Prosecution Service and the independent Judicial Appointment Commission.¹⁴⁰ Since 2010 policing and criminal justice has been devolved to the Stormont executive, thereby giving local politicians control over law and order.¹⁴¹ Under the International Monitoring Commission on Decommissioning there have also been a number of measures for paramilitaries to decommission their weapons and demilitarisation of British armed forces in Northern Ireland.¹⁴²

A Victims' Commission was also established, now called the Commission for Victims and Survivors and led by a Victims' Commissioner. This is meant to promote awareness and safeguard matters relating to victims, review the adequacy of relevant laws and services for victims, assess victims' needs, and to advise the Stormont executive on victims' interests. In 2012 a Victims' Forum was also created made up of victims, survivors, and victim organisations to inform the Commission's work on the assessment of victims' needs, examine the definition of 'victim' and to make recommendations. In 2015 the Fresh Start Agreement was adopted to tackle ongoing paramilitary activity, such as all political parties supporting rule of law, challenging paramilitary activity and support those to transition away from paramilitarism alongside greater concerted policing of paramilitary criminal activities.¹⁴³

Despite these endeavours, paramilitary violence continues in both loyalist and republican communities. The invocation of past battles, massacres and rebellions, whether from the 1690 Battle of the Boyne to 1916 Easter Rising and the Battle of the Somme, violence remains a part of political and cultural identity. To an extent this past violence without confronting the victimisation it caused is still memorialised and celebrated through annual marches, murals and commemoration of 'volunteers' killed on service. This is compounded by financial support still being provided to some ex-combatant groups through discretionary government funds, on the one hand to ensure community cohesion, but for victims it remains frustrating to see those responsible for violence, implicitly threatening and explicitly using it to achieve their political ends.¹⁴⁴

Nevertheless, while guarantees of non-repetition are the greatest stride towards reparations in Northern Ireland, they generally benefit society as a whole and do not directly remedy individual victims' suffering, save to reduce the return to violence. This may mean little to victims whose families are subjected to ongoing threats and violence from paramilitaries. On a broader note, the issue of segregation in many areas of Northern Ireland and continuing

¹³⁷ 'A new beginning: Policing in Northern Ireland, Independent Commission on Policing for Northern Ireland' (1999).

¹³⁸ Bell (n 25) 1117. Consistent with Principle 36(e), Impunity Principles, and principle 22(f), UN Basic Principles and Guidelines (n28).

¹³⁹ Section 51, Police (Northern Ireland) Act 1998.

¹⁴⁰ Justice (Northern Ireland) Act 2002.

¹⁴¹ As part of the Hillsborough Agreement 2010. Principle 23(a), UN Basic Principles and Guidelines (n 28).

¹⁴² 'Final Report of the Independent International Commission on Decommissioning' (2011).

¹⁴³ 'A Fresh Start: The Stormont Agreement and Implementation, Section A', November 2015.

¹⁴⁴ This can be seen with the Social Investment Fund.

violence by dissident republicans and loyalists, means that reconciliation and a complete peace has yet to be achieved. Many continue to live with the threat and reality of ongoing violence,¹⁴⁵ thus suggesting that certain causes of the conflict and victimisation have yet to be addressed. This is not to say that reparations could resolve these deep set divisions within society, but they could at least alleviate victims' suffering. While greater respect for human rights has been engendered with the creation of new institutions, it is questionable whether public trust has been restored in government institutions when it has not coherently addressed the past or provided adequate remedies for victims. Victims dissatisfied with this status quo have sought redress through civil litigation.

4. Civil litigation by victims

Although using the civil courts to obtain redress is not a new avenue, there have been a number of claims made by victims against responsible actors for the violence during the Troubles. This litigation is a way for victims to obtain recognition of their suffering, challenge the official narrative of such violence and perhaps to a lesser extent obtain compensation to deal with the continuing suffering. This is apparent in the litigation around the British Government's policy of internment,¹⁴⁶ which is 'about acknowledging, officially, that internment was illegal and discriminatory and the actions of the government at the time were unlawful.'¹⁴⁷

Some victims and victim groups have been litigating to bring to light information around collusion between the British Government and paramilitary groups in killings. This has included covering up evidence, use of lethal force and using informants. In the *Keeley* case, Margaret Keeley had her application to sue the PSNI, Ministry of Defence and informant, Frederick Scappaticci (former head of the IRA's internal security team), accepted by the Northern Ireland High Court in 2011. The claim involves her assault by the police in 1992 during a three day interrogation in order to protect her husband's identity as an informer. Upon her subsequent release she was interrogated by the IRA led by Scappaticci, who at the time was also working for the British Government. Yet by 2019 the case was still ongoing against Mr Scappaticci, along with up to 20 lawsuits lodged by other victims.¹⁴⁸ Similar to the internees cases, Mrs Keeley's motivation is that, '[t]ime has gone on and the truth must be known about how victims were treated by the RUC and informants.'¹⁴⁹

In a case involving lethal force, Aidan McKeever, a getaway driver in an IRA attack on the police station in Coalisland in 1992, was successful in suing the Ministry of Defence when he was injured in an ambush by the SAS, which killed four other IRA members. The High Court found that the SAS were not justified in shooting him and upheld the award of £75,000.¹⁵⁰ However, the British Government has refused to hold an inquest into the deaths of four other

¹⁴⁵ Fay, Morrissey and Smyth (n 8) 16.

