



Report on the Remediating the Past, Healing for the Future Conference

The Great Hall, the Queen's University of Belfast

3 October 2014



Acknowledgement

The Commission for Victims and Survivors wishes to thank all individuals, groups, academics and agencies who gave so generously of their time to contribute to the Remedying the Past, Healing for the Future conference. The Commission would particularly like to thank Dr Luke Moffett, School of Law at the Queen's University of Belfast, for his assistance in organising the conference and compiling this report.

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Summary

On 3 October 2014 the Commission for Victims and Survivors, the School of Law, Human Rights Centre, and the Institute for the Study of Conflict Transformation and Social Justice (Queen's University Belfast); Transitional Justice Institute (Ulster University) and Healing Through Remembering held 'Remedying the Past, Healing for the Future'.

The conference aimed to encourage an informed discussion around how tangible measures could be used to improve the quality of life for victims and survivors.

The keynote speech was delivered by Antônio Augusto Cançado Trindade, a Brazilian judge at the International Court of Justice, former President and judge of the Inter-American Court of Human Rights, and a professor of international law.

A panel in the morning brought together local practitioners to highlight issues affecting victims and survivors and to discuss appropriate remedies for dealing with the past. An afternoon workshop enabled conference participants to discuss the potential benefits and limitations of material and symbolic reparations; the kind of remedies that could be appropriate for Northern Ireland and the potential role for apologies and acknowledgement. This discussion informed a panel session after lunch, where conference attendees engaged in a conversation with academics on the experiences of remedies in other locations and their applicability to Northern Ireland.

There were 121 individual delegates including groups and service deliverers, statutory agencies, non-governmental organisations, academics, members of the Victims and Survivors Forum and individual victims and survivors.

One of the main findings of the event was that reparations have different meanings to different people. It was clear that reparations are much more than purely financial, it is also about moral reparation and can include restitution, compensation, rehabilitation, measures of satisfaction (such as apologies and memorials) and guarantees of non-repetition.

The conference has provided the Commission and conference partners with a wealth of information gathered from the guest speakers and feedback provided by delegates. From the Commission's perspective, this information will be used to inform its work and advice in the future.

1.0 Background

The area of reparations featured prominently at the Commission's Dealing with the Past conference, held on 25 February 2014 at the Stormont Hotel. Attendees at the event participated in workshops exploring the areas of truth, justice, acknowledgement and reparations. The discussions in the workshops provided the Commission with a wealth of views and opinions in relation to the four themes. Key findings from the reparations workshop indicated that the term has different meanings to different people and that is much more than purely financial, it is also about moral reparation, restitution, compensation, rehabilitation, apologies, memorials and guarantees of non-repetition. Feedback from the conference was included in a comprehensive report and was used as a resource by the Commission in preparing its advice to the Office of the First Minister and deputy First Minister on dealing with the past.¹

On the 27 March 2014 the Commission submitted advice to the Office of First and deputy First Minister. The Commission's paper, *Advice on Dealing with the Past: A Victim Centred Approach*, stated that when addressing the past from a victims and survivors perspective, four areas have been identified that need to be addressed, namely: acknowledgement; truth; justice; and reparation. The paper advised that any potential solutions to dealing with the past must enshrine the principle of choice for victims and survivors of whether to engage with the mechanism or not. Addressing reparations, the Commission recommended that a comprehensive process is put in place for the provision of reparations for all victims and survivors and that the bereaved, injured and carers should all be eligible for a programme of high quality services, financial assistance and that a pension should be provided for the severely injured.²

It is within this context that the Commission was approached by the Amnesties, Prosecution and Public Interest in the Northern Ireland Transition project to further explore issues related to dealing with the past, and specifically in relation to reparations.

¹ Commission for Victims and Survivors (2014) *Report on the Dealing with the Past Conference Stormont Hotel, Belfast, 25 February 2014*, Belfast: CVSNI.

² Commission for Victims and Survivors (2014) *Advice on Dealing with the Past: A Victim Centred Approach*, Belfast: CVSNI.

The event, 'Remedying the Past, Healing for the Future', was held on 3 October 2014 by Commission for Victims and Survivors, the School of Law, Human Rights Centre, and the Institute for the Study of Conflict Transformation and Social Justice (Queen's University Belfast); Transitional Justice Institute (Ulster University) and Healing Through Remembering.

The conference aimed to encourage an informed discussion around how tangible measures could be used to improve the quality of life for victims and survivors.

2.0 Attendance

There were 121 individual delegates at the conference from across the victims and survivors sector including groups and service deliverers, statutory agencies, members of the Victims and Survivors Forum and individuals. A further 18 individuals attended with a staff role.

3.0 Conference Proceedings

Proceedings for the day included a welcome by Healing Through Remembering's Chair Oliver Wilkinson; a presentation from Dr Luke Moffett on reparations; the keynote address from Judge Cancado Trindade; a panel session with local practitioners, chaired by Prof Monica McWilliams; workshops discussing the potential benefits and limitations of material and symbolic reparations; and a panel session after lunch, where conference attendees engaged in a conversation with academics on the experiences of remedies in other locations and their applicability to Northern Ireland, facilitated by journalist Susan McKay. Dr Luke Moffett and Prof Brandon Hamber concluded the conference with an overview of the day's proceedings and potential next steps.

The School of Law, Queen's University Belfast, uploaded the day's proceedings to its YouTube channel shortly after the event.³

3.1 Welcome

Oliver Wilkinson, Chair of Healing Through Remembering, opened the conference.

Mr Wilkinson advised that the rationale and objective of the conference was to develop debate and inform discussions on issues connected to dealing with the past. He added that the presentations and discussions would enable participants to take the conversation beyond truth and justice and would provide an opportunity to look at practical and imaginative ways to meet the requirements of those affected by conflict. Mr Wilkinson recognised that the issues connected with dealing with past can be difficult and emotional and advised delegates that a listening service was available if needed.

Mr Wilkinson thanked the conference partners for their contributions and level of knowledge, skill and experience of victims and survivor issues.

3.2 Reparations Overview

Dr Luke Moffett, School of Law, Queen's University Belfast, provided an overview of reparations and their application in post conflict scenarios.

Dr Moffett stated that when talking about remedying the past we often focus on truth and justice, but, in light of international law, reparations are the third part missing from this conversation. Reparations are victim-centred, in that they seek to remedy the harm caused to victims through appropriate measures. In Northern Ireland there tends to be a focus on criminal investigations and trials, as well as truth recovery mechanisms when dealing with the past. While these mechanisms are important in establishing facts and accountability, by neglecting reparations there is a missed opportunity to provide direct redress to victims. Moreover, there are limitations in the

³ The full conference can be viewed online at:
<https://www.youtube.com/playlist?list=PL05SJrdW0gfi7USPkmHEH1ATHKosPKVO8>

extent of criminal investigations leading to prosecution of perpetrators, given the passage of time and destruction of evidence.

Dr Moffett stated that the purpose of the conference was to broaden the conversation on the past and, to examine what role reparations can play in remedying the harmful consequences of the Troubles/conflict. Dr Moffett explained that his presentation intended to outline in legal and international terms what reparations are, their purpose, difficulties, and issues of responsibility – to inform discussions on remedying the past in Northern Ireland. He added that at times reference would be made to international language, such as state and non-state actors, not to legitimise or justify such violence, but as terms of reference in distinguishing the responsibility of different individuals and groups.

