

Victims’ Rights under International Human Rights Law
Submission to the Northern Ireland Assembly Ad Hoc Committee on a Bill of Rights for
Northern Ireland

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Introduction

1. I am a Professor of Law at Queen’s University Belfast School of Law. My research includes analysing the applicability of international human rights law, international criminal law, and international humanitarian law to societies that are overcoming past violence. Across multiple projects, this has involved examining the scope of states’ obligations with respect to victims’ rights to truth, justice and reparations under international law. In addition, since 2013, I have been a member of the Model Bill Team that has worked to develop human rights compliant approaches to deal with legacy issues in Northern Ireland.¹
2. At the Committee’s invitation, my evidence focuses on the issue on victims and legacy pertaining to the proposed Bill of Rights for Northern Ireland, focusing in particular on the rights of victims under international human rights law. The human rights standards discussed in this submission are to varying degrees applicable to victims of non-conflict related harms in Northern Ireland. Victims of Historical Institutional Abuse, and victims of crime, including serious offences such as sexual violence, and victims of these other offences may share some similar needs with victims of the Troubles.² However, these forms of victimisation fall outside the scope of this submission.
3. This submission is informed by a range of human rights treaties including the International Covenant on Civil and Political Rights 1966 (ICCPR), the UN Convention against Torture 1984, and the European Convention on Human Rights 1950 (ECHR). The submission also draws on a body of ‘soft law’ developed by UN bodies, which are informed by human rights law and are intended to provide further guidance to states on

¹ More information on the Model Bill Team’s work is available on our project website: ‘Dealing with the Past in Northern Ireland’ <https://www.dealingwiththepastni.com/> accessed 24 March 2021.

² UN Office on Drugs and Crime, ‘Crime Prevention & Criminal Justice Module 11 Key Issues: 8. Victims of Crime and International Law’ (July 2019) <http://www.unodc.org> accessed 19 March 2021.

their obligations with respect to victims.³ The principal soft law standards on victims' rights are the United Nations (UN) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985⁴ (which focuses primarily on victims of crime) and the Basic Principles and Guidelines on the Right to a Remedy and Reparation 2005 (which focuses primarily on victims of gross human rights violations and serious violations of international humanitarian law).⁵ Although non-binding, these soft law standards have been influential in the development of binding international law and state practice. For example, they have informed the jurisprudence of international human rights courts and international criminal tribunals,⁶ the approach to reparations in subsequent multilateral treaties,⁷ and national legislation on victims in several states.⁸ This submission takes the position that the Bill of Rights should be based on existing international human rights instruments, which would bring Northern Ireland into line with international best practice and ensure that the United Kingdom (UK), including the devolved government in Northern Ireland, fulfils its international legal obligations.

4. Efforts to deal with the legacy of Troubles-related offences in Northern Ireland have focused heavily on violations of the right to life, with the work of existing investigative and truth recovery work being orientated towards conflict-related deaths and enforced disappearances. Although this work has brought some positive benefits for some families, many conflict-related deaths remain unresolved. In addition, instances of other Troubles-related human rights violations, including illegal detention, severe bodily injury, and torture have received less attention, despite the fact that victims of these serious violations have enforceable rights under international law.⁹ In analysing victims' rights under

³ Eg the Preamble to the 2005 Basic Principles and Guidelines states that its provisions 'do not entail new international or domestic legal obligations but *identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations* under international human rights law and international humanitarian law which are complementary though different as to their norms' (emphasis added).

⁴ UN General Assembly, 'Basic Principles of Justice for Victims of Crime and Abuse of Power' (UN General Assembly 1985) General Assembly resolution 40/34 <<https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>> accessed 19 March 2021.

⁵ UN General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation' (2005) General Assembly resolution 60/147

<<https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>> accessed 19 March 2021.

International Humanitarian Law is also known as the law of armed conflict and it seeks to regulate the actions of combatant parties during conflicts. It is not generally viewed as applicable to Northern Ireland's conflict and hence is not explored in this submission.

⁶ See eg International Criminal Court, Appeals Chamber *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, (18 July 2019).

⁷ See eg the provisions on reparations in the Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force on 1 July 2002), UN Doc A/CONF.183/9 <http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_120704-EN.pdf> accessed 26 March 2021, Article 75; and the International Convention for the Protection of All Persons from Enforced Disappearances (adopted 20 December 2006, entered into force 23 December 2010), UN Doc A/RES/61/177, Art 24.