¹⁴⁶ 'Republicans 'to sue government' over NI internment', *BBC News*, 9 August 2011; and Brian Rowan, 'Interned loyalists were pawns, says lawyer in legal bid', *Belfast Telegraph*, 16 November 2011.

¹⁴⁷ 'Former detainees bring internment case', *Irish Times*, 10 August 2011. Similarly see the Ballymurphy seven case – 'Police fail in bid to have Ballymurphy Seven case dismissed', *BBC News*, 1 June 2012; and claims of torture and unreliable confessions extracted by the RUC during interrogations, see Ian Cobain, 'Hundreds of Northern Ireland 'terrorists' allege police torture', *The Guardian*, 11 October 2010.

¹⁴⁸ 'Stakeknife: Freddie Scappaticci facing up to 20 lawsuits', *Irish News*, 20 February 2019.

¹⁴⁹ *Keeley v Chief Constable of the Police Service for Northern Ireland* [2011] NIQB 38, [16].

¹⁵⁰ *Aidan McKeever v Ministry of Defence* [2011] NIQB 87.

IRA men who were killed in the same ambush.¹⁵¹ Families of those killed have campaigned for an apology by the British Government.¹⁵² This incident goes to the heart of the messy reality of conflict and continuing debates over deserving and non-deserving victims. With regards to intelligence gathering, Lawrence Rush, who lost his wife in the Omagh bombing, had an application to sue the British Government and the PSNI accepted by the High Court in March 2011, for their intelligence failures in preventing the bombing.¹⁵³

Collectively these cases against the British Government call into question the maintenance of the rule of law during the conflict by the security forces and the criminal justice system. However, the British Government is not the only state source of reparation, as victims of the IRA are also pursuing a reparation action against the Libyan Government for supplying weapons to the organisation during the 1980s.¹⁵⁴ Victims have also tried to sue loyalists¹⁵⁵ and the Irish Government,¹⁵⁶ but often these cases victims lack the funds or access to legal aid to sustain the claims. Even where they are successful, the defendants may sometimes lack the means to pay compensation and may remain unapologetic, making it an adversarial and limited avenue for redress. That said civil litigation is providing a legal forum to confront difficult harms and violations, which go beyond ‘innocent’ victims to also address the suffering of combatants. To an extent this exercise of procedural rights is reaffirming the rule of law in dealing with the past as a common set of values, in particular that no matter what the person’s responsibility for past violence or other circumstances, they have a right to remedy for violations of their human rights.¹⁵⁷

The Omagh bombing litigation is emblematic of the challenges and benefits of a successful litigation approach. It was brought by relatives of those killed in the 1998 dissident IRA bomb, which left 29 civilians dead including a pregnant woman with unborn twins, and over two hundred injured. In July 2009, the Northern Ireland High Court ruled that Real IRA leader Michael McKevitt, Liam Campbell, Colm Murphy and Seamus Daly were responsible and ordered them to pay £1.6 million in compensation to the victims.¹⁵⁸ Compensation was not the victims’ primary goal, but acknowledgement and to hold those responsible to account, with litigation being ‘a vehicle for putting as much information as possible into the public domain about the bombing and the men they claim were involved.’¹⁵⁹ The victims also sought an injunction against the defendants for their future conduct, but the court refused on the basis of a lack of evidence.¹⁶⁰ In July 2011, the Court of Appeal dismissed the appeals of McKevitt and Campbell, but allowed the appeals of Murphy and Daly, with the evidence against them to be retried in a new trial beginning in January 2013.¹⁶¹ In their retrial, they were found both liable in March 2013, with Daly later arrested and charged for the bombing in 2014, his criminal prosecution collapsed in 2016. Daly and Murphy’s appeal to the

¹⁵¹ See ‘Ambush, assassination and impunity: The Killings of Kevin Barry O’Donnell, Patrick Vincent, Peter Clancy, and Sean O’Farrell’, *Relatives for Justice* (2012).

¹⁵² Jon Mulgrew, ‘Government must apologise for IRA deaths, say families’, *Belfast Telegraph*, 2 August 2012.

¹⁵³ *Lawrence Rush v PSNI and Secretary of State for Northern Ireland* [2011] NIQB 28.

¹⁵⁴ ‘IRA victims seek answers in Libya’, *Belfast Newsletter*, 23 October 2012.

¹⁵⁵ Connla Young, ‘Victims’ family to sue loyalist over 1992 killings’, *Irish News*, 7 December 2015.

¹⁵⁶ Philip Bradfield, ‘Victims of loyalists and IRA sue UK and Dublin’, 15 May 2014.