3.2.1 What are Reparations?

Dr Moffett explained that reparations publicly acknowledge victims' suffering, and provide measures, such as rehabilitation and compensation, to help alleviate and remedy the harm caused. By focusing on victims, reparations are victim-centred by responding to their differing needs from the rest of society. By publicly acknowledging and remedying such harm, reparations also aim to prevent such atrocities happening again in the future. Accordingly, reparations aim to publicly recognise and ease victims' suffering, but also to raise public awareness of the violations of the past to prevent their repetition.

Dr Moffett added that reparations can be distinguished from other mechanisms of dealing with the past. For example, criminal trials focus on prosecuting and punishing perpetrators, leaving very little room to provide for victims' needs. Similarly, truth commissions, while they do allow victims to participate in proceedings, try to uncover the wider truth for society. Dr Moffett explained, if reparations are just offered to victims without holding those responsible to account or finding out the truth, reparations can appear to be 'blood money' to silence victims. Instead reparations work best when used together with other mechanisms to acknowledge the past and find some form of accountability.

3.2.2 What is the Purpose of Reparations?

The main international document on reparations is the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparations, which state that the purpose of reparations is to promote justice by redressing the harm caused.⁴ The Principles are a soft law document in that they are not binding on states, but provide guidance on best practice in implementing reparations, and have been relied on in a number of international judicial decisions and domestic mechanisms reinforcing their importance.

Dr Moffett advised that reparations are based on three main goals: remedy; reconciliation/social solidarity; and restoring victims' dignity/acknowledgement. With the first of these, remedy is justice aimed at repairing harm. Remedial justice has procedural and substantive aspects, in that it involves consultation with victims through access, information and participation in reparation processes; and substantive in the sense that judicial/administrative reparation decision and outcomes are crafted to alleviate the consequences of the harm caused to victims.

It was highlighted that reparations are also implemented as part of reconciliation and social solidarity by redressing imbalance of conflict where some individuals and groups are left to suffer the consequences and harm of such violence. In addition reparations can prevent those responsible from benefiting from their wrongdoing by making them responsible for remedying the harm they have caused. Reparations can correspondingly allow trust to be rebuilt between citizens and the state and between communities, by acknowledging the harm of the past and taking measures to prevent their repetition.

Dr Moffett explained that reparations can likewise be aimed at restoring victims' dignity and reputation by acknowledging that the harm suffered was not their fault, and they deserve to have it remedied. He added that reparations are meant to improve victims' quality of life by providing them the means to build a future by easing the harm they suffered. The failure to provide reparations can aggravate the

⁴ The 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparations can be viewed online at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

initial harm, whether serious injury or murder, by failing to recognise victims' suffering and right to redress.

3.2.3 Types of Reparation

It was explained that reparations are not just compensation, but a range of measures, such as rehabilitation; memorials; pensions; university scholarships; and apologies, that publicly acknowledge the harm suffered by victims, alleviate their continuing suffering, and try to prevent future violence.

In international law there are five main types of reparations recognised to remedy serious violations:

- Restitution;
- Compensation;
- Rehabilitation;
- Measures of satisfaction; and
- Guarantees of non-repetition.

These five types of reparations are meant to be used together as far as possible to effectively remedy the harm victims have suffered.

Dr Moffett explained that restitution aims to return the individual to the situation before they suffered harm, such as the return of property, but this is impossible with those who have been killed or seriously injured; therefore there is a need to use other reparation measures in such circumstances.

It was highlighted that compensation can provide money or pensions, which enable victims the 'freedom of choice' to spend the money as they see fit to redress their suffering, but some may feel it reduces the value of a human life to a sum of money, and can cause divisions with communities and families. It was explained that pensions can be more appropriate as they provide more long term, regular support in improving the quality of life of victims and survivors. Alternatively, scholarships for

victims or their children can offer monetary support and enable new opportunities for survivors and their families. Dr Moffett highlighted that Judge Cançado Trindade stated in the *Loayza Tamayo v Peru* case that human beings are not ‘*homo oeconomicus*’ ‘reduced to a mere agent of economic production’ or monetary amount. While compensation offers victims the freedom to spend the money as they wish, it is insufficient by itself in remedying their harm and needs to be complemented by other forms of reparations.

When looking at rehabilitation the World Health Organisation defines it as, ‘the combined and co-ordinated use of medical, social, education and vocational measures for training or retraining the individual to the highest possible level of functional ability.’⁵ This includes medical, psychological, and social assistance, as well as access to legal and support services.

Dr Moffett highlighted that satisfaction aims to address the public or moral harm suffered by victims through official acknowledgement by those responsible and remembrance of their suffering through measures such as memorials, apologies, investigations, recovery of those disappeared, and public pronouncements of acknowledgement of responsibility by responsible state and non-state actors.

It was explained that guarantees of non-repetition are commitments made by the state to prevent the occurrence of violations in the future, such as the creation of human rights institutions to monitor the state’s compliance with international law, civilian oversight of security forces, and human rights education.

⁵ World Health Organisation, Expert Committee on Medical Rehabilitation, Second Report, Technical Report Series 419 (1968), p. 6

3.2.4 Who is Eligible?

The UN Principles on Reparations (Principles 8 & 9) define victims widely as:

persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions ... also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, or convicted and regardless of the familial relationship between the perpetrator and the victim.

This definition includes carers, witnesses, emergency responders, as well as state and non-state forces who were seriously victimised. Dr Moffett stated that such a wide definition of victims means it can be difficult to provide sufficient redress for everyone. It was highlighted that instead, many countries tend to focus on those most vulnerable and who continue to suffer, such as children and widows in Sierra Leone. Thus reparations generally concentrate resources and redress of serious violations such as those who were killed, seriously injured, suffered sexual violence, and the disappeared.

3.2.5 Who is a Victim for the Purpose of Reparation?

Looking at definitions, it was noted that international law recognises those who suffer harm to claim reparations, generally against the state, given its obligations under international treaties. Dr Moffett explained that this approach is non-discriminatory, in that the character or behaviour of victim does not exclude their ability to claim reparations, due to serious nature of their suffering, reinforcing the value of human life and dignity, as well as the principle of the rule of law.

It was highlighted that state practice however can paint a different picture. Different political contexts and compromises can narrow the scope of individuals who may deserve to be recognised as victims. For example, in a situation when limited to identifiable human rights violations such as in South Africa for killings, abductions,

torture and serious injury it can deny reparation to other victims. More problematic is excluding those who belonged to armed groups from reparations, as their convictions may be based on tainted evidence and it does not deal with many individuals who were never convicted. For example, in Peru distinguishing perpetrators who were victimised has delayed reparations for other victims, and such exclusion denies reparations to child soldiers, who made up to 40% of one illegal group.

3.2.6 Who is Responsible for Reparations?

In international and human rights law, the state is responsible for reparations due to the actions or inactions of its police or military forces.⁶ However, where violations are committed by terrorist or non-state actors, members of such organisations and the group itself can be held responsible for reparations.⁷ If they are penniless, then the state becomes responsible in providing reparations in order to ensure victims as citizens have access to effective remedy. Penniless perpetrators can contribute to reparations through apologies, acknowledgement of responsibility, provide information on the recovery of those disappeared and truth processes. Under the 2005 UN Basic Principles on Reparations the state should establish reparation mechanisms to remove the burden from victims in bringing cases before the courts. This reflects a basic principle of the rule of law that everyone within the jurisdiction of a country who has suffered harm should have access to justice and an effective remedy.

3.2.7 Past Northern Ireland Proposals

Dr Moffett outlined political initiatives and proposals that addressed reparations in Northern Ireland.

In 2009 the Consultative Group on the Past was established to develop recommendations on dealing with the legacy of the past. The Group recommended

⁶ See Principle 15 and 16, the 2005 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.

