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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

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the 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 from 9 to 18 November 2015.

Since the adoption of the Good Friday (or Belfast) Agreement in 1998, the United Kingdom of Great Britain and Northern Ireland has taken important measures to address the legacies of the human rights violations and abuses committed during the "Troubles" (1968-1998), 30 years of mainly politically motivated violence. While at the social level there is awareness of the fact that not dealing with the past may impose huge burdens of many kinds, no consensus has been reached on how to do it.

In the present report, the Special Rapporteur highlights the important achievements made in the areas of guarantees of non-recurrence, especially on police reform. With regard to truth-seeking initiatives, reparations programmes and the criminal justice system, he analyses the multiplicity of initiatives undertaken and the remaining challenges. He notes that most of the efforts have been "event-based" and have not allowed the patterns, policies and structural dimensions of violations and abuses to be addressed. The cases of death have been the focus of these measures, excluding most victims of torture, sexual abuse and illegal detention, and have generally lacked a gender perspective. The Special Rapporteur makes recommendations on the way forward in the implementation of the Stormont Agreement and on ways to address remaining challenges.

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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*

Contents

* Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 27/3, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, visited the United Kingdom of Great Britain and Northern Ireland from 9 to 18 November 2015 at the invitation of the Government. He visited Belfast again from 16 to 18 May 2016.

2. The purpose of the mission was to assess the work undertaken by the Government, at both the national and devolved levels, in the areas of truth, justice, reparation and guarantees of non-recurrence, and to advise on further efforts to address the legacy of the violence committed in Northern Ireland between 1968 and 1998, during the "Troubles".

3. During his first visit, the Special Rapporteur met with representatives of the Foreign and Commonwealth Office, the Ministry of Justice, including the Minister for Human Rights, and the Ministry of Defence. He also held discussions with the Shadow Secretary of State for Northern Ireland, the Northern Ireland Office, the Independent Complaints Reviewer, the Joint Committee for Human Rights and the Northern Ireland Affairs Committee of the House of Commons. Furthermore, he held meetings with the President and Justices of the Supreme Court and members of the Equality and Human Rights Commission and the Department for International Development. In Belfast, meetings were held with representatives of the Office of the First Minister and of the Deputy First Minister, including the deputy First Minister; the Minister of the Department of Justice; and representatives of the Department of Culture, Arts and Leisure, including the Public Record Office of Northern Ireland, and the Departments of Education and Social Development. The Special Rapporteur met with the Lord Chief Justice, the Attorney General, representatives of the Public Prosecutions Service and the Departmental Solicitor's Office, and the Chief Constable of the Police Service of Northern Ireland. He also held meetings with the Policing Board, the Police Ombudsman, the Ombudsman of Northern Ireland, the Northern Ireland Equality Commission, the Human Rights Commission, the Commissioner for Victims and Survivors and the Victims and Survivors Forum, and the Independent Commission for the Location of Victims' Remains. In London and in Northern Ireland, in the counties of Armagh, Fermanagh, Tyrone and Londonderry, the Special Rapporteur met with religious leaders, professional groups, civil society groups, including victims and their families, former prisoners, members of academia and other individuals who have contributed to initiatives to address the past.

4. During his second visit to Belfast, the Special Rapporteur met with, inter alia, the Parliamentary Under-Secretary of State for Northern Ireland, the Lord Chief Justice, the Victims Commissioner, the Victims' Forum, representatives of political parties and non-governmental organizations, academics, the Northern Ireland Human Rights Commission, the Chief Constable and his senior colleagues, the Irish Minister for Foreign Affairs and the Irish Joint Secretary of the British-Irish Council, and the Consul General of the United States of America.

5. The Special Rapporteur thanks all those who shared their valuable and important experiences and insights.

II. Context

6. Following some 30 years of mainly politically motivated violence, commonly known as the Troubles, between 1968 and 1998, which claimed between 3,260 and 3,600 lives and led to the injury of more than 40,000 people, the Good Friday Agreement (also known the "Belfast Agreement") was signed in 1998 as a foundation for peace in Northern Ireland. During the Troubles, between 16,200 and 37,000 bombings were perpetrated, and

violations and abuses committed by a range of Republican armed groups (whose aim was a United Ireland), Loyalist armed groups (determined to keep Northern Ireland in the United Kingdom), and members of various British security and military forces and the Royal Ulster Constabulary. Most of the casualties were, however, neither affiliated with any armed group nor active participants in the conflict.

7. While not actually a "conflict" based on religious differences, members of Republican armed groups, and in particular of the Provisional Irish Republican Army, came overwhelmingly from the Catholic community, while the members of Loyalist armed groups, including of the Ulster Volunteer Force and the Ulster Defence Association (also acting as "Ulster Freedom Fighters"), came predominantly from the Protestant community.

8. The most recent phase of the conflict was preceded, in the 1960s, by a peaceful civil rights movement formed to curb the discrimination that Catholics endured in certain aspects of daily life, including employment, housing, education and political representation. The demonstration in Londonderry/Derry in 1972, when British security and military forces attacked demonstrators with lethal force – an event later to become known as "Bloody Sunday" – marked an upturn in violence. The clash, and others, precipitated the violence witnessed in the decades that followed. Initiatives aimed at addressing the political and legal causes of violence were unsuccessful.

9. The Good Friday Agreement signed in 1998 ultimately allowed for extensive political reform, including devolution in the form of a Northern Irish executive with power over internal affairs. A complex power-sharing arrangement established in 1999 facilitated the representation of most political parties in the Assembly. The Agreement stipulated the legitimacy of a freely exercised choice by the majority of people in Northern Ireland to remain part of the United Kingdom or be a part of Ireland. The international nature of the Agreement, involving the Republic of Ireland, is another noteworthy aspect. The Agreement was endorsed in a referendum by 71 per cent of voters in Northern Ireland (where turnout was 81 per cent) and 94 per cent in the Republic of Ireland (where turnout was 51 per cent).

10. While the Agreement succeeded in curbing hostilities, instances of violence and tensions continued, particularly in the decommissioning of paramilitary groups, leading the Government of the United Kingdom to re-impose direct rule three times in the early 2000s. In follow-up political agreements, such as the Weston Park Agreement (2001) and the St. Andrews Agreement (2006), the Governments of the United Kingdom and of Ireland bolstered previous commitments to support policing reform, carry out certain investigations, restore devolution, establish a victims' commissioner and re-integrate ex-prisoners. The Hillsborough Agreement (2010) provided for the devolvement of justice and policing matters to Northern Ireland.

11. Growing concerns over the security situation in 2013 saw negotiations among political parties in Northern Ireland on the complex issues of "parades, flags and dealing with the past" (Haass-O'Sullivan talks). While several areas witnessed some progress, the parties ultimately failed to reach an overarching agreement.

12. The visit of the Special Rapporteur in November 2015 coincided with the latter part of a 10-week-long process of negotiations on the implementation of the Stormont House Agreement. On 17 November 2015, an agreement was reached on all main issues, except with regard to the new institutional set-up on dealing with legacy issues. The stalemate continued the pattern of previous political agreements, that is, stopping short of a comprehensive understanding of how to address past events in Northern Ireland.

