



Northern Ireland  
Assembly



Queen's University  
Belfast



The Open  
University



Ulster  
University

## Knowledge Exchange Seminar Series (KESS)

### Dealing with the Past in Northern Ireland: Putting Gender on the Agenda

Dr Catherine O'Rourke, Senior Lecturer and Gender Research Coordinator, Transitional Justice Institute, Ulster University

#### Why Gender Matters in Dealing with the Past

This policy brief sets out proposals for the integration of gender into efforts to deal with the past in Northern Ireland, as a constructive response to the following four challenges in current approaches to dealing with the past in Northern Ireland:

Firstly, there is substantial evidence of broad dysfunctionality in the current approach to dealing with the past. To date, institutional efforts to deal with the past in Northern Ireland have been politically fraught and highly costly (most notably, the Bloody Sunday / Saville Inquiry costing £190 million); they have proceeded with little coherency, through a patchwork of criminal and legal processes; and they have consistently failed to meet the expectations of victims and their families. Moreover, these ongoing criminal and legal processes, such as police investigations into historical killings, ongoing prosecutions, public inquiries and inquests, combined with victim dissatisfaction, have already proven destabilizing to the political process and carry significant potential to be further destabilizing.

Secondly, the author's research in mapping the initiatives to date to deal with the past in Northern Ireland has identified an absence of any official recognition of gender as a structural element of the conflict, or even as a relevant consideration, in crafting state responses to dealing with the past (O'Rourke, 2013). This can be identified as only one of the shortcomings and silences of the current process. Reasons for the exclusion of women and broader gender perspectives of conflict are typically attributed to overly-narrow understanding of 'harms' that result from conflict, that focuses in particular on deaths, but not, for example, to the ongoing socioeconomic and relational harms experienced by those left behind. Further, decision-making around dealing with the past typically prioritizes the 'primary' conflict and primary conflict protagonists, to the exclusion of other agendas and actors. The absence of a gender dimension is typically also attributed to an excessively legalistic focus on individual deaths resulting from the conflict and individual perpetrators, which in turn generates a series of other shortcomings and absences in the official process (most notably in the Northern Irish context, the plight of the living injured and the ongoing socioeconomic consequences of the conflict experienced daily at the community level). Importantly, the grounds for broad dissatisfaction with the initiatives, and the increasingly visible proposals for an alternative approach, overlap tellingly with gender critiques of transitional justice, that call for a broader understanding of harm, focus on the importance of process, and eschew an exclusively individualistic and legalistic approach.

## Knowledge Exchange Seminar Series 2014-15

Thirdly, the absence of a sustained gender dimension to official efforts to deal with the past reflects and echoes silos within civic and political life in the jurisdiction. Historically, and in the contemporary approach to dealing with the past, Northern Ireland has been characterized by silos between women's organisations ('the women's sector'), victims' organisations ('the victims sector') and statutory and political stakeholders. While the constitution of these distinct sectors has facilitated collaboration, solidarity and knowledge exchange *within* sectors, it has acted as a barrier to learning *across* these sectors.

Finally, while gender and transitional justice is a rich and burgeoning area of scholarship, and scholars based within Northern Ireland are internationally-recognized within this body of scholarship (see generally the gender work of the TJI), where scholars have struggled to date is to translate theorized critique of current practice into concrete strategies for meaningful enhancement of that practice. The problems encountered in Northern Ireland in making gender integral to institutional efforts to deal with the past represent global challenges to states attempting to