⁷ Principle 15, the 2005 UN Basic Principles on Reparations.

the establishment of a Legacy Commission, which would function as a truth-recovery mechanism and involve four strands including community issues arising from the conflict; a review of historical cases; a process of information recovery; and thematic or linked cases emerging from the conflict.⁸ The Group also recommended a one-off ex-gratia recognition payment of £12,000 be paid to the relatives of those killed during the Troubles/conflict, to acknowledge the loss they have endured and the shortcomings of previous compensation schemes.⁹ However this recommendation was found to be disagreeable to a number of people as it would include members of paramilitary groups who were killed. Moreover, this payment excluded those who had been seriously injured. As a result of protests to the recognition payment, all of the recommendations of the Consultative Group were rejected.

The Haass-O’Sullivan all-party talks at the end of 2013 did offer some new proposals in remedying victims’ suffering.¹⁰ It proposed there would be a truth recovery process through the Independent Commission for Information Retrieval and an independent Historical Investigations Unit to continue historical investigations into unsolved deaths and serious injuries. The proposals noted at the outset that support for victims is the ‘first requirement’ in comprehensively dealing with the past, with two tasks of providing a range of high-quality services and promoting understanding of such services, with the Victims and Survivors Service to continue its work in this area. While these services concentrate on assisting those physically harmed, a new Mental Trauma Service was suggested to meet the needs of those who continue to suffer from psychological harm. More substantive measures to deal with the past included those responsible to acknowledge the wrongfulness of their actions, more than an apology as an ‘unqualified acceptance of responsibility, express an understanding of the human consequences for individuals and society, and include a sincere expression of remorse for pain and injury caused.’ Nevertheless, such proposals avoided contention by omitting reference to reparations or ‘rights’ for victims.

⁸ CGP report Chapter 8. See Patricia Lundy, Commissioning the Past in Northern Ireland, *Review of International Affairs*, 60(1138-1139) (2010) 101-133; and Aoife Duffy, A Truth Commission for Northern Ireland? *International Journal of Transitional Justice* 4(1) (2010) 26-46.

⁹ Report of the Consultative Group on the Past (2009), p92. A similar payment was made by the Irish government through their Remembrance Commission’s Acknowledgement Payment.

¹⁰ Draft proposal is available online at: <http://www.northernireland.gov.uk/haass.pdf>

Dr Moffett also mentioned the Commission for Victims and Survivors held a conference on 'Dealing with the Past' in February 2014, which highlighted the continuing needs of victims and the need for a comprehensive approach. In the workshops on reparations a mature discussion touched on a number of key issues. Participants felt that reparations had different meanings to different people, requiring flexibility and perhaps tailored to distinct needs. However, they believed there is a need for acknowledgement of the suffering caused and the context in which violence occurred, as well as a long term process to address trans-generational harm.¹¹

3.2.8 Experience in Other Countries

It was explained that reparations have been used in a number of countries to remedy the past, from reparations paid by Germany to survivors of the Holocaust over the past sixty years to memorial museums in Chile.¹²

It was highlighted that Chile has one of the most extensive national reparation programmes. The Chilean government has provided over \$1.6 billion in pensions to certain victims of the Pinochet regime, and established a specialised health care programme for survivors of violations. These were accompanied by an official apology from the Chilean President, a Memory and Human Rights and a Victims' Memorial, which includes the names of all those killed or disappeared by state forces.

In Uruguay in 2006 the government passed legislation to provide a pension to those who were members of trade unions, political parties, political prisoners, the exiled and those who were unable to work during the military regime. In 2007 a national museum, the Cultural Centre Museum of Memory, was established to remember the civil strife and state repression which victimised thousands of Uruguayans.

¹¹ See Dealing with the Past Conference Report, (2014) p18-22, available at: <http://www.cvsni.org/images/media-centre/dwp-conference/CVSNI-DWP-Conference-Report-March-2014.pdf>

¹² For further details and examples see the UN Handbook on Reparations Programmes – available at <http://www.ohchr.org/documents/publications/reparationsprogrammes.pdf>; and the work of the International Centre for Transitional Justice (ICTJ) <http://www.ictj.org/research/reparations>

Dr Moffett stated that the Inter-American Court of Human Rights has been at the forefront of developing appropriate reparation packages to victims of serious human rights violations. By way of example in the *Mapiripán Massacre v Colombia* case, over 100 paramilitaries attacked the town of Mapiripán and detained, tortured, and executed at least 49 civilians, destroyed their bodies, and threw them into a river, causing the survivors to abandon the town and seek refuge elsewhere. The Inter-American Court ordered the state to construct a memorial; provide rehabilitation to survivors and families; identify, recover, and return the remains of victims to their next of kin; and to guarantee the safe return of the survivors to Mapiripán, allowing them to reintegrate into the community and the possibility of future reconciliation. This was complemented with awards of compensation to the survivors and family members of those killed, both for the harm they had suffered and psychological trauma as a result.¹³

In Brazil the state has paid \$100,000 to those who died in police custody or disappeared to some 300 families. Over \$1 billion has been paid out to those who were dismissed from civil service or military through restitution in kind for 'remuneration, payments, salaries, income, restitution, dues, compensation, advances or reimbursements.'

In Kenya, the Truth, Justice and Reconciliation Commission, which examined abuses and atrocities from 1963 to 2008, recommended a range of reparation measures for victims. The Commission prioritised those who suffered serious violations, i.e. those who were killed, tortured, raped, or seriously injured. These Priority A victims would be entitled to a ten year annual pension, as well as medical and psychological vouchers to fund rehabilitation. Other victims who had been displaced or lost cattle, as well as the Priority A victims, would benefit from collective reparations, including apologies, memorials, micro-financing for business opportunities, health services, counselling or skill training, as well as land restitution or resettlement for those displaced.

¹³ *Mapiripán Massacre v Colombia*, Merits, Reparations and Costs, Series C No. 134 (IACtHR, 15 September 2005), paras.305-315.

Dr Moffett explained that reparations have been developed to sensitively deal with complex individuals who were perpetrators in supporting or committing violence against others, but were also victimised themselves.

In Peru a memorial, the 'Eye that Cries', was created recognising all those who died or were disappeared, included members of illegal armed groups, state forces and civilians, reflecting the common suffering to their families. The government has also created a reparations programme providing both individual and collective (to affected communities) reparations. Compensation of \$10,000 in lump sum (based on maximum amount provided to self-defence committees demobilisation) for families of those killed/disappeared; those partially or totally disabled; and victims of rape, and for those victims over 50 are entitled to a pension of half minimum pay. In addition, individual reparations to victims include access to education, specialised healthcare and housing. Individuals who were convicted for membership to illegal armed groups are not entitled to individual reparations, but can benefit from collective reparations to communities, such as housing programmes and training. Together these measures are complemented with symbolic reparations, such as apologies, memorials and increasing public awareness of past violations.

In South Africa the promotion of reconciliation and the end of apartheid defined victims broadly to include those who suffered harm from gross violations of human rights or an act associated with a political objective for which an amnesty was granted.¹⁴ The South African Truth and Reconciliation Commission recommended \$2,700 per annum for six years to victims who suffered human rights violations (based on an average annual household income for family of five). The South African government later made one \$4,000 payment to those who engaged with Commission. Despite the broad definition of victimisation, numerous victims were excluded from reparations, in particular those who were victimised by other violations not falling with the defined gross violations of human rights, harm suffered by acts committed by perpetrators not given an amnesty, or did not amount to a 'political

¹⁴ Section 1, Promotion of National Unity and Reconciliation Act 34 of 1995.

objective'.¹⁵ Nevertheless a number of complex victims were recommended for reparations.