III. General considerations

13. Despite the consensus that the past should be addressed, no single narrative of the past is acceptable to all sides. Even certain words about the past are used by some "to continue the struggle through other means". Disagreement even relates to terms with a well-established legal definition, such as "conflict" or "victim", the latter being a term that remains, in particular, the subject of intense contestation. Indeed, the very notion of human rights, which by its universality should play a socially integrative function, is regretfully seen by too many as a banner for partisanship.

14. The current statutory mechanisms alone cannot address this situation. The central mission is to liberate all parties from the sense that the uniqueness and greater sense of victimhood of the members of one community must be remembered and acknowledged before beginning any discussion about how to move forward. Once all parties are recognized as equal members of a shared, collective political project, it will be easier to manifest allegiances without once again recalling the many ways that one community has aggrieved another in the past.

15. Truth, justice, reparations and guarantees of non-recurrence understood as components of a comprehensive policy to redress legacies of violations and abuse can afford recognition to victims, promote civic trust, strengthen the rule of law and contribute to reconciliation or social integration. Such measures should not, however, be used as instruments of "turn-taking", tools of patronage or a guarantee of control over a particular constituency. Nothing undermines the socially integrative potential of justice measures more than the fact or the perception that their design or implementation is partial. Ultimately, truth, justice, reparation and guarantees of non-recurrence will be effective only if the violation of fundamental rights is the sole consideration triggering access to these measures (see A/HRC/21/46, para. 24).

16. Despite the sovereign State authority of the Government of the United Kingdom, British institutions are not seen by all stakeholders as neutral arbiters, owing chiefly to the participation of the United Kingdom in certain relevant, and contested, events of the past. This imposes serious constraints on the way forward that are not always sufficiently recognized. Any future arrangement for truth disclosure and justice will have to account for the fact that neither the United Kingdom nor other stakeholders can assume the position of neutral arbiters of the Troubles, and will therefore require procedures to guarantee both the reality and the perception of independence and impartiality.

17. Significant activity has been conducted and advances made over the years in the domain of institutional reforms and non-recurrence (such as policing, demobilization and disarmament of ex-combatants, judicial reform and legal reform). With regard to truth, justice and reparations, efforts to date have relied heavily on judicial procedures, leading to inevitable "fragmentation". Judicial procedures are case-based and primarily about individual responsibility. Other measures, including the work of the Historical Enquiries Team (see para. 29-31 below), have tracked this logic. Four large, important public inquiries have been event-based, and have had the same effect. Mechanisms designed to assess the structural and systemic nature of violations have received scant attention. The violation of individual rights was endemic to the Troubles, and should be redressed; the Troubles were not, however, simply the aggregate of isolated events. Patterns, structures, institutions, organizations, chains of command, and policies are all essential components of the events that should be uncovered and explored; it is therefore vital that more attention be paid to mechanisms that will assess this comprehensive dimension as well. The resolution of individual cases, narrowly conceived, while important, does not exhaust the work of truth and justice initiatives. Indeed, trustworthy institutions and the rule of law largely depend on clarity in this regard.

18. The responses given by government institutions and civil society organizations have focused on deaths, despite instances of other violations, including cases of illegal detention, severe bodily injuries, and torture, which far outnumber the actual cases of death. These cases deserve urgent attention, as victims have a right to comprehensive redress and because some of them are in situations of extreme vulnerability. Claims left without redress have a large impact on the credibility of institutions. Furthermore, the gender-related dimension of violations and abuses committed during the Troubles' – particularly the heavy burden, disproportionately shouldered by women, of caring for traumatized and/or disabled family members – deserves sustained, thorough analysis and integration into policymaking.

19. Lastly, it is well understood that the legacy of the past continues to cast a very dark shadow over the present and future. The impact of the Troubles still weighs not only on individuals but on society in general; however, following the failure to reach any agreement on legacy issues in November 2015, victims, some of whom have waited more than 40 years for redress, are again asked to wait. The credibility of institutions and of the commitments made by the authorities is at stake. Since the visit of the Special Rapporteur, some stakeholders, including the Lord Chief Justice, have explored innovative ways to work more proactively on legacy cases. Creative reflection and action by more stakeholders should be encouraged.

IV. Truth

20. Distinctions between truth and justice initiatives are more often than not overdrawn. Judicial investigations enable both judgments of culpability and (imperfect) truth-telling; equally, most truth commissions have contributed substantially to judicial processes. In Northern Ireland, "the criminal justice system has become the space wherein victims and survivors sought 'truth' and contested versions of the past have been examined."[1] Many of the measures discussed here could have been placed in the section on criminal justice (chap. V). Given that they have not, however, led to prosecutorial successes – for example, only three of the 1,800 cases reviewed by the Historical Enquiries Team resulted in convictions – they resemble more truth-seeking initiatives than justice measures.

A. Main existing mechanisms

21. While the Good Friday Agreement recognized human rights as fundamental to conflict transition, it made only passing reference to the legacy of human rights violations and to possible avenues of redress. Nonetheless, several important initiatives, including investigative and truth-seeking avenues, have been conducted. Civil society organizations, working with victims' families, have examined various aspects of the Troubles, as have investigative journalists, historians and other scholars.

1. Public inquiries

22. Four large-scale public inquiries have been undertaken to investigate specific events. Most prominent was the Bloody Sunday inquiry, which took approximately a decade to complete. After an exhaustive review of material evidence and multiple witness and participant testimony, the inquiry found that, contrary to the official State position, British

[1] Cheryl Lawther, "Criminal Justice, Truth Recovery and Dealing with the Past in Northern Ireland" in *Criminal Justice in Transition: The Northern Ireland Context*, Anne-Marie McAlinden and Clare Dwyer, eds. (Oxford, Hart Publishing, 2015).

paratroopers had fired the first shot, without warning, against people posing no threat, and subsequently fired on fleeing, unarmed civilians, on someone already wounded on the ground, and on persons who had come to the aid of the wounded, resulting in 14 deaths, and confirmed that British soldiers lied to cover up their acts.[2] The publication of the report led to a public apology by Prime Minister Cameron, 38 years after the events.

23. While public inquiries can be a significant truth-seeking instrument, they have serious limitations as well. The Inquiries Act of 2005, which assigned the power to initiate public inquiries to the executive branch, has been criticized for granting excessive executive control (see CCPR/C/GBR/CO/7, para. 8 and CCPR/C/GBR/CO/6/CRP.1, para. 9). Calls for inquiries into other large-scale or paradigmatic cases, including the Omagh bombing and the killing of human rights defender Pat Finucane, have not been taken up.[3] Victims have expressed serious concern that the rationale for establishing truth and justice initiatives, in the form of official inquiries, is neither transparent nor, ultimately, equitable.

24. In addition to their exorbitant cost (for example, the Bloody Sunday inquiry cost more than £200 million), event-based inquiries do not always produce evidence for establishing whether a particular incident fell into a general pattern or practice of violations. An individually-focused inquiry would thus fail to address the systematic or widespread nature of violations, and of whether they are the result of certain policies, orders or chains of command.

2. Inquests

25. In the absence of criminal prosecutions, bereaved families sometimes resort to coroner inquests (public hearings held by the coroner in certain cases to establish facts about a person's death) in order to gain access to a "judicial" inquiry. Inquests are, however, limited judicial mechanisms. Despite the reservations of the European court of Human Rights about their scope, the inability to compel witness testimony and the lack of prompt, reasonably expeditious proceedings, inquests continue to be a common form of legal recourse.