⁸ Theo van Boven, 'Introductory Note to the United Nations 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' (United Nations Audiovisual Library of International Law 2010) 5 <https://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf> accessed 23 March 2021.

⁹ Pablo De Greiff, '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' (UN Human Rights Council 2017) A/HRC/34/62/Add.1 <<https://undocs.org/A/HRC/34/62/Add.1>> accessed 19 March 2021.

international law, this submission takes into account the diverse forms of violations that took place, although it recognises that different approaches may be appropriate to remedy different forms of violations.

Summary

5. *Victims' Rights as part of Northern Ireland's 'Particular Circumstances'*: it is well established that the rights of victims of the conflict form part of Northern Ireland's 'particular circumstances' that should be addressed in the proposed Bill of Rights.
6. *Definition of Victims*: it is settled in international human rights law that individuals should be recognised as victims on the basis of the harm that they experienced, where that harm resulted from criminal offences under domestic law or violations of international human rights norms. Victims can experience harm as a result of being the direct subject of the violence, of intervening to protect others, or being a family member of a direct victim. The fundamental human rights principle of non-discrimination means that victim status cannot be denied to individuals on the basis of protected characteristics or their past behaviour or affiliation.
7. *Rights to Dignity and Participation*: to respect the dignity of individual victims and their families and to ensure the ability of victims to participate in public life, particularly where it pertains to efforts to provide victims with remedies, international human rights law requires that the states analyse challenges that victims may face in engaging with legal and administrative processes. This may require specific attention being given to challenges that may result from age, gender, health, geography or poverty, and ensure that proactive steps are taken to ensure that all victims are able to access available remedies.
8. *Right to an Effective Remedy*: Victims' right to an effective remedy is a composite right. For victims of crime, it includes rights to access justice and to restitution and compensation. For victims of human rights violations, the right to effective remedy also encompasses the rights to rehabilitation, satisfaction (including the right to truth) and the guarantees of non-repetition. Failure to fulfil victims' right to an effective remedy can in and of itself breach states' international legal obligations, irrespective of the affiliation of those responsible for the inflicting the harm.

Victims' Rights as Part of Northern Ireland's 'Particular Circumstances'

9. This Committee's terms of reference require it

to consider the creation of a Bill of Rights that is faithful to the stated intention of the 1998 Agreement in that it contains rights supplementary to those contained in the European Convention on Human Rights (which are currently applicable) and 'that reflect the particular circumstances of Northern Ireland'; as well as reflecting the principles of mutual respect for the identity and ethos of both communities and parity of esteem.

10. The 1998 Agreement recognised the need ‘to address and acknowledge the suffering of victims of violence as a necessary element of reconciliation’.¹⁰
11. Since the 1998 Agreement, the rights of victims of the conflict have consistently been recognised as an issue that is tied inherently to Northern Ireland’s ‘particular circumstances’, notwithstanding the fact that some victims experienced conflict-related harms outside of Northern Ireland. For example, a 2009 consultation paper published by the Northern Ireland Office (NIO) in response to the Northern Ireland Human Rights Commission’s 2008 advice on a Bill of Rights identified ‘Victims and the Legacy of the Conflict’ as a human rights issue with particular application to Northern Ireland and as issue to ‘which everyone could subscribe’.¹¹ The NIO paper also tied understandings of Northern Ireland’s ‘particular circumstances’ to the need to address the legacy of the past due to its ongoing consequences for Northern Ireland’s transition,¹² and echoing the language of the 1998 Agreement, observed that efforts to do so should reflect the ‘principles of mutual respect for the identity and ethos of both communities’.¹³
12. This submission therefore contends that it is well established that the rights of victims of the conflict form part of Northern Ireland’s particular circumstances that should be addressed in the proposed Bill of Rights.

Defining Victims under International Human Rights Law and Non-Discrimination

13. Although there are political disputes in Northern Ireland over the definition of victims,¹⁴ from a legal perspective, it is settled in international human rights law that individuals should be recognised as victims of the basis of the harm that they experienced, where that harm resulted from domestic criminal offences *or violations of international human rights norms*.¹⁵ For example, the Basic Principles for Victims of Crime and Abuse of Power 1985 define victims of crime as

who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of

¹⁰ The Belfast or Good Friday Agreement (Northern Ireland Office 1998) 22

<<https://www.gov.uk/government/publications/the-belfast-agreement>> accessed 25 March 2021.