By way of example, in the case of the three AWB¹⁶ members who were murdered by a police officer (who received an amnesty) in Mafikeng in March 1994, the family members of the deceased were recognised as victims and referred to the Reparations and Rehabilitation Committee for consideration.¹⁷ The picture of victimisation is further clouded by the exclusion of innocent individuals who were wrongly convicted under the apartheid legal system, but were ineligible for amnesty or reparations.¹⁸ A Special Pension Fund was set up to benefit members of the state and liberation groups, such as the South African Defence Forces, Umkhonto we Sizwe and the Azanian People's Liberation Army, on the basis of the sacrifices such forces made in the establishment of democracy in South Africa.¹⁹ However, the pension board in determining awards could take into account the individual's role and motive in a political offence, and its nature and gravity on state and non-state actors.²⁰

Dr Moffett advised that a comprehensive reparation programme has been established in Colombia since 2005, which incorporates the responsibility of pro-state armed groups and the state. In 2005 the Justice and Peace Law was passed to complement earlier demobilisation and pardons made to armed groups to cover human rights abuses and other violations committed during the conflict by all parties, with a greater emphasis on accountability and victims. For the purposes of

¹⁵ Mamdani n.2.

¹⁶ Afrikaner Weerstandsbeweging (Afrikaner Resistance Movement) a far right paramilitary Afrikaner group.

¹⁷ Application in Terms of Section 18 of the Promotion of National Unity and Reconciliation Act, No.34 of 1995. *Ontlametse Bernstein Menyatsoe Applicant (AM 7498/97)*, 5 August 1999, involving the deaths of Jacobus Stephanus Uys, Alwyn Wolfaardt and Nicolaas Cornelius Fourie.

¹⁸ Louise Mallinder, *Indemnity, Amnesty, Pardon and Prosecution Guidelines in South Africa* (2009), p97-98.

¹⁹ Lovell Fernandez, Reparations policy in South Africa for the victims of apartheid, *Law, Democracy and Development* 3(2) (1999), 209-222, p214. Section 189(1) of the Interim South African Constitution (No.200 of 1993), s.1, Government Employees Pension Law 1996 (No.21 of 1996), and Special Pensions Act 1996 (No. 69 of 1996). The Special Pension was complemented by the Demobilisation Act (No.99 of 1996), which provided additional demobilisation packages to those who were unable or unwilling to join the National Defence Forces. See Lephophotho Mashike, 'Some of us know nothing except military skills': South Africa's former guerrilla combatants, in S. Buhlungu, J. Daniel, and R. Southall (eds.), *State of the Nation: South Africa 2007*, 351-378.

²⁰ S.1(2), Special Pensions Act 1996.

reparations, Article 42 stipulates that members of armed groups who ‘benefit from the provisions of this law [i.e. demobilisation and reduced sentence] are under a duty to make reparation to the victims of said criminal conduct for which they were convicted by judicial verdict. Article 44 outlines appropriate reparations individuals can be held responsible for. While these reparations focus on the responsibility of individual members of armed groups, the Colombian Constitutional Court found that such a system would disproportionately impair victims’ right to remedy. Instead the finding of individual members of an armed group criminally responsible for violations would result in the collective civil responsibility of the group and its members.²¹ While this is not collective criminalisation, it does offer a useful alternative to enforcing reparations orders against these armed groups to secure effective reparations to victims. The Court also found that individuals not only had a duty to provide reparations from their own illegal resources, but their legal ones as well, thereby ensuring an effective remedy and to tackle resources being laundered. Furthermore, the Colombian Constitutional Court held that the state has a subsidiary duty to provide reparations to victims, when those individuals or organisations responsible are unable to do so.

There have been a number of cases against individual members of armed groups in Colombia. These convictions have been used as a legal basis to seek forfeiture of other members’ legal and illegal assets. One of the most notable cases was against Freddy Rendón Herrera, a former AUC commander. The Supreme Court of Bogotá found that he had violated human rights law, and he and other members of the AUC, were jointly responsible for murders and illegal recruitment of children as soldiers amounting to grave breaches of IHL and serious violations of IHRL. The Court ordered them to provide reparations to 309 child soldiers used by the group, including the provision of compensation for at least 15 months minimum wage to each child (now adults).²² The Court also called upon the government to support the victims’ other needs to rehabilitation and to prevent its future recurrence. In this case reparations were selectively used to redress the harm caused internally by the AUC to its members.

²¹ *Gusavo Gallón y otros*, Corte Constitucional C-370/2006, 18 May 2006, para.6.2.4.4.7-6.2.4.4.13.

²² Tribunal Superior del Distrito Judicial de Bogotá, Sala de Justicia y Paz, Freddy Rendón Herrera, 16 December 2011.

Dr Moffett highlighted that the reparation scheme under the Justice and Peace Law is supplemented by the National Commission on Reparation and Reconciliation, which is to manage reparations and the Fund for the Reparations for Victims. This fund is made up of illegal assets of armed groups and government and international donations to victims who are able to identify those responsible for reparations. By 2008 the Colombian government reported that 1,559 bodies have been exhumed, with 4,619 items of property donated by combatants to victims for the purpose of reparations. In 2011 the responsibility of the state to provide reparation was strengthened by the Victims' Right to Reparation and Land Restitution Act. The Colombian situation represents the ability of armed groups to be held responsible for reparations on the basis of violating human rights law, not only by individuals, but by the organisation as a whole.²³

3.3 Keynote Address

The keynote speech was delivered by Antônio Augusto Cançado Trindade, a Brazilian judge at the International Court of Justice, former President and judge of the Inter-American Court of Human Rights, and a professor of international law. During his time at the Inter-American Court, Judge Cançado Trindade was involved in deciding numerous cases of gross human rights violations committed by state and non-state actors, such as disappearances, torture, and state collusion.

Judge Cançado Trindade spoke from his experience in dealing with contentious cases before the Inter-American Court of Human Rights and the International Court of Justice.

He began his discussion by talking about his experience in dealing with reparations at the Inter-American Court of Human Rights. Since the court began in the late 1970s until today, it has been marked by different cycles of cases. The Judge explained that the first of these cycles involved enforced disappearances of persons

²³ See Luke Moffett, *Beyond Attribution: Responsibility of Armed Non-State Actors for Reparations in Northern Ireland, Colombia and Uganda*, available at https://www.academia.edu/3708274/Beyond_Attribution_Responsibility_of_Armed_Non-State_Actors_for_Reparations_in_Northern_Ireland_Colombia_and_Uganda

in the early years of the court. The second cycle of cases were more concerned with issues of due processes of the law, such as undue delays. From the last decade onwards the court has addressed the cycle of massacre cases.

With the first cycle of cases on enforced disappearances there were three key countries where these violations occurred: Honduras; Guatemala; and Peru. More recently disappearances in Colombia have come before the Court. However, in these early years the issues before the Court was how to deal with such breaches and deliver reparations for it. The Judge clarified that where a breach of a legal obligation occurs, such as for a state not to kill individuals, there is subsequent legal obligation to repair the breach. This reflects that they are two faces of the same coin which cannot be separated from each other. This is a basic principle of international law (the Law of Nations). He explained that the duty to provide reparations is a response to a breach in the international legal order to cease the effects of the breach. In the first generation of cases, the most contentious cases the Inter-American Court had to determine who was a victim of such violations.