26. Reforms have not resolved the myriad of problems that inquests pose. Protracted litigation concerning the disclosure of information on security personnel causes delays. Questions about independence abound, especially where former personnel of the Royal Ulster Constabulary (led by a coroner) are in charge of investigating the Constabulary's conduct using information held in police files. Concerns about access to past inquests persist, even though most of the information is held in public records offices. When documents on cases related to the Troubles are released, they are heavily redacted.

27. Furthermore, the inquest system deals with only a small number of legacy cases: as at October 2015, there were 55 cases involving 96 deaths, pending for between 30 and 40 years. While clarifying and finalizing every case is important, inquests cannot provide a comprehensive overview of broader circumstances relating to the Troubles.

28. The Lord Chief Justice of Northern Ireland, Sir Declan Morgan, recently assumed responsibility for the coronial process, implementing reforms to ensure completion of outstanding inquests within five years. Such reforms include applying a thematic approach,

[2] See www.bloody-sunday-inquiry.org.uk.

[3] In the response of the authorities of the United Kingdom to the present report, they referred to the non-statutory review undertaken by Sir Desmond De Silva of the Finucane case, adding that, "in the Government's view, the De Silva review clearly established the truth of what happened in the Finucane case and the then Prime Minister made a full apology in the House of Commons".

creating structured and systematic linkages between cases, sequencing cases, ensuring that the presiding coroner reviews all relevant material in unredacted form, and establishing a dedicated legacy inquest unit. This initiative, as a wisely designed strategy to maximize the truth-telling potential of inquests for individual cases, and illustrating the structural dimensions of violations, deserves strong support.

3. Historical Enquiries Team

29. The Historical Enquiries Team (HET), set up in 2005 in part to comply with the judgements handed down by the European Court of Human Rights, re-examined deaths attributable to the Troubles to ensure that all investigative and evidential opportunities were undertaken. The HET re-examined more than 2,400 deaths in six years. While not an explicit truth-seeking measure, the work of the HET has brought some relief to families by bringing to light considerable and substantive information.

30. The HET encountered significant challenges to its practical independence. It was located as a free-standing structure within the Police Service of Northern Ireland, but the need for local knowledge led to the recruitment of former and/or retired officers of the Royal Ulster Constabulary, which appeared to compromise of the impartiality of the HET, particularly in cases of alleged State collusion.

31. The HET was shut down in 2014 when a British standards inspection report revealed, that as a matter of policy, the HET treated allegations of State involvement differently to those involving non-State actors.[4] In December 2014, the Police Service established the Legacy Investigation Branch to assume responsibility for the outstanding workload of the HET.

4. Office of the Police Ombudsman

32. The Office of the Police Ombudsman in Northern Ireland, established in 2000, addresses complaints of past misconduct. It instituted reforms to ensure confidence in and the credibility of its work, including clear procedures and ease of access; the right to be heard; independent investigation, with right of reply by those under investigation; greater access to documents, including those of intelligence agencies; publication of its reports; and enhanced communication with victims' families through a dedicated professional service. Limitations nevertheless remain, such as its inability to compel police testimony or to investigate military and security services or civilians who have collaborated with the police (for example, informants).

33. While the caseload of the Office of the Police Ombudsman has, since it began addressing historical cases, steadily increased to more than 300 cases today, its funding has progressively and substantially declined.

5. Independent Commission for the Location of Victims' Remains

34. Established as a statutory body by an intergovernmental agreement signed by the Governments of Ireland and of the United Kingdom in 1999, the Independent Commission for the Location of Victims' Remains gathers information used to locate the remains of victims of enforced disappearances perpetrated by paramilitaries during the Troubles. No information may be used in criminal proceedings. In the 16 cases it has examined to date,

[4] See HMIC, "Inspection of the Police Service of Northern Ireland Historical Enquiries Team", 2013, p. 28.

its work has led to the recovery of 10 bodies. Two other bodies have been recovered outside of the scope of the Commission's work.

B. Challenges to truth-seeking mechanisms

1. Event-based approach

35. The investigative mechanisms described above are designed to clarify a particular event, not to reveal structural or systemic aspects of violations, including patterns replicated in similar incidents, or other underlying factors, such as chains of command, orders or policies.

36. Event-based measures do not necessarily make a systematic assessment of cross-cutting thematic issues. The gender-related impact of violations and abuses has been understudied at an official level. Given the State's ambiguity with regard to the classification of the Troubles, Security Council resolution 1325 (2000) and related policy recommendations cannot be applied to Northern Ireland. More sustained and thorough analysis of ways in which the impact of violations and abuses manifests itself in the lives of women is required. Various initiatives undertaken by civil society and academia on this issue are to be commended.

2. Ad hocism

37. The above-described mechanisms are, generally, ad hoc or function in an ad hoc manner, requiring a particular decision on the part of authorities to trigger them. Like all ad hoc mechanisms, they are not exempt from questions of whether the mechanisms have been established solely on the basis of violations or the needs of victims, equitably considered, or also influenced by extraneous and possibly political considerations.

3. "Fragmentation" of cases

38. No truth-seeking or investigative mechanism has purview over all actors possibly involved. For example, while the Office of the Police Ombudsman in Northern Ireland may investigate the police but not the military or intelligence agencies, the HET was empowered to investigate all actors, except the police.

4. Focus on deaths to the exclusion of other violations and abuses

39. All investigatory and truth-recovery processes focus on cases of killing or suspicious death; consequently, persons physically or psychologically injured as a result of life-threatening attacks, torture or ill-treatment, including sexual violence, are excluded from historical investigations. The majority of violations and abuses relating to the Troubles therefore remain largely unaddressed.

5. Independence

40. Interlocutors have also referred to the (perceived) lack of independence of historical investigative mechanisms, as described above.

6. Overuse of national security exemptions to avoid disclosures

41. Perhaps the thorniest issue in debates about truth-telling in Northern Ireland concerns the disclosure of information held by government institutions. The Government of the United Kingdom (in, for example, a communication dated 26 April 2016 from the Northern Ireland Office to the Council of Europe) consistently claims the right, if not the obligation, to prevent disclosure of "sensitive information", including that which could

endanger the lives of informants or "damage […] national security" by revealing security sector methods or operations. Differences over national security exemptions were apparently the main concern over which the negotiations on the implementation of the Stormont House Agreement broke down in November 2015.

42. Appeals to the ambiguous concept of "national security", invoked as a blanket term becoming a means to shield individuals or practices against open scrutiny, fuel mistrust and suspicion. The fact that "national security" has no statutory definition in British law aggravates this perception.

43. In other contexts, this issue has received an entirely different treatment. Typically, State institutions, including the security sector, are required to collaborate with truth commissions and to provide all relevant information, including "sensitive" information.

44. In Although truth commissions have received considerable latitude in handling information on national security issues, no obvious cases of serious breaches have been recorded, in part because the methods disclosed were so clearly incompatible with any notion of legality or legitimacy that they could not be considered part of any defensible national security strategy. Concerns about the security of individuals have been addressed not by limiting disclosure, but by protecting individuals, including through witness protection programmes.