¹¹ Northern Ireland Office, ‘Consultation Paper - A Bill of Rights for Northern Ireland: Next Steps’ (Northern Ireland Office 2009) 5–6 <<https://cain.ulster.ac.uk/issues/law/bor/nio301109bor.pdf>> accessed 23 March 2021.

¹² *ibid* 1.2.

¹³ *ibid* 4.1.

¹⁴ Sarah E Jankowitz, *The Order of Victimhood: Violence, Hierarchy and Building Peace in Northern Ireland* (Springer International Publishing 2018); Marie Breen-Smyth, *Suffering, Victims and Survivors in the Northern Ireland Conflict: Definitions, Policies, and Politics* (De Gruyter Oldenbourg 2018); Luke Moffett, ‘A Pension for Injured Victims of the Troubles: Reparations or Reifying Victim Hierarchy’ (2015) 66 Northern Ireland Legal Quarterly 297.

¹⁵ Eg the elements of the definitions set out here have been adopted by the UN human rights bodies. See eg Committee Against Torture, ‘General Comment No. 3 (2012) Implementation of Article 14 by States Parties’ (2012) UN Doc CAT/C/GC/3 para 3.

criminal laws operative within Member States, including those laws proscribing criminal abuse of power.¹⁶

The same instrument describes victims of abuse of power as

persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, *through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights*.¹⁷

In addition, the Basic Principles and Guidelines on a Right to a Remedy and Reparations 2005 define victims as

victims are 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 that constitute gross violations of international human rights law, or serious violations of international humanitarian law*.¹⁸

The framing of these definitions allows for the recognition of victims who suffered human rights violations, where those violations may not have been contrary to the criminal law in place at the time that the violence took place.

14. International standards make clear that victim status can apply to *direct* victims against whom the crimes or human rights violations were perpetrated as well as *indirect* victims such as those who experienced harm as a result of ‘intervening to assist victims or to prevent victimization’¹⁹ or ‘the immediate family or dependants of the direct victim’.²⁰
15. Under international law, a person can be recognised as a victim irrespective of ‘whether the perpetrator is identified, apprehended, prosecuted or convicted’.²¹
16. Non-discrimination is a fundamental principle of international human rights law. It is reflected on international standards on victims’ rights. For example, the Basic Principles on the Right to Justice for Victims of Crime and Abuse of Power 1985 specify that the rights contained in the principles

shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.²²

¹⁶ UN General Assembly (n 4) para 1. (emphasis added)

¹⁷ *ibid* 18. (emphasis added)

¹⁸ UN General Assembly (n 5) para 8. (emphasis added)

¹⁹ UN General Assembly (n 4) para 2; UN General Assembly (n 5) para 8.

²⁰ UN General Assembly (n 4) para 8; UN General Assembly (n 5) para 18.

²¹ UN General Assembly (n 4) para 2; UN General Assembly (n 5) para 9.

²² UN General Assembly (n 4) para 3.

Similarly, the Basic Principles and Guidelines on a Right to Remedy 2005 state that their application and interpretation ‘must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception’.²³ They further state that states have an obligation to

Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice ... *irrespective of who may ultimately be the bearer of responsibility for the violation.*²⁴

This provision indicates that the victims of violence committed by state or non-state actors should be able to access the courts in order to seek redress.²⁵ In addition, regional human rights courts, such as the European Court of Human Rights, have held that states have positive obligations to investigate violations of the right to life, life-threatening injuries, and disappearances, irrespective of whether those allegedly responsible are State agents or private persons or are unknown.²⁶ In addition, the UN Human Rights Committee has argued that a state can be found to be in breach of the International Covenant on Civil and Political Rights if it fails to investigate, punish or redress violations of the Covenant committed by state and non-state actors.²⁷ As will be discussed below, international human rights standards also make provision for reparations to be made by non-state actors.

17. In adhering to the principle of non-discrimination, international human rights law does not distinguish between more or less sympathetic victims, and instead, focuses exclusively on the nature of the harm experienced. In commenting on the disputes over victim status in Northern Ireland, the UN Special Rapporteur for Truth, Justice, Reparations and Guarantees of Non-Repetition observed that ‘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’ for the purpose of determining victim status.²⁸ However, international law does not preclude victims who have also been responsible for criminal behaviour being recognised and treated as offenders where necessary, as demonstrated by the recent conviction of former child soldier Dominic Ongwen before the International Criminal Court.²⁹

18. This commitment to non-discrimination was reflected in the Northern Ireland Human Rights Commission (NIHRC) 2008 Advice on the Bill of Rights, which included a

²³ UN General Assembly (n 5) para 25.