Judge Trindade explained that the cases before the court on disappearances in Guatemala were crucial, where 626 massacres occurred between 1974 and 1986. The Guatemalans had established a Historical Commission on the Clarification of Historical Facts, which concluded that the Mayan Achai were the targeted group, amounting to genocide. In dealing with reparations the Inter-American Court found it difficult to determine the amount of reparations for those disappearances, in particular in terms of justiciability where there is no body. The difficulty for the court to overcome was who was a victim in such cases of disappearance – was the victim only the disappeared person or did it also include those close or family members to the disappeared person? The court came to the understanding that the notion of victim involves the protected rights, in that disappeared persons are deprived of their life. The European Court took longer to reach a similar understanding, until the Turkey and Cheyhan cases. The Inter-American Court made a distinction that the disappeared person have their right to life violations, but their right may not be justiciable as the state did not recognise the competence of the court at the time of the disappearance. But those who continue to suffer for not knowing the whereabouts of their loved one, are victims of other rights, such as not being

subjected to cruel, inhumane, or degrading treatment and the right to personal integrity.

Judge Trindade then posed how we deal with reparations for enforced disappearances as the next challenge. The Inter-American system has an understanding that just one form of reparations would be inadequate, unlike the European Court which, until the early 1980s, only provided compensation. The Inter-American Court considered other forms of reparations, such as restitution (which is impossible with disappearances, as it cannot be undone), compensation, satisfaction, rehabilitation and guarantees of non-repetition. The Judge asked how was this possible for the Inter-American Court? Article 63 for reparations is different from the European Convention, which only refers to satisfaction, i.e. just compensation. The draftsman of the Inter-American Court used the conjunction of 'and' to allow other forms of reparations. This was many years before the UN Basic Principles and Guidelines on the Right to Remedy and Reparations, which is actually a reconstruction of the jurisprudence of the Inter-American Court, but it has strong support in international case law.

With reparations for disappearances the Inter-American Court began to think of distinct reparations for the next of kin or close relatives or for the fatal victim themselves. In the end the Court decided on equity, in that its discretion it awarded reparations on the basis of fairness to the victims. In one of the first cases the Court faced involving extrajudicial execution in Suriname, it found that the seven people killed by state forces had left seventeen widows, due to their local custom of polygamy. Multiple marriages were recognised in the Suriname Constitution, so these widows were all recognised as victims entitled to reparations, even if they married again. Thus the Inter-American Court put reparations in the social context, attentive to the community.

Returning to reparations for disappearances, the Judge highlighted the difficulty in ordering reparations if there are no mortal remains. Where a person dies, they cease to be a legal person, for the purposes of succession it still has its effects, so does reparations. In cases of extreme violence, such as disappearances and massacres, reparations do not put an end to what occurred, i.e. the violation of

human rights. The wrong has been committed, and the wrong has not been effaced (eradicated) by reparations. In such cases, the harm done is irreparable to the next of kin. What reparation does is to avoid the aggravation of consequences of the damage done. How are these consequences aggravated? The Judge explained that this is answered by society's indifference to victims' suffering or forgetting what occurred. Extreme violence has an inter-generational impact. It was highlighted that reparations are meant to alleviate the suffering of those who are direct victims, but also to put an end to consequences. Reparations can be understood as a legal reaction to human cruelty, manifested in the most adverse forms to put an end to impunity for such breaches.

In the second generation of cases in terms of due processes of law, the Judge recalled interviewing victims of torture, who as a result had to live in exile from their home countries. In the Judge's view torture is an 'irreparable harm', in that a person who has been tortured will not be the same again. They lose faith in others, and it is a very cruel harm. He noted that there are ways to alleviate suffering through reparations. With the Court's cycle of cases on due process, it ordered social rehabilitation/assistance for victims of torture, including the state to pay for the victims or their children's education. This reflects a wider issue with reparations, in that it can only alleviate suffering, it cannot be undone.

The Judge explained that the victim-centred nature of the law of human rights, is the most important development in international law. It was highlighted this intended to balance the imbalance that exists between the state and its subjects. Of course this is more complicated when we deal with situations of internal armed conflict, convergence of IHL/IHRL/ICL.

Another legacy of the disappearances cases was the right to truth. This was difficult to develop as it came after the drafting and acceptance of the regional human rights conventions. In the case of *Bámaca-Velásquez v. Guatemala* the first order of the court to the state was for it to determine the truth, investigate the facts, and determine the whereabouts of the mortal remains and to return them to the family. This was the primary point, with compensation and other reparations following it.

The Judge then referred to the most recent cycle of cases involving massacres at the Inter-American Court of Human Rights. If there is no investigation of the facts there is a procedural violation of the substantive rights at issue, this is an important new approach adopted by the European Court. This derives from the obligation to ensure respect for human rights, which means positive obligations on part of the state to investigate, take any other measures and prosecute any of those responsible. In relation to massacres, these have involved Guatemala in the past, but nowadays it is Colombia. The difficulty was determining the exact amount of victims where this is not clarified in the application to the court, and the identification of those victims. In some cases the victims did not what their names to appear in the application to the court for personal security reasons. In those cases the Judge would ask, are the victims or alleged victims identifiable? Their legal representative said they were identifiable. For example communities in Colombia organised themselves to protect them from the on-going conflict by issuing their own ID cards. In this case victims were not only those who were identified, but also those who were identifiable. In the cases of *Mapiripan and Ituango Massacres*, the court held that any other victims who claimed to be victims of the atrocities as established in these judgments may present themselves before the competent national organ and show that they victims for the same facts alleged in the cases before the Inter-American Court. Thus the state would be obligated to provide the same reparations to these other victims in some cases before the International Court of Justice. The first case concerns the terrible regime of 1982-1990 of Hissène Habré that left 40,000 victims, 80,000 orphans, and 200,000 people displaced and without any material support. He fled from Chad, and sought shelter in Senegal taking public funds. Belgium sued Senegal for not extraditing or prosecuting Habré. The case represents the damages caused to victims for failure to disclose and due reparations for such violations. In light of this case of finding Senegal in breach, the European and African Union have raised funds to establish a court to try him. It represents a pursuit of restorative justice, for victims they need justice, the unveiling of truth is not enough. The passage of time does not efface, it aggravates the resentment and suffering of what happened. The most recent case at the ICJ involves the *Diallo (Republic of Guinea v. Democratic Republic of the Congo)* on diplomatic protection, but relied on International Convention on Civil and Political Rights and argued individual reparation.

Judge Trindade concluded with the point that the victim is central. For the person who is seeking justice, there is an insoluble whole between breach and reparation, which cannot be separated. He emphasised that reparations are a fundamental obligation which is victim-oriented.

Judge Trindade's address concluded with a question and answer session with the audience.²⁴

3.4 Panel One: The Northern Ireland Perspective

Panel One brought together local practitioners to highlight their perspectives and to discuss a range appropriate remedies for dealing with the past in Northern Ireland. Each practitioner was invited to speak briefly and attendees were offered an opportunity to ask questions at the end. The session was chaired by Professor Monica McWilliams.

3.4.1 Geoff Hamilton, Innocent Victims United

Geoff Hamilton is a former member of the Victims and Survivors Forum and founding member of the Mid Ulster Victims Empowerment Project in Mid Ulster. Geoff's role at the project is to provide advocacy support and advice to families seeking justice in addition to organising events, services and classes to help them deal with the effects of trauma.

Geoff agreed with Judge Trindade's belief that any approach to reparations needs to be victim-centred. He stated that being victim-centred ensures that all aspects of need - truth; justice; access to services – helps to assist victims and survivors with moving to a better place. However, Geoff added that in order to deliver tangible services, there needs to be an understanding of truth and justice issues, as they have an impact upon how people access support.