45. The authorities have argued that witness protection is not feasible in Northern Ireland, citing pledges of confidentiality made to informers, and contextual factors that make identification easy (for example, in small geographic regions or tightly knit communities). They furthermore cite the fact that some people have indeed been murdered on the suspicion of providing information to the authorities. Legally, authorities argue, they are bound by article 2 of the European Convention on Human Rights to protect the life of citizens.

46. Asserting the obligation to protect the life of citizens does not override obligations stemming from the right to truth. No single right to life trumps other "weaker" rights. The right to truth can be construed as a way to (at least partially) redeem the right to life of those who have been killed by State or non-State actors. Instead, the point must be to find ways of satisfying the right to truth for victims and society while acknowledging the complex conditions under which this must be done, which are compounded in Northern Ireland by the widespread reliance on informers.

47. When acting in accordance with both national and international obligations, national security may only be served within the limits of the law, and allowing for adequate means of comprehensive redress in cases of breach of obligations.

V. Criminal justice initiatives

48. Criminal justice efforts in Northern Ireland are not so much marked by their paucity as by their perceived partiality and incomplete nature.

49. Despite requests to various relevant parties, surprisingly no entity could provide the Special Rapporteur with comprehensive data on the prosecution of State or non-State actors relating to the conflict. The United Kingdom might well be expected to record and maintain such information, including basic facts, such as the number of prosecutions brought against State and non-State actors.

50. The above-described situation strengthens the merit of recommendations in favour of a single truth-seeking mechanism that would not only attempt to shed light on unresolved cases (which constitute the majority) and on their patterns, but would also

systematically collect and present all relevant action and information on what has been done in the domain of justice to date. An overall assessment of the initiatives undertaken over a period of decades and of those yet to be implemented must include information about what has been accomplished (or not) to the present day, so that successes and failures may be measured.

51. The response of the Government of the United Kingdom to the Troubles was marked by its punitive approach. It is estimated that between 20,000 and 40,000 people, both Republicans and loyalists, spent time in prison.[5] According to the Police Service of Northern Ireland, 19,605 people were charged with terrorist and other serious offences from 1969 to 2003.[6] During the Troubles, Northern Ireland had among the lowest crime rates in Western Europe, but one of the highest rates of imprisonment per capita (with three-quarters of the prison population convicted of conflict-related offences).[7]

52. Data available are insufficiently analysed and disaggregated (such as by charge, group membership and length of sentence) to allow a thorough evaluation of the justice system. Aggregate figures cannot dispel the perceived bias in the distribution of investigative, prosecutorial and punitive efforts, and in fact fuel continuing mistrust in the institutions. The table below contains the information available on the affiliation of those killed and of those responsible.[8]

Number of deaths by organization responsible

Organizational affiliation of victims	*Lost lives (1955-1999)*	*Cost of the Troubles (1969-1998)*	*CAIN database (1969 – 2001)*
Security forces	367	422	368
Loyalist paramilitaries	1 050	983	1 020
Republican paramilitaries	2 139	2 001	2 054
Civilian not known	80	11 (civilian)	81
Other		216 (other)	
Total	**3 636**	**3 593**	**3 523**

Number of deaths by status of victim

Organizational affiliation of victims	*Lost lives (1955-1999)*	*Cost of the Troubles (1969-1998)*	*CAIN database (1969 – 2001)*
Security forces	1 012	1 129	1 111

[5] Office of the First Minister and Deputy First Minister, Employers' Guidance on Recruiting People with Conflict-related Convictions, Report of the Review Panel, March 2012, p. 14.

[6] Conflict Archive on the Internet (CAIN) Web Service, Background Information on Northern Ireland Society: Security and Defence.

[7] Clare Dwyer, "The Complexity of Imprisonment: The Northern Ireland Experience", *Cambrian Law Review*, Vol. 35, 2004, p. 97.

[8] See Christine Bell, "Dealing with the Past in Northern Ireland", *Fordham Law Review*, Vol. 26, No. 4, 2002, pp. 1126-7; Marie-Therese Fay, Mike Morrissey and Marie Smyth, *Northern Ireland's Troubles: the Human Costs* (London, Pluto Press, 1999); and Malcolm Sutton, "An Index of Deaths from the Conflict in Ireland", CAIN Web Service, 2001.

Loyalist paramilitaries	144	119	151
Republican paramilitaries	392	363	395
Civilian not known	2 088	2 990	1 866
Other			
Total	**3 636**	**3 601**	**3 523**

Source: Christine Bell, "Dealing with the Past in Northern Ireland", *Fordham Law Review*, Vol. 26, No. 4, 2002.

53. Any assessment of the justice sector from the standpoint of transitional justice would require knowledge of the type of contribution it made in clarifying the numbers above, and how it tracked (or did not track) the resulting figures. No one's interests or rights are served by the lack of certainty. Some uncertainty results from unresolved cases, but also from dispersed, non-systematized or unanalysed data. The Government of the United Kingdom could do much more to mitigate both sources of uncertainty. Nothing undermines the potential of justice measures more than their perceived lack of impartiality.

54. At present, figures on the prosecution of State agents do not coincide with the rough 10 per cent figure attributed to State agents.[9] Manifest unevenness in the distribution of investigatory and prosecutorial initiatives undermines confidence in rule of law institutions.

55. The Good Friday Agreement established an early release programme for prisoners to be completed within two years of the signature of the Agreement, and explicitly acknowledged the need for reintegration support for released paramilitaries.[10]

56. To implement its part of the Agreement, the United Kingdom adopted the Northern Ireland (Sentences) Act in 1998, which created an independent Sentence Review Commission. Triggered by individual inmate applications, the Commission's determinations could be challenged for judicial review.

57. Under the Act, prisoners sentenced to five or more years would serve one third of their sentence, while prisoners sentenced to life would serve two thirds of the sentence served by a prisoner convicted of an equivalent offence but not related to the "anti-terrorist" laws adopted to address the Troubles). All prisoners remaining were to be released by July 2000.

58. The early release scheme was an important enabling condition of the Good Friday Agreement. Negotiated agreements between undefeated parties often involve such transactions. Nevertheless, at least for those who had been convicted and imprisoned, the Agreement did not establish an impunity regime: all of the 449 prisoners released by 2000 had served between 67 and 72 per cent of the time they would have served without early release.[11]

[9] Relatives for Justice, a non-governmental organization, argues that the figure of 10 per cent is artificially low owing to underreporting and lack of investigations, and contends that, if collusion with State forces were incorporated, the State would bear some responsibility for some 33 per cent of all killings. See Relatives for Justice press statement, "RFJ respond to SoS Propaganda Myths", 16 April 2014.

[10] No provision was made for those not yet convicted or convicted but not in prison, an omission that would give rise to subsequent challenges.

[11] Sentence Review Commissioners Annual Report 2002. See also Bell, "Dealing with the Past in Northern Ireland" (see footnote 8), pp. 1112-14.

59. The impunity gap in Northern Ireland does not come so much from early release as from apparent selectivity in the deployment of prosecutorial resources, and from gaps derived from the almost exclusive attention to cases leading to death.