¹⁵⁷ Luke Moffett, ‘Reparations for “Guilty Victims”: Navigating Complex Identities of Victim–Perpetrators in Reparation Mechanisms’, (2016) 10(1) *International Journal of Transitional Justice* 146.

¹⁵⁸ *Breslin & Ors v Seamus McKenna & Ors* [2009] NIQB 50. The court found that there was insufficient evidence against a fifth defendant, Seamus McKenna.

¹⁵⁹ ‘Real IRA founder loses Omagh civil case appeal’, *The Guardian*, 7 July 2011.

¹⁶⁰ *Breslin & Ors* [2009] NIQB 50, para.285.

¹⁶¹ *Breslin & Ors v Michael McKevitt & Ors* [2011] NICA 33.

European Court of Human Rights on the civil ruling against them was rejected in 2016, followed by litigation by some of the victims against the State for failing to prosecute those responsible and to hold a public inquiry.¹⁶² It should be noted that the Omagh bomb litigation is unique, given the media attention and legal aid support to victims to maintain the case for over five years in the civil case. That said, those responsible have not made any contribution to the compensation award, nor have they been successfully prosecuted. However, not all victims agree on the choice of litigation and only a dozen were involved in the initial case, reflecting the diverse views amongst victims on how to deal with the past.

Litigation is beset with numerous challenges. Victims need to secure legal aid, uncover sufficient evidence to bring successfully a claim, identify a responsible individual, and to demonstrate that any delay outside of the three year statute of limitations from the date of injury was due to the identity of the person responsible being unknown.¹⁶³ In addition, discovering the truth is dependent on the willingness of other actors, including the State, to disclose information. The British Government has often invoked public interest immunities to prevent the release of sensitive information which could jeopardise national security and continuing intelligence operations against paramilitary groups.¹⁶⁴ However shortcomings in historic investigations have forced victims to use civil litigation as way to obtain some measure of satisfaction through the release of information, by the courts compelling responsible state actors to comply with their obligations under Article 2 of the European Convention.¹⁶⁵

B. Conclusion

Over twenty years after the Good Friday Agreement and fifty years since the conflict began, victims still await reparations and an effective remedy for the harm they suffered. While the current approach in Northern Ireland is to provide services and look to the future, for those who still suffer it is insufficient. As Morrissey and Smyth state, the conflict ‘cannot be consigned to the past as the past is not past’.¹⁶⁶ The current transitional justice discussions in Northern Ireland have focused on historical investigation and a possible truth recovery mechanism, reparations are a third avenue to bolster the gains already made and to add greater coherence to remedying victims’ harm. A Northern Ireland truth commission is needed before, or at least in tandem with, any reparation programme to establish the facts of the conflict, which can be used to inform recommendations on the scope and content of reparations. Reparations should not be forgotten, they are integral to remedy the past in partnership with victims’ rights to justice and truth.

In more general terms, the experience in Northern Ireland shows that victims’ right to reparations needs to be entrenched in law to ensure comprehensiveness and equality. While issues of victim recognition and responsibility for atrocities are not easy for any post-conflict society to address, the purpose of transitional justice is to ensure a new political community,

¹⁶² Lisa O’Carroll, ‘Omagh bomb victims’ families to sue Northern Ireland police chief’, *The Guardian*, 10 August 2017.

¹⁶³ Section 7(4), The Limitations (Northern Ireland) Order 1989. For instance see *Patrick Ferran v Chief Constable of Northern Ireland* [2010] NIQB 137.

¹⁶⁴ Principle 22(b), UN Basic Principles and Guidelines (n 28).

¹⁶⁵ See for instance, *Barnard’s (Edward) Application for Judicial Review of the Decision by Chief constable of the Police Service of Northern Ireland*, [2017] NIQB 82, 28 July 2017; and *Morley (Eilish) on her own behalf and as personal representative of the estate of Morley (Eoin) (deceased) v The Ministry of Defence and others*, [2019] NI Master 1, 1 February 2019.

¹⁶⁶ Fay, Morrissey and Smyth (n 8)16.

where narratives of the past can be harmonised. Reparations in Northern Ireland continue to lack cohesion and direction, which can run counter to achieving a successful transition from conflict. As Healing through Remembering have stated, a ‘piecemeal uncoordinated approach impedes a collective understanding’, particularly in recognising victims and their suffering.¹⁶⁷ It could be argued that the provision of reparation measures identified in this chapter are not reparations at all, as they are not part of a transitional process, do not affirm victims’ human rights or contain an official acknowledgement of responsibility and victimisation.¹⁶⁸ The failure of the peace process to create a new political community, but instead replicate and constitutionally entrench divisions, means that victims and the issue of reparations have become new sites of conflict. The absence of will to redress the harm caused by the Troubles burdens victims to walk down a long and costly road to redress through litigation with no guarantees of obtaining an effective remedy. This may have more long term implications for peace and reconciliation in Northern Ireland, if the last century’s grievances become future generations’ sites of armed conflict.

¹⁶⁷ Principles on dealing with the past, HTR Report (2008), 3.

¹⁶⁸ de Greiff (n 2), paras. 75-80.