²⁴ The question/answer session can be viewed online (from 51:26) at:
<https://www.youtube.com/watch?v=gqs2orx4myY&index=2&list=PL05SJrdW0gfi7USPkmMHEH1ATHKosPKVO8>

With reference to the Consultative Group on the Past, Geoff stated that for the people he represents, the proposed recognition payment was a non starter. He explained that it was more suitable to look at creative ways for addressing the needs of victims and cited the aspects of the Victims and Survivors Service work and the Victims and Survivors Forum's investigation of proposals for a pension for the severely injured. Geoff added that any reparations package needed to be sustainable and made reference to the recent 4.4% efficiency savings imposed upon groups.

Geoff also highlighted the differences in experiences of victims in urban and rural environments. He explained that many individuals in Mid Ulster still live in fear and are conscious of their personal security.

Geoff concluded that many of the victims and survivors he represents believed in the state, but feel that the state has let them down. He urged policy makers and stakeholders to see issues through the perspectives of victims and survivors.

3.4.2 Alan McBride, WAVE

Alan McBride is the Centre Coordinator of the WAVE Trauma Centre in Belfast. His wife Sharon was among nine people killed by the IRA's bombing of a fish shop on the Shankill Road in 1993. Alan is also an HTR board member and a former member of the Victims and Survivors Forum.

Alan stated his frustration regarding the lack of movement relating to issues connected to dealing with the past. He cited the examples of the Consultative Group on the Past and the recent Haass/O'Sullivan proposals and questioned if there was political will to address contentious and challenging areas.

Alan provided a personal account of how the assistance he received after his wife's killing helped him. He explained that the compensation he received enabled him to access third level education and pursue a new career path.

Alan discussed the role of apologies. He stated that an initial apology he received after his wife's killing was rendered meaningless after an incident shortly afterwards in which a man was killed and his daughter was seriously injured by an undercar bomb. He contrasted that apology with one he received from an individual which was personal and displayed acknowledgement and an understanding of his loss.

Alan concluded that many people may feel that now is not the time to discuss reparations due to the economic climate and debates surrounding welfare reform. He cited that Columbia, a developing nation, has in place an extensive reparation programme and suggested that the UK Government has a responsibility to prioritise the needs of victims and survivors.

3.4.3 Andrée Murphy, Relatives for Justice

Andrée Murphy is the Deputy Director of Relatives for Justice. Her role has included mainstreaming the organisation from the front living room of a relatives home to acquiring the resources for premises and the putting in place of staff, volunteers, and structured support programmes for people affected by the Troubles/conflict across Northern Ireland and the border regions.

Andrée stated that discussions relating to reparations needed to be framed within a human rights perspective and focused on the rights of victims and survivors.

Andrée discussed the rights of civilians affected by conflict. She highlighted that reparations were included in the Belfast/Good Friday Agreement - recognising the suffering of victims; access to services and the transformation of institutions such as the judiciary and policing arrangements. Andrée explained that those affected by institutional change are often compensated for loss; for example arrangements facilitated under Patten and could be contrasted by the process for civilians accessing services through the Northern Ireland Memorial Fund and the Victims and Survivors Service.

Andrée highlighted the role and experiences played by women during conflict and peace building. She explained that many victims and survivor groups were formed

by women due to recognising, and experiencing, the impact that conflict had on families and communities. She added that due to nature of accessing support, many of the services are individualised and that can have an affect on how women engage and interact within the sector.

Andrée concluded that aspects of dealing with the past - truth, justice and reparations - cannot be separated and are interlinked for many individual victims and survivors. She added that there is a need to ensure that all those affected by conflict are included in any future process and as part of that, women must have equal participation and an equal voice.

3.4.4 Alex Bunting, Victims & Survivors Forum

Alex Bunting lost a leg and sustained other serious injuries in a booby trap bomb attack on his taxi in Belfast in 1991. He is a member of the Victims and Survivors Forum.

Alex said the context for any discussion on reparations needs to be contextualised by the impact of violence upon the victim. This should be viewed economically, socially and physically. He added that many victims are living on benefits and this is unjust as they had their capacity to generate an income and contribute to a pension taken away from them.

As a Forum member, and part of the WAVE Injured Group, Alex explained that he has been part of discussions with politicians to request the implementation of a pension for the severely injured. He advised that the Commission for Victims and Survivors conducted comprehensive research on the feasibility of a pension for the severely injured, which was submitted to the Office of First and deputy First Minister earlier this year. Alex explained that there are currently 357 individuals who could be eligible for support and stressed that any arrangement would be for victims and survivors having to deal with debilitating injury and ongoing health issues.

3.4.5 Stephen White OBE, former Assistant Chief Constable

Stephen White is a former senior police officer with a 26 year career in the Royal Ulster Constabulary and the Police Service of Northern Ireland. He has assisted in many international policing interventions and since his retirement has been involved in providing training and consultancy. Stephen is a trustee of the RUC George Cross Foundation and sits on a number of boards including Community Restorative Justice Ireland and Northern Ireland Co-operation Overseas.

Stephen stated that it was not his intention to claim to speak on behalf of everyone connected to the police as each serving and former officer is an individual. He added that individual identity and the needs of victims and survivors are complex.

Stephen highlighted the dual role that police officers had to fulfil – normal policing duties and counter terrorism. He recounted a week in 1981 when he was involved in containing serious civil disorder, followed by being shot at for the first time and conducted a cycling proficiency test at a primary school.

Whilst recognising that he was subjected to multiple traumatic incidents, in which he was injured and colleagues were killed, Stephen stated that he did not see himself as a victim or survivor. He added that he made that decision, but recognised that many did not have a choice.

In addressing the needs of former officers and their families, Stephen highlighted that many require acknowledgement; the right not to be judged; the right not to be labelled; the right to be treated as a human; and the right to pursue justice. He added that the needs of former and serving officers and widows vary depending on the individual.

Stephen concluded that the challenge for many individuals, regardless of background, is countering narratives that they do not agree with. He explained that this can be achieved by openness, dialogue and honest engagement.

The panel session concluded with a question and answer session with the audience.²⁵

4.0 Workshops

Workshops were held to allow conference participants to share their thoughts and views on remedies. This discussion informed the conversation after lunch, where conference attendees engaged in a conversation with academics on the experiences of remedies in other situations and their applicability to Northern Ireland.

Four workshops were held in parallel with approximately thirty participants in each workshop.

The workshops aimed to address three question areas:

- What are the potential benefits and limitations of material and symbolic forms of reparations in dealing with the past?
- What kinds of collective remedies could be appropriate in Northern Ireland? How could these be delivered?
- What role is there for apologies and acknowledgement?

Each workshop was chaired and by a trained HTR facilitator.

A Commission staff member was in each workshop and participants were made aware that a listener service was available.

²⁵ The question/answer session can be accessed online at:
<https://www.youtube.com/watch?v=CPnmmyGfLQY&list=PL05SJrdW0gfi7USPkMHEH1ATHKosPKV08&index=>

4.1 Feedback

Comments from each of the four workshops are summarised below:

4.1.1 Benefits and limitations of material and symbolic reparations

- There is a need to respond to the practical needs of victims and survivors first.
- The reparative process should be a growth process – such as financial safeguards that enable job creation; addresses transgenerational impacts; and acknowledges gender issues.
- Cross jurisdictional issues – there needs to be greater acknowledgement of victims in Great Britain and the Republic of Ireland.
- Physical barriers, such as peace walls, indicate continuing division and should be included in any debate.
- Eligibility – is the current definition fit for purpose when dealing with reparations?
- The use of language and terminology can be a barrier for progress.
- There is a need to have the right balance of looking back and forward.
- Can symbolic reparation actually be enshrined in legislation?
- Should illegal organisations be liable to pay/make reparations?
- There needs to be a debate over whether perpetrators should have access to reparations.
- Cuts to services have a profound impact on the victim and survivor sector and potentially any reparations package.
- Those who served with state forces have often received compensation and financial support. There is a feeling that civilians have been treated differently.
- Some victims and survivors perceive compensation as a pay off.
- Does material reparation avoid acknowledgement?
- Agreement is needed, at a political level, to facilitate the compiling of a number of different narratives.
- Should victims suffering psychologically be paid less/more than those who have physical injuries? How could a reparations package allocate financial reparations to victims without creating a hierarchy?