VI. Reparations

60. The area of least achievement in the context of Northern Ireland remains reparations, despite various programmes to assist victims: the criminal compensation schemes of 1977, 1988 and 2002; the special payments made in 1998 to the families of the "disappeared"; the Northern Ireland Memorial Fund of 2001-2013 (an independent charity created to provide assistance to bereaved or injured victims of the Troubles); the Victims and Survivors Service, established in 2012; and other forms of support for members of the security forces or their families. These forms of assistance have mobilized significant resources.[12]

61. There are no official figures on the costs of these programmes.[13] The figures would, however, not be low; for the period 2013-2017, the Victims and Survivors Service alone was assigned a budget of £50 million.

62. The Government of Northern Ireland continues to experiment with institutional infrastructure that would improve responses to victims. The Commission for Victims and Survivors was established in May 2008 to advise (with input from a victims' and survivors' forum) the Executive Office on comprehensive responses to the needs of victims. The operational delivery vehicle is the Victims and Survivors Service, established in 2012 as an arms-length body to administer funding to support groups for victims and survivors, and to deliver financial assistance, services and other support to individual victims and survivors.[14]

63. After a stormy period, characterized by a frequent turnover of commissioners, the Commission has recently spent considerable time and effort in building confidence among its main constituencies and addressing queries about the operation, practices and neutrality of the Victims and Survivors Service.

64. Still, significant challenges remain. Even within the limited aims of the compensation and service schemes in Northern Ireland, concerns about the equitable treatment of victims persist beyond a comparison of benefits offered to former service men and their families as opposed to those for civilian victims. Even among civilian victims, significant inequalities exist, since the benefits offered by different schemes have varied over time, while "top off" equalizing benefits have become contentious.

65. There is inequity in the kind and quality of services available to people in different areas of the jurisdiction; for example, some services, such as counselling and some forms of specialized health treatment, are concentrated in urban areas.

66. Beyond questions of equity, Northern Ireland has ended up with a services model that works largely through organizations closely tied to the communities of origin of beneficiaries. While the initial reasons for such an arrangement were understandable (in

[12] According to the first Victims Commissioner, £186 million had been paid to victims of terrorist violence, of which £26 million on awards upon the death of a victim, and a further £160 million on awards for injuries to a victim. See *We Will Remember Them*, report of the Northern Ireland Victims Commissioner, Sir Kenneth Bloomfield, April 1998, p. 27.

[13] See Michael Potter and Anne Campbell, "Funding for Victims and Survivors Groups in Northern Ireland", Northern Ireland Assembly, 2 October 2014.

[14] Office of the First Minister and Deputy First Minister, Strategy for Victims and Survivors, November 2009.

particular the general lack of trust that characterized the post- conflict period), this model risks forming constituencies and consolidating identities in ways that hew closely to the divides around which the conflict was fought. The provision of services should have been structured in a way that highlighted professional rather than identity criteria, and that at least prevented the formation of closed constituencies.

67. With regard to services, there is also a surprising dearth of systematic data on patterns and trends, which complicates immensely the implementation of equitable programmes.

68. Programmes with different types of exclusions are rife: certain types of conditions are not covered (such as various forms of psychological disability), while some categories of person are ineligible, in particular any member of a group classified as terrorist or his/her family, barred from receiving benefits, a limitation already highlighted in 1998[15] that still causes a great deal of division and dispute. Gender gaps identified in the provision of reparations reflect the broader challenge of ensuring reparations that are gender-sensitive.[16]

69. An apt illustration of how far the legacies of the past are from being resolved is the controversy over pensions. For years, non-governmental organizations have campaigned to establish a pension for those seriously injured during the Troubles and thus unable to work and accrue occupational pension rights. The Commission for Victims and Survivors has endorsed this proposal, and issued an advice paper in which it estimated that approximately 500 individuals would be eligible for the pension under existing criteria, including the statutory definition of victim in 2013. This proposal would, however, allow a small number of people who were not only victimized themselves but, in some way, may have victimized others, to receive the pension too. A programme that would benefit approximately 500 needy people directly and others indirectly, transferring to them £2 million per year, lost the required political support; consequently, no one receives the pension.[17]

70. This debate has crystallized around the very basic concept of "victim". Under the Victims and Survivors (Northern Ireland) Order 2006, the legal definition is a general, inclusive one – indeed overly so, compared with familiar definitions in international documents. The main nationalist and Republican political parties and organizations broadly agree with the inclusive definition; in contrast, Unionist and Loyalist parties and organizations see the definition – and its consequences, that is, making eligible to receive the pension persons who, in their view, are not deserving – as eroding the boundaries between "innocent victims" and "guilty perpetrators".[18]

71. Calls have therefore been made for qualifying the notion of "victim", while some talk, both approvingly and disapprovingly, of a "hierarchy" of victims. Once a debate is framed in the field of victimhood, it is notoriously difficult to resolve given, that this category is, by its very nature, both descriptive and evaluative. This use of the notion of "victim" is one way that any discussion on the past remains a zero-sum exercise.

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[15] See Bloomfield, *We Will Remember Them* (see footnote 12), p. 27.

[16] Fionnuala Ní Aoláin, Catherine O'Rourke and Aisling Swaine, "Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice", *Harvard Human Rights Journal*, vol. 28, 2015, p. 97.

[17] Two eligible people died between the first and second visits by the Special Rapporteur while awaiting a settlement.

[18] Some groups informed the Special Rapporteur that they preferred the definition of victim used in the European Union Directive on the rights of, support and protection of victims of crime (2012/29/EU), given that it would exclude those responsible for criminal activity from receiving benefits

72. Other countries coping with past abuses have established reparations programmes, demobilization initiatives and crime compensation programmes, each with clear aims and criteria of eligibility. Discussions in Northern Ireland on the issue of compensation conflate the characteristics of all these programmes, with results that have been far from positive.

73. In establishing reparations programmes, most countries steer away from debates over the definition of "victim". In accordance with broad human rights concepts, such as that all persons have human rights, questions about affiliation, past behaviour or identity (whether of the perpetrator or the victim) are considered irrelevant and set aside.[19]

74. Since most reparations programmes adopt a relatively straightforward guiding definition of "victim", the persons to be considered eligible for reparations are established when the "beneficiary" is defined. Although the term is not above dispute either, it is not freighted with the same evaluative complications as the term "victim".

75. Ideally, the sole criterion triggering eligibility for reparations is having been a victim of a human rights violation (or where relevant, international humanitarian law violation). Since human rights protections are indifferent to the identity, affiliation and even past behaviour of the person concerned, a programme that adopts this notion would not preclude anyone on these grounds. Part of the socially integrative power of reparations programmes (like of other transitional justice measures) depends precisely on how they highlight the overriding importance of rights.[20]

76. While a reparations programme should focus on and take care of the victims of human rights violations, separate programmes would address the needs of, for example, ex-combatants with disabilities (whose injuries were not the result of human rights violations). None of this precludes the establishment of parallel programmes offering benefits to victims of crime (not constituting human rights violations).

77. The difficulties faced by victims of the Troubles have been compounded by poverty and geography, particularly those in rural areas.

78. The lack of attention to the impact, whether direct or indirect, of the violence of the Troubles on women is a particular concern. Since the violations and abuses, the hardships faced by women, many of whom have raised their families single-handedly with limited resources, have been exacerbated. While community groups do provide some assistance, the State has not engaged in a thorough analysis or sustained effort to address the gender-related dimensions of violations and abuses.