²⁴ *ibid* 3(c). See also ICCPR, Article 2(3)(a): ‘To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, *notwithstanding that the violation has been committed by persons acting in an official capacity*’ (emphasis added).

²⁵ van Boven (n 8).

²⁶ Examples of European Court of Human Rights case law finding that the state has an obligation to investigate violations committed by non-state actors or unknown parties include *Paul and Audrey Edwards v. the United Kingdom*, para 69; *Maiorano and Others v. Italy*, paras 123-26; *Kolevi v. Bulgaria*, paras 191-215; *Opuz v. Turkey*, paras 150-150; *Iorga v. Moldova*, para 26; *Tahsin Acar v. Turkey* [GC], para 226.

²⁷ United Nations Human Rights Committee, ‘General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (29 March 2004) para 8.

²⁸ De Greiff (n 9) para 73.

²⁹ International Criminal Court, *The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15 (4 February 2021).

provision stating ‘Legislation must be enacted to recognise *all* the victims of the Northern Ireland conflict and to ensure that their rights are protected. These rights include rights to redress and to appropriate material, medical, psychological and social assistance.’³⁰

The Rights to Dignity and Participation

19. International human rights law is premised on the recognition that ‘all human beings are born free and equal in dignity and rights’.³¹ Where these universal commitments are applied to victims’ rights, they not limited to which rights victims should be afforded but also cover how victims should be treated.³² For example, the right to dignity creates obligations on states to take appropriate measures to ensure that victims are ‘treated with compassion and respect for their dignity’³³ and that their ‘safety, physical and psychological well-being and privacy, as well as those of their families’ is protected.³⁴ This requires that states take care to ensure victims are not retraumatised by their interactions with legal and administrative institutions.³⁵ Furthermore, as is explored below with respect to the right to an effective remedy, the right to dignity requires that redress mechanisms are accessible to victims and are ‘appropriately adapted so as to take account of the special vulnerability of certain categories of person’.³⁶
20. The 1998 Agreement recognised that ‘victims have a right ... to contribute to a changed society’.³⁷ This provision corresponds to the universal right to participate in public affairs proclaimed in Article 25 of the ICCPR and inferred from the right to free elections set out in Article 3 of Protocol 1 to the ECHR. The application of this right requires that victims are consulted in the design of mechanisms to meet their needs as well as on ‘[i]nstitutional reforms aimed at preventing a recurrence of violations’.³⁸ Implementation of this right requires states to analyse the challenges that victims may face in having their voices heard and the taking of proactive steps to ensure that all victims have the opportunity to participate in public life, particularly where it pertains to victims’ rights. This requires the state to be sensitive to how factors such as gender, age, health, poverty, and geography may inhibit victims’ ability to access effective remedies.³⁹

³⁰ Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland* (Northern Ireland Human Rights Commission 2008) 43.

³¹ Universal Declaration of Human Rights (adopted on 10 December 1948), General Assembly resolution 217 A, Article 1.

³² Northern Ireland Human Rights Commission, ‘Human Rights and Victims of Violence’ (Northern Ireland Human Rights Commission 2003) 50.

³³ UN General Assembly (n 4) para 4.

³⁴ UN General Assembly (n 5) para 10.

³⁵ *ibid.*

³⁶ United Nations Human Rights Committee (n 27) para 15.

³⁷ The Belfast or Good Friday Agreement (n 10) 22.

³⁸ Diane Orentlicher, ‘Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity’ (UN Commission on Human Rights 2005) UN Doc E/CN.4/2005/102/Add.1 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>>. Principle 35

³⁹ De Greiff (n 9) paras 77–79.