- Many felt there was a serious lack of consideration for those injured between the 1960s and 1980s - while legislation offered compensation to victims after 1988, victims injured before then have experienced deteriorating health because of their injuries, which has meant they cannot work and caused financial difficulties.
- There is a perception that services and support is concentrated in urban areas and often neglects the needs of those in rural environments.

4.1.2 What kinds of collective remedies could be appropriate in Northern Ireland?

- Support for any collective process should not conflict with the rights of the individual.
- Serious consideration should be given to a pension for severely injured victims.
- There is a need to further address the needs of carers.
- There is a need for more resources to be put into psychological counseling and healthcare programmes in Northern Ireland.
- If there were a model of material and symbolic reparations, could a hierarchy be created?
- Consideration should be given to institutional reparations in the form of public services, or shared services, for all communities to avoid segregation.
- There is a specific need to address the trans-generational trauma which already exists in Northern Ireland.
- Art programmes could be a method of engaging communities in a collective experience by expressing their hurt and attempting to heal together.
- Symbolic reparations like memorials are extremely important but need to be approached in a holistic way in which all victims feel like their hurt is being recognised and that what has happened to them is remembered.
- Potential for formalised truth recovery?
- Consideration could be given to the notion of 'multiple truths'.

- There is a need to treat all victims equally - large groups should not be considered more important in 'getting their questions answered' than smaller groups or individual cases.
- Victims' experiences are diverse and it should be noted that there cannot be a 'one size fits all' reparations model.
- Need for a multifaceted model that allows individuals to inform reparations and engage in the reparations process that best meets their needs.
- Issue of time - victims need reparations now, not in another 15 years, they need reparations within their lifetime.

4.1.3 What role is there for apologies and acknowledgement?

- Importance should be placed on being sincere, well crafted and coupled with accountability.
- Provision of an authentic and sincere apology could be hugely significant for the individuals concerned and for society.
- Sometimes apologies can appear to have been given for politically expedient reasons.
- There should be an acknowledgment of the difference between public and private apologies. This depends on the individual. The importance of private apologies should not be underplayed.
- Apologies from the state and from paramilitary organisations need to be followed up by positive action.
- Apologies must be carefully considered – as in have an appropriately established system to avoid re-traumatisation.
- What about trained mediators? There are transference issues. Apologies should be part of a communicative process.
- Need for a range of bodies and resources to facilitate and mediate apologies.
- The Government needs to take the lead in supporting an agreed acknowledgement process that supports the needs of victims and survivors.
- Acts of acknowledgement need to happen soon as future generations are being affected. Equally, older generations seeking acknowledgement may never receive it.

- Language can be difficult and divisive issue. Use of terms like 'state actor' and 'terrorist' and 'war' can cause hurt and distress to some victims and survivors. Also there is a view that when certain language or narratives are used that it provides justification for perpetrators of violence.
- Apologies are only part of the process and they need to be considered. They should not be considered a panacea.
- Apologies and acknowledgement have a central role in framing a process to bring closure to people and in doing so help ensure the past does not become the future.
- Potential for 'bad' apologies to cause more damage to victims, and issues of time- it can take time for apologies to be made and this can result in trauma for victims who may end up disappointed by an apology.
- Apologies given may seem hollow without accountability for actions.

5.0 Conference Observations

5.1 Panel Two: Exploring Challenges and Experiences in Other Contexts

Panel Two brought together academics to share their knowledge of reparations and their application in an international context. Each academic was invited to speak briefly and attendees were offered an opportunity to ask questions at the end. The session was chaired by Susan McKay.

5.1.1 Dr Natasa Mavronicola, Queen's University Belfast

Dr Natasa Mavronicola joined Queen's University Belfast in July 2013. She completed her PhD on the absolute right not to be subjected to torture or inhuman or degrading treatment or punishment, at the University of Cambridge and has qualified for the Cyprus Bar. She is interested in human rights, public law, criminal justice and legal theory.

Looking at the example of Cyprus, Dr Mavronicola explained that the island has had a long history of conflict stemming from colonisation and civil tension.

Concentrating on the period of time since the 1950s, she explained that the recent history of the conflict emanated from a violent campaign between 1955 and 1959 and inter-communal troubles after independence in 1960.

Dr Mavronicola highlighted that inter-communal massacres occurred frequently throughout this period. She explained the impact of political events on the island, in particular the actions of the ruling powers in Greece and Turkey, which paved the way for the Greek coup d'etat and the Turkish invasion in 1974.

Addressing the legacy of the conflict, Dr Mavronicola advised that there was loss of life; loss of property; and approximately 200,000 people were displaced. She also explained that there have been numerous determinations in relation to international law and human rights breaches. Dr Mavronicola concluded that the key issue for Cyprus is to find a settlement that achieves peace and coexistence between communities.

5.1.2 Prof Kieran McEvoy, Queen's University Belfast

Prof Kieran McEvoy is the principle investigator on the 'Amnesties, Prosecution and Public Interest in The Northern Ireland Transition' Arts and Humanities Research Council funded project. He is currently a Senior Fellow in the Institute for the Study of Conflict Transformation and Social Justice and Professor of Law and Transitional Justice at the School of Law, Queen's University Belfast.

Prof McEvoy focused on the potential role that acknowledgement and apologies could play in the Northern Ireland context.

He explained that there have been three major pieces of work that have looked at this area: HTR's Making Peace with the Past in 2006; the Consultative Group on the Past (2009); and the Haass/O'Sullivan proposals (2013). Prof McEvoy stressed that technically, there is not much more that can be done on this area. Looking at the latest initiative, Prof McEvoy stated that the Haass/O'Sullivan proposals addressed the need to look at apologies and acknowledgement. He explained that the document called for public statements of acknowledgement by those involved in the

conflict, encouraging them to take responsibility for what they have done and express remorse for the pain they have caused.

Prof McEvoy explained that he is currently working with HTR to produce a practical piece of work looking at how acknowledgement could work in the Northern Ireland context. This work has looked at how apologies have been crafted by state and non state actors; particularly apologies from the Australian and Canadian governments and ongoing work with FARC and other guerrilla groups in Columbia.

Prof McEvoy referred to Alan McBride's comments during panel one and highlighted the impact that 'good' and 'bad' apologies can have. He explained that if there was to be a process in the future it would be important to get it right first time as there may not be another opportunity. Prof McEvoy concluded that work in this area is achievable; however it does require political will.

5.1.3 Prof John Brewer, Queen's University Belfast

Prof John Brewer is a Professor of Post Conflict Studies at Queen's University, a former President of British Sociological Association and a member of UN Roster of Global Experts.