79. Those who were children during the Troubles require specialized care, including reintegration programmes, education and employment support. The impact of the Troubles is inherited, and should be addressed in children, many of whom are still exposed to violence and poverty.

80. Many questions could be raised concerning both the funding and institutional delivery of benefits and services to victims in Northern Ireland. The fundamental challenge is that benefits and services become reparations only if they are accompanied and motivated by an acknowledgment of responsibility. While various parties have made apologies, including Prime Minister Cameron, the Provisional IRA and others, they have been piecemeal and usually conditioned. With regard to human rights violations committed in Northern Ireland, the parties that should acknowledge their wrongdoing are as plentiful as

[19] See General Assembly resolution 60/147, annex, para. 8.

[20] See jurisprudence of the Inter-American Court of Human Rights, for example, Neira-Alegría et al. v. Peru, 1996, in which the Court stressed that even "terrorists" had a right of redress.

the reasons given for their unwillingness to do so. All actors involved in violations and abuses committed during the Troubles should consider an acknowledgement, which could be issued simultaneously.[21]Such acknowledgment would then become available as the grounds for benefits and services; only then could one speak of reparations in the strict sense.

VII. Guarantees of non-recurrence

81. In his most recent reports, the Special Rapporteur outlined a broad framework approach to non-repetition, highlighting the importance of a comprehensive approach to non-recurrence and of an enabling context and initiatives that go beyond institutional reforms, and entail strengthening both civil society and interventions in the cultural sphere (A/HRC/30/42 and A/70/438).

A. An enabling context

82. Although the causes of violence or of human rights violations cannot be reduced to inequality or poverty alone, it is well known that both conditions correlate with violence and the violations of rights. Entrenched economic exclusion and persistent and durable inequalities may be particularly detrimental to the enjoyment of rights.

83. The Good Friday Agreement and the St. Andrews Agreement contained commitments to equality aimed at tackling patterns of deprivation of the communities most affected by the Troubles, a fact implicitly acknowledged in section 75 of the Northern Ireland Act (1998), which established statutory obligations of equality.

84. These obligations have led to institutional developments, such as the Equality and Good Relations Commission, tasked with advising the Government and challenging it on issues of performance, as expressed in a variety of strategies, most recently in *Together: Building a United Community*, published in May 2013. In the publication, the Commission articulates an expansive vision of "a united community, based on equality of opportunity, good relations and reconciliation – one which is strengthened by its diversity...". It acknowledges that "more work needs to be done to resolve the challenging legacy of [the] past". It takes interventions in the cultural public sphere seriously, proposing the establishment of an "All-Party Group, with an independent chair, to consider parades and protests; flags, symbols and emblems and related matters; and the past."

85. Although the Special Rapporteur welcomes these initiatives, he shares the doubts expressed by civil society about whether piecemeal, relatively small-scale programmes (such as youth summer schools, volunteer programmes, sporting events and shared neighbourhoods) are sufficient to realize the vision described by the Commission in its publication. Northern Ireland remains deeply segregated in such crucial areas as housing and education: more than 90 per cent of social housing areas are segregated into predominantly single communities, a figure reaching 94 per cent in Belfast. Approximately 92 per cent of children and young people in primary and post-primary schools are educated separately on the basis of religious background. It is broadly understood that this degree of separation entails costs and risks. It is not clear that the document describes policy instruments to change these figures significantly, even in the long-term. Surveys

[21] See for example Brian Gormally, "Acknowledgement and its Role in Preventing Future Violence", discussion paper and proposal, September 2006.

consistently indicate strong support for more 'mixing' of the two communities.[22] Opportunities to achieve significantly greater levels of integration than political parties have sought to date may be feasible.

B. Institutional reforms

1. Police reform

86. In the aftermath of serious human rights violations, it is often crucial, for the sake of non-recurrence, to engage in both security-sector reform and the effective demobilization of ex-combatants. The former is the area under the mandate where the greatest achievements have been made in Northern Ireland. The emphasis of the Police Service of Northern Ireland on human rights, together with greater citizen involvement (the result of both perceived representativeness and a new policing strategy), has brought about extraordinarily high rates of popular trust – between 80 and 85 per cent – in the Police Service.[23] The magnitude of this change is especially remarkable when one considers that the predecessor institution, the Royal Ulster Constabulary, was not particularly trusted by one of the communities in Northern Ireland.[24]

2. Patten report

87. As a result of the Good Friday Agreement, the Independent Commission on Policing for Northern Ireland (Patten Commission) was established in 1998 to conduct a fundamental review of the Royal Ulster Constabulary. After extensive consultations – the Commission met more than 10,000 people and received 2,500 written submissions – it made a number of recommendations, the majority of which were implemented and remain an important part of the Police Service of Northern Ireland.[25]

(a) Personnel renewal

88. According to the Police Service of Northern Ireland, following 1998, turnover of personnel was 5,800 out of 6,800, achieved mainly by the proposal of early retirement or severance packages. The result of such a large turnover was an almost entirely new police force, even though no explicit vetting process was followed neither for officers already employed nor for new applicants.[26]

(b) Representativeness of the police force

89. The renewal of the police force was accompanied by a 50/50 recruitment policy that was applied for 10 years, in accordance with section 46 of the Police (Northern Ireland) Act 2000 and the aspiration expressed in the Good Friday Agreement of increasing the

[22] See Colin Knox, "Cohesion, Sharing, and Integration in Northern Ireland", *Environment and Planning C: Government and Policy*, 2011, vol. 29, No. 3, p. 551.

[23] Department of Justice, "Perceptions of Policing, Justice and Anti-Social Behaviour: Quarterly Update to December 2015", May 2016.

[24] For some of the remaining challenges, see the Fresh Start Panel report on the Disbandment of Paramilitary Groups in Northern Ireland, May 2016.

[25] Chris Patten, "A New Beginning: Policing in Northern Ireland", report of the Independent Commission on Policing for Northern Ireland, September 1999.

[26] See for example Democratic Progress Institute, *The Good Friday Agreement: An Overview*, pp. 41-42.

representativeness of the force. According to the Patten Commission, when the Agreement was signed, the Royal Ulster Constabulary was overwhelmingly Protestant (92 per cent).

90. Affirmative action recruitment schemes adopted by the Police Service until 2011 brought the proportion of Catholics to 31 per cent among police officers and about 20 per cent among police staff (as at 1 November 2015). Similarly, the percentage of female police officers rose from 12 to 28 per cent.

91. The Patten Commission recommended that the Policing Board and the office of the Police Ombudsman should also be broadly reflective of the population.

(c) Accountability and oversight bodies

92. Policing reform also included the establishment of accountability and oversight bodies, part of the institutional structure that gives life to a human rights approach to policing in the Police Service, including a human rights adviser within the force and someone with full access to all Police Service operations and with national security clearance.

(d) Policing Board

93. The Policing Board, composed of ten political and nine independent members, is mandated to ensure that the Police Service is effective, efficient, impartial, representative and accountable, thereby securing the confidence of both communities.

94. In 2003, the Police Board devised a human rights framework based on the Human Rights Act, specifying 14 key issues to be monitored, including attention to victims (with a special section on legacy cases).