The Right to an Effective Remedy

21. The right to an effective remedy requires that in addition to protecting individuals from violations of their rights, where rights have been violated, states also have an obligation to ensure that individuals also have accessible and effective remedies to vindicate those rights. The UN Human Rights Committee has observed that ensuring remedies are accessible may require them to ‘appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children’.⁴⁰
22. This right is contained in the ICCPR, the ECHR and treaties related to specific violations such as torture and enforced disappearances. The UN Human Rights Committee has found that this right is non-derogable, meaning that although during times of public emergency or conflict, states have some discretion in how they deliver remedies, they nonetheless remain required to ensure that all remedies are effective.⁴¹
23. A failure by a state to provide a victim with an effective remedy ‘could in and of itself’ breach the state’s obligations under international human rights law, irrespective of whether the state was responsible for the original violation.⁴²
24. Victims’ right to an effective remedy is a composite right. For victims of crime, it includes rights to access justice and to restitution and compensation. For victims of human rights violations, the right to effective remedy also encompasses the rights to rehabilitation, satisfaction (including the right to truth) and the guarantees of non-repetition.⁴³
25. International human rights law recognises that both victims of crimes and victims of human rights violations have **the right to access mechanisms of justice** in order to obtain redress. Recognising that victims, particularly those with multiple forms of vulnerabilities, may face challenges in exercising this right, the UN instruments on victims’ rights set out standards with which states should comply to ensure judicial processes, whether civil or criminal, are accessible and victims’ right to dignity are respected. These include:
 - a. Disseminating information about available remedies;
 - b. Informing victims of their role and the scope, timing and progress of remedy proceedings;
 - c. Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - d. Providing proper assistance to victims throughout the legal process;

⁴⁰ United Nations Human Rights Committee (n 27) para 15.

⁴¹ UN Human Rights Committee, ‘General Comment No. 29: Article 4: Derogations during a State of Emergency’ (UN Human Rights Committee 2001) UN Doc CCPR/C/21/Rev.1/Add.11, para 14.

⁴² United Nations Human Rights Committee (n 27) para 15.

⁴³ M Cherif Bassiouni, ‘International Recognition of Victims’ Rights’ (2006) 6 Human Rights Law Review 203.

- e. Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- f. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

26. Through previous Bill of Rights debates, there has been support for including at least some of the elements listed in paragraph 24 in a Bill of Rights to ensure that victims are able to access justice mechanisms. This support has come from the NIHRC,⁴⁴ civil society organisations,⁴⁵ and academics.⁴⁶

27. Victims' **right to truth** does not appear in UN standards on victims of crime. However, with respect to human rights violations, the UN Basic Principles and Guidelines on a Right to a Remedy and Reparations provide that reparations should include

Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations.⁴⁷

In addition, the UN's Updated Set of Principles to Combat Impunity for Serious Human Rights Violations 2005, which relates to 'serious crimes under international law' (which it defines as including torture, extrajudicial execution, and disappearances) asserts that '[i]rrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate.'⁴⁸ Similarly, in *El-Masri v Macedonia*, the Grand Chamber of the European Court of Human Rights identified the right of victims and society to know the truth about serious violations:

address another aspect of the inadequate character of the investigation in the present case, namely *its impact on the right to the truth* regarding the relevant circumstances of the case. In this connection it underlines the great importance of the present case not only for the applicant and his family, but also for other victims of similar crimes and the general public, who had the *right to know* what had happened.⁴⁹

⁴⁴ Northern Ireland Human Rights Commission (n 30) 43.

⁴⁵ Amnesty International, 'United Kingdom: Strengthening Proposals for the Northern Ireland Bill of Rights' (Amnesty International 2001) AI Index: EUR 45/025/2001 <https://www.amnesty.org.uk/files/doc_14672.pdf?slxvDnciwvJPF7jUJEuR1oY7fx8Wrb_i=> accessed 22 March 2021.

⁴⁶ Anne Smith and Colin Harvey, 'Where Next for a Bill of Rights for Northern Ireland?' (Ulster University and Queen's University Belfast 2018) 25 <<http://qpol.qub.ac.uk/wp-content/uploads/2018/12/Full-Report.pdf>> accessed 23 March 2021.

⁴⁷ UN General Assembly (n 5) para 22(b).

⁴⁸ Orentlicher (n 38). Principle 4.

⁴⁹ *El-Masri v the former Yugoslav Republic of Macedonia* (App No 39630/09) (2013) 57 EHRR 25, para 191 (emphasis added).