Prof Brewer's contribution concentrated on his work as Principal Investigator of a six year project funded by the Leverhulme Trust looking at the development of compromise amongst victims of conflict. He explained that the project focused on three contemporary places of conflict – Northern Ireland, South Africa and Sri Lanka – and addressed a diverse range of issues ranging from integration of child soldiers; deconstruction of violent masculinities amongst former militants and social justice. Prof Brewer explained that there are common features of the programme. These include using a common research design and same research instruments across the three arenas of conflict. This involves qualitative interviews with victims and a nationally representative sample of the general population. In the South African case, the project also located former witnesses to the Truth and Reconciliation Commission in order to reflect upon their experiences of that process.

Prof Brewer stated that reparations require an institutional framework. This should involve a respect for international case law and for international humanitarian law. He added that this should also command a respect for the moral rights of victims and the will for politicians to rise above the problems that dealing with the past involves. Prof Brewer noted that in Sri Lanka, this institutional framework is absent due to the process being a 'victors' peace'. Prof Brewer also explained that Tamils in the north east of the island are not allowed the right to memorialise, and for him, this example reinforced the need for reparations to include memorialisation.

Turning to South Africa, Prof Brewer explained that it is important to link reparations with truth and justice. He explained that even though it was clear black South Africans had experienced new human rights protections, many to witnesses at the Truth and Reconciliation Commission will say they have received no justice. Prof Brewer stated that this means that unless social economic redistribution, along with justice truth and reparation, the experience of justice is inadequate. Further, in situations where societies retain high levels of economic inequality, despite the peace process, social economic redistribution issue will also muddy issues around reparation, justice and truth.

5.1.4 Dr Louise Mallinder, Transitional Justice Institute

Dr Louise Mallinder is the co-investigator on the 'Amnesties, Prosecution and Public Interest in The Northern Ireland Transition' Arts and Humanities Research Council funded project. She is a reader in human rights and international law, as well as the 'Dealing with the Past' research co-ordinator at the Transitional Justice Institute, Ulster University.

Dr Mallinder stated that the classic explanation of reparations focused on ideas of restitution - restoring the victim to the position they were in before violence. However, echoing Judge Trindade's comments, often this is not possible following severe human rights violations. In this instance, there is often a move to look at alleviating suffering. This can include looking at restorative justice or forms of civic justice. It was stressed that harms may not only be against the individual but also to wider society.

Dr Mallinder explained that it was important to consider situations before a conflict where society was characterised by structural or socio economic inequalities. In many cases individuals may have been somehow disfranchised because of their background. In this context reparations may not be about bringing them back to the situation they were in but some form of transformation.

Addressing collective reparations, Dr Mallinder highlighted that looking beyond individual experiences recognised that violence is often experienced differently in geographical locations; such as in rural and urban areas of Northern Ireland.

Dr Mallinder listed examples of collective remedies in order to illustrate the range potential reparations programmes: rebuilding of infrastructure or rebuilding of homes destroyed through conflict; restoration of trust; assisting with the location of victims; cleaning up of land affected by disasters; maintenance programmes or improvements to buildings; measures to support culture; education programmes; and addressing healthcare needs.

Panel two concluded with a question and answer session with the audience.²⁶

5.2 Final Thoughts and Where to Next?

The closing session commenced with an overview from Dr Luke Moffett. He stated that Judge Trindade's address, the panel sessions and the conversations throughout the workshops enabled an understanding of reparations beyond a legal understanding.

Prof Hamber discussed possible steps that could be taken. He stated that he was conscious of Alan McBride's comments during panel one about the need to move beyond talking. He added that there was an overarching sense of honesty about where we are and what might be possible. Prof Hamber stated that, in absence of a

²⁶ The question/answer session can be accessed online (from 23:42) at:
https://www.youtube.com/watch?v=ILQgy8Q_F8k&list=PL05SJrdW0gfi7USPkMHEH1ATHKosPKVO8&index=6

roadmap and based on feedback from the workshops, he had identified ten issues that seem to suggest areas to take forward:

1. Acknowledgement or apology challenges – this is different for individuals and organisations – what makes an effective apology? In what context can organisation work towards? How do you help/mediate an apology?
2. Pension and financial support are a key issue – heightened in the context of ongoing economic challenges.
3. Victims are individuals and have multiple needs. They should be offered a table of opinions, not forced to accept or be part of specific reparations/policy questions.
4. The need to look at the role of education as a form of reparation.
5. The role of symbolic reparations, like shared memorials, should be explored further.
6. Consideration of alternative approaches as part of reparations landscape: art, theatre, dialogue as part of process.
7. Widen the frame – geographically (Great Britain and the Republic of Ireland), acknowledge the gender dimension, the role of carers and address inter-generational issues.
8. Need for more learning regarding collective reparations. Many questions still remain about learning from other contexts.
9. There is a need to consider what underlying principle would underpin reparations. There has been a lot of discussion on equality/fairness and varied/complex needs. There needs to be a move away from a piecemeal approach and a move towards a structured approach.

10. There is a requirement to take forward on different levels. This can include politically, through the Victims and Survivors Forum and victims and survivors groups.

In Dr Moffett's concluding remarks he stated the issue of reparations had often been missed when discussing dealing with the past. He noted the positive atmosphere and willingness to engage throughout the day and thanked people for their engagement.

In terms of next steps, Dr Moffett advised that content from the day and the feedback from the workshops would be collated into a report, which would be used to inform the Commission.

6.0 Conclusions

The purpose of the Remediating the Past, Healing for the Future conference was to facilitate a wide discussion with the sector on issues connected to reparations. The event was also intended to inform and advise the Commission and conference partners.

There were 121 individual delegates at the conference from across the victims and survivors sector including groups and service deliverers, statutory agencies, academia, members of the Victims and Survivors Forum and individuals. This indicates a high level of interest in the subject matter, content and rationale behind the conference. The feedback and range of views collected in the workshops indicates the need for continued engagement with the sector to ensure that victims and survivors are provided with a voice.

It was highlighted during the day that reparations are measures to effectively remedy the harm suffered by victims and may include restitution, compensation, rehabilitation, measures of satisfaction (such as apologies and memorials), and guarantees of non-repetition. It was also explained that reparations are generally made by those responsible for the harm caused to victims, whether state, illegal organisations, individuals or a combination of the latter.

It was noted that reparations have three components: (1) acknowledgement; (2) responsibility; and (3) remedy. Acknowledgement officially recognises victims' suffering, and encourages public understanding and appreciation of the suffering of families injured and those killed. Responsibility is tied to accountability as it identifies those parties responsible for the harm, holds them to account for their actions, judges their liability, and requires them to contribute in remedying the victims' suffering, whether through compensation, return of property, or apologies. The final component of remedy represents a public commitment to redress victims' harm through appropriate material and symbolic measures. Such remedies should be complex to reflect that victims and survivors have different needs, tackle the causes and consequences of victimisation such as the impact on children, gender and the elderly, as well as being connected to other dealing with the past mechanisms to be comprehensive. Importantly, under international law, reparations are a victim's right, a legal entitlement, rather than discretionary services.

In the conference's closing session Prof Hamber outlined ten key areas that should be addressed when looking at reparations. These areas outline where the sector is regarding level of knowledge, understanding and the progressing of discussions regarding reparations.

Issues connected with dealing with the past, including reparations, have been provided with a platform within the sector since the Commission's Dealing with the Past conference in February 2014.

The Remedying the Past, Healing for the Future and the Dealing with the Past conferences have helped raise awareness and the profile of reparations and potential provisions for victims and survivors. In addition, the publication of the Commission's advice to Ministers on Dealing with the Past has further raised the need to continue conversations on these important areas in order to explore potential remedies and formulate policy positions.

There was a clear desire from those present to continue the conversations in these important areas for victims and survivors and the Commission will be examining how best to do this in the coming months.