(e) Office of the Police Ombudsman in Northern Ireland

95. The Office of the Police Ombudsman in Northern Ireland, a system of independent, impartial and civilian oversight of policing, was established in 2000. The creation of the Office, which is independent from the Police Service and has its own team of investigators, has made an important contribution in gaining public confidence in both the police and the complaints system. The cuts to the funding to the Office introduced in 2014 have, however, undermined the efforts to restore the reputation the Office had gained during its first seven years of existence.

C. Release and integration of paramilitary prisoners

96. The Good Friday Agreement recognized the importance of reintegrating released political prisoners into the community by supporting employment, retraining and further education.

97. Even though the release of paramilitary prisoners initially elicited public outrage, a number of ex-prisoners, mainly through organizations they have founded, have contributed significantly to wider peacebuilding in Northern Ireland. As efforts to reduce violence can carry greater weight and appear more credible when they are led by former combatants, their active participation has reportedly had a positive impact on the willingness of society, and particularly of young people, to resolve conflicts in a non-violent manner, thus making a crucial contribution to non-recurrence.

98. Legislative and other discriminatory barriers prevent former prisoners from having their full citizenship restored (such as access to employment opportunities, and restrictions on pensions and eligibility for home insurance or bank loans). Moreover, some of these

barriers have an effect on children and grandchildren when family background checks are made.

99. It was decided that a disarmament, demobilization and reintegration programme was not required in Northern Ireland. As a recent report explains, however, there are very good reasons of public interest for removing the obstacles that former prisoners and their families still face, and for continuing and improving support for them and their communities.[27]

D. Bill of rights

100. In yet another manifestation of the drafters' conviction that the future of Northern Ireland depended largely on the possibility of institutionalizing human rights, the Good Friday Agreement called for the establishment of an independent Northern Ireland human rights commission, the tasks of which would be, inter alia, to advise on a bill of rights for Northern Ireland. The Northern Ireland Human Rights Commission presented its recommendations in December 2008. In November 2009, the Northern Ireland Office published a consultation paper on a bill of rights. In parallel, the Bill of Rights Forum, established by the Government as a result of the St. Andrews Agreement of October 2006, submitted its extensive report to the Commission in March 2008.

101. Despite the richness of the debates, declining political will and lack of consensus have brought the process of developing a bill of rights to a standstill. All stakeholders should resume this process expeditiously.

E. Interventions in the cultural sphere

102. In addition to institutional reform, social transformation also involves cultural initiatives. In Northern Ireland, there is no more obvious example of these initiatives than memorials. More than 600 memorials, mostly established by communities, organizations and individuals, are places of memory for those killed and injured during the Troubles. The Special Rapporteur had the opportunity to visit the Omagh Bomb Memorial Garden and the temporary facilities of the Bloody Sunday Museum. Other recent initiatives include the Peace Bridge in Derry/Londonderry and the establishment of the Private Day of Reflection (21 June).

103. Although victims have been actively involved or even lead some memorialization activities, there is no consistent policy on this issue. One recurrent challenge is posed by the fact that a significant number of memorialization and other cultural initiatives have not been able to foster mutual understanding, but have rather contributed to persisting divisions. The absence of a collective memorial for all victims of the Troubles, another proposal long discussed, is also telling.[28]

F. Societal interventions

104. Civil society organizations, including non-governmental organizations, can make a crucial contribution to reconciliation and moving forward.

[27] See Fresh Start Panel report (see footnote 24), in particular sect. 3 and paras. 4.24-4.28.

[28] See also Brandon Hamber, Liz Ševčencko and Ereshnee Naidu, "Utopian Dreams or Practical Possibilities? The Challenges of evaluating the Impact of Memorialization in Societies in Transition", *International Journal of Transitional Justice*, vol. 4, 2010, pp. 397-420.

105. Civil society and non-governmental organizations have advocated for redressing the past in Northern Ireland, placing victims at the centre of their approach. Many organizations, however, continue to focus on what separates them from others. Most civil society groups representing victims have likewise become fragmented in their approach to advocacy.

106. There is, however, a small number of victims' organizations that do not respond exclusively to an affiliation or constituency, but rather provide services to all types of victims on the basis of need. Regrettably, such organizations often struggle to find funding precisely because they are not tied to any specific constituency.

VIII. Conclusions

107. **Following the Good Friday Agreement, the United Kingdom has, by various ways and means, attempted to address the legacy of the Troubles. At the social level, there is awareness of the fact that legacy issues impose huge burdens on relations between citizens and official institutions, and on institutions themselves. Agreement about the need to address the past has not, however, led to consensus about how to go about it.**

108. **Placing human rights at the core of the large dispensation, the Good Friday Agreement has been a crucial enabling condition of progress and a forward-looking accord. Unsurprisingly, its greatest successes have come in guarantees of non-recurrence. Even among its exemplary institutional reform initiatives, its police reforms, a typically challenging area for countries transitioning out of conflict, stand out. The process, involving the renewal of personnel, a new policing model, the establishment of independent oversight mechanisms (such as the Police Board and the Office of the Ombudsman), establishing a human rights legal adviser with broad access within the Police Service, and symbolic measures including changes in name, uniform and insignia, have led to a profound transformation in the perceived trustworthiness of the force. Such a collective achievement should be celebrated, and studied by other countries facing similar challenges.**

109. **While clear about its future vision, the Good Friday Agreement was largely silent about how to address the legacy of violations and abuses committed during the Troubles. The ways that the past still disrupts the country's present demonstrate that it has not been properly and completely addressed, despite the multiplicity of initiatives undertaken in the areas of truth, justice and – to a lesser degree – reparations. Available data show that the criminal justice system has handled the cases of more than 20,000 persons under different strategies, including detention without trial, juryless trials and various penitentiary policies, expressing a more general policy of "criminalization" (some elements of which were never abandoned). With regard to official truth-seeking, various institutional arrangements have been tried to meet the persistent demands of victims, their families, and other sectors of society. These have included discrete efforts, such as the Independent Commission for the Location of Victims' Remains; broader ones, such as coroner inquests; and more ambitious projects, such as the legacy work of the Office of the Police Ombudsman in Northern Ireland, the HET, and public inquiries. Resources, quite large in absolute terms, have been mobilized to provide victims with some benefits, although the amounts involved are relatively modest when considering the number of potential beneficiaries. Furthermore, there seems to be a lack of clarity about the preconditions of reparation, which cannot be reduced to mere compensation or provision of a service, but call for an acknowledgement of responsibility.**

110. **Considering the possible reasons for the success of future-oriented measures, and the challenges to measures explicitly intended to redress past violations and abuses, is revealing. Northern Ireland is in some respects an auspicious environment for addressing the past: it is part of a well-established, affluent democracy, with strong institutions, both generally and in the area of human rights (including the Northern Ireland Human Rights Commission), and is proud of its culture of respect for human rights and the rule of law. Furthermore, it has a strong civil society and extraordinary expertise on transitional justice (largely underutilized by official institutions) among both academics and practitioners.**