28. Victims' right to truth corresponds to states' obligations to investigate serious human rights violations. The European Court of Human Rights has recognised that the procedural obligation to conduct effective investigations arises from violations of Articles 2 and 3 of the Convention. In a series of cases relating to Northern Ireland, the European Court has established to fulfil this obligation, investigations must be independent, prompt, transparent and capable of identifying, and if appropriate, punishing those responsible.⁵⁰
29. Draft wording for a Bill of Rights put forward by the Northern Ireland Human Rights Commission in 2008⁵¹ and more recently by academics has suggested that the proposed Bill of Rights require the enactment of legislation to ensure that all violations of the right to life are effectively investigated and that mechanisms to address legacy offences are fully human rights compliant.⁵² In addition, in its 2009 response to the NIHRC advice, the NIO expressed its willingness to consider including a provision in the Bill of Rights to require effective investigations into violations of Articles 2 and 3 of the ECHR.⁵³
30. International human rights law recognises that the **right to reparations** for victims of crime includes the right to **restitution** and the right to **compensation**. The Basic Principles of the Right to Justice for Victims of Crime 1985 states that, where appropriate, this can include offenders making 'fair restitution to victims, families and the dependants', and where the criminal behaviour was carried out by state agents, the state should provide restitution to the victims.⁵⁴ This instrument further provides that 'when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation' to victims of serious crimes.⁵⁵
31. The right to a reparations for victims of human rights violations is more extensive. The Basic Principles and Guidelines on the Right to a Remedy and Reparation 2005 contain the similar commitments to the 1985 Principles, but also observe that reparation 'should be proportional to the gravity of the violations and the harm suffered' and that states should establish national reparations programmes to support victims irrespective of the affiliation of those who harmed them.⁵⁶ The 2005 Principles and Guidelines also stipulate that 'full and effective reparation' should include rehabilitation, satisfaction and guarantees of non-repetition alongside the restitution and compensation, providing indicative examples of the types of actions that can be taken to satisfy each element of reparation. For example, the 2005 Principles and Guidelines observe that providing satisfaction to victims can include 'Commemorations and tributes to the victims', a provision that corresponds to the statement in the 1998 Agreement that 'It is recognised that victims have a right to remember'.⁵⁷
32. In his 2017 report to the United Kingdom, the UN Special Rapporteur for Truth, Justice, Reparation and Guarantees of Non-Repetition observed that reparations are the 'area of

⁵⁰ See eg *McKerr v United Kingdom* (2001) 34 EHRR 20.

⁵¹ Northern Ireland Human Rights Commission (n 30) 20.

⁵² *Smith and Harvey* (n 46) 25.

⁵³ Northern Ireland Office (n 11) para 8.6.

⁵⁴ UN General Assembly (n 4) paras 8–11.

⁵⁵ *ibid* 12.

⁵⁶ UN General Assembly (n 5) para 15.

⁵⁷ 'The Belfast or Good Friday Agreement' (n 10) 22.

least achievement' in the context of dealing with the past in Northern Ireland, despite the operation of various compensation schemes during and after the Troubles.⁵⁸

33. In recognition of these shortcomings, the NIHRC recommended in 2008 that legislation should be enacted to protect the rights of all victims, including their 'rights to redress and to appropriate material, medical, psychological and social assistance'.⁵⁹ Similar language has also been included in a model Bill of Rights prepared by Smith and Harvey.⁶⁰

Conclusion

34. Victims' rights to dignity and participation are not included in the Human Rights Act 1998. In addition, although UK courts have followed the ECHR's case law on the procedural obligations arising from violations of the right to life, Article 13 of the European Convention on Human Rights on the right to an effective remedy was omitted from the rights incorporated from that treaty into United Kingdom law by the Human Rights Act. Their inclusion in a Bill of Rights for Northern Ireland would therefore provide 'supplementary protections' as required under the terms of the 1998 Agreement.
35. Enhanced recognition of victims' rights within a Bill of Rights would demonstrate Northern Ireland's respect for and solidarity with victims,⁶¹ provide safeguards to ensure that victims are able to engage with mechanisms to address their needs with an enhanced sense of safety and security, and should lead to greater compliance with the UK's obligations to fulfil victims' rights to access to justice, truth and reparation, which have all too often been delayed. Furthermore, whereas failure to meaningfully address the legacy of the Troubles has undermined public confidence in our institutions, greater adherence to victims' rights should help to rebuild public trust and bolster guarantees of non-repetition.

⁵⁸ De Greiff (n 9) para 60.

⁵⁹ Northern Ireland Human Rights Commission (n 30) 43.

⁶⁰ Smith and Harvey (n 46) 25.

⁶¹ Ilias Bantekas and Lutz Oette, 'Victims' Rights and Reparation', *International Human Rights Law and Practice* (2nd edn, Cambridge University Press 2016) 600.