111. **Despite these positive factors, "more work needs to be done to resolve the challenging legacy of [the] past".[29] In the present report, the Special Rapporteur has identified some technical shortcomings in truth, justice and reparations efforts. First, most efforts have been event-based, directed at individual cases. It is critical, however, to direct attention to instruments that may capture the more "structural" dimension of violations and abuses, so that victims and society receive answers on whether the violations were part of a pattern reflecting a policy under the responsibility of institutions with identifiable chains of command. This issue is critical to establishing the trustworthiness of institutions.**

112. **Second, cases leading to death have received the most attention from institutions and, consequently, from civil society, despite other types of cases, such as of illegal detention, sexual violence, torture, injury and severe harm, which far outnumber deaths. Because victims of these violations and abuses also have rights to comprehensive redress, these cases deserve urgent attention.**

113. **Third, questions remain about the distribution of efforts in each area of the mandate. There is nothing that undermines more the effectiveness of transitional justice measures than the perception they are instruments of "turn-taking", namely, as the means to score political points or tools of patronage.**

114. **There is a noticeable difference between the approaches taken for non-recurrence and those to address the legacy of the past: the former stemmed from initiatives that were comprehensive in scope and pursued with few restraints; the latter are halting and reticent, open to charges of obfuscation more than transparency (for example, the redefinition of "collusion", the use of "national security" considerations, discussions over the definition of "victim", or ambiguities in the classification of the conflict). It is not surprising that the two types of measures have found such radically different degrees of success. Reticence and indirectness have involved costs not just for victims, but also for the broader project of a society genuinely able to move forward together – obviously, since the two are linked.**

IX. Recommendations

115. **The Stormont House Agreement contains broad outlines of the new institutional set-up to address the legacy of the Troubles: an independent Historical Investigations Unit ("to take forward investigations into outstanding Troubles-related deaths"); an Independent Commission on Information Retrieval ("to enable victims and survivors to seek and privately receive information about the death of their next of kin"); an Oral History Archive ("to provide a central place to share experiences**

[29] The Executive Office, *Together: Building a United Community*, May 2013, p. 22.

and narratives related to the Troubles”); and an Implementation and Reconciliation Group (“to oversee themes, archives and information recovery”).

116. **Since the details of the Agreement are yet to be defined, the Special Rapporteur offers only some general comments.**

117. **The independence, access to information and adequate funding of the Historical Investigations Unit is critical to avoiding the problems of earlier truth-seeking measures, including the HET and the Office of the Police Ombudsman in Northern Ireland.**

118. **Given that the Historical Investigations Unit, like past mechanisms, will be case-based, the implementation and reconciliation group must be designed, staffed, funded and authorized to address the patterns, themes and structural dimensions of a conflict that cannot be properly understood or addressed as the sum of isolated cases. In the Agreement, the wording referring to the Implementation and Reconciliation Group is vaguer than for the other proposed institutions.**

119. **The willingness of people to trust the Oral History Archive with their testimonies is contingent on resolving issues of independence and modalities of support to guarantee access and preservation. The full potential of the Archive depends on being more than the repository of discrete, unconnected stories; again, it must have the capacity to analyse and discover patterns and themes.**

120. **Links between the different elements of the architecture are critical to their success; for example, the timeline of each institution must mesh in a reasonable way. Similarly, while the Agreement stipulates a different appointment and selection procedure for staffing each institution, the institutions are meant to work as a coordinated whole; however, the current draft provides no incentive for retaining a group of people that can actually work together.**

121. **The overall challenge is ensuring that this complex institutional apparatus not only performs better than the earlier efforts it seeks to replace, but also delivers results, which earlier efforts did not envision, necessary for accounting for and redressing the past.**

122. **Aside from recommendations concerning the architecture proposed by the Agreement, the Special Rapporteur makes the recommendations below.**

123. **The surprising shortfall in data on virtually all aspects relating to truth, justice and reparation should be addressed. Lack of data informing assessments of costs, distribution and effectiveness fuel charges of partiality and do not contribute to clarity regarding necessary additional efforts. The United Kingdom has the institutional means to compile such information.**

124. **The proposals made by the Lord Chief Justice of Northern Ireland to improve the efficacy of coroner inquests should be supported.**

125. **The structural and systemic dimensions of violence and rights violations and abuses should be examined. A comprehensive understanding of the past requires instruments that do not treat it merely as a series of unconnected events.**

126. **Truth, justice and reparation initiatives should expand their focus beyond cases leading to death to address violations and abuses largely excluded from their ambit, including torture, sexual harm, disappearance and illegal detention.**

127. **All future truth-seeking and justice arrangements should incorporate procedures to guarantee both the reality and appearance of independence and**

impartiality. Similarly, they should be funded in a reliable way that guarantees independence and effectiveness, and allows for long-term planning.

128. **Adjudicating issues concerning disclosure is central to the credibility of truth and justice initiatives. The use of "national security" as a blanket term should be avoided in order to make transparent past practices that were, retrospectively, illegal under national and international law and of dubious effectiveness in furthering security. The Special Rapporteur encourages the Government to work with academic and non-governmental experts to devise an approach that makes disclosure practices human rights and constitutionally compliant.**

129. **National security, in accordance with both national and international obligations, may only be served within the limits of the law, and allowing for adequate means of comprehensive redress in cases of breach of obligations.**

130. **Reparations for victims should be tackled seriously and systematically. It is unclear whether the conflation of eligibility criteria and the ends of reparations, demobilization and a general safety net have delivered an ideal outcome. Reparation involves an acknowledgment of responsibility (which is not the same as criminal guilt). Beneficiaries qualify for programmes solely on the basis of a violation of their rights. Regardless, the issue concerning pensions for almost 500 seriously injured victims urgently needs resolution.**

131. **Demobilized persons, many of whom have made important contributions to maintaining peace, need ongoing support. It is also crucial to ensure that the discriminatory barriers to reintegration are eliminated, as recommended by the Fresh Start Panel.**

132. **Variations in the model of services to victims should be considered, including giving increased support to organizations that make an effort to build bridges between communities and victims' groups.**

133. **The Special Rapporteur calls upon civil society organizations in general and non-governmental organizations in particular to consider whether continued focus on particular groups of victims should not, decades after the end of the conflict, give way to a focus on all victims, regardless of their affiliation or identity, in order to depoliticize support for victims. The transition from a sectarian to a multi-ethnic, diverse society will not be possible without the initiative and participation of all members of civil society.**

134. **Despite the importance that memorials have acquired in Northern Ireland, there is no agreed general policy supporting memorials that could** (a) **raise support for such activities;** (b) **incentivize the establishment of memorials that would foster mutual understanding, or at least prevent the instrumentalization of memory;** (c) **complement and stimulate other forms of truth-telling; and** (d) **guarantee the involvement of and participation by victims in all memorialization activities. Such a policy is urgent.**

135. **The Special Rapporteur urges all stakeholders to re-engage immediately with work on adopting a bill of rights.**

136. **Removing exclusionary barriers, reducing inequalities and minimizing poverty are essential for non-recurrence. Policy instruments to achieve these aims are, however, not obviously being enacted. Unsurprisingly, housing and education segregation continues to be the norm. Nonetheless, discrimination in the work place has diminished significantly, proving that progress is possible. In general, redressing past violations and abuses is also facilitated when discussions about the past are not mingled with debates about sectarian distribution of the means of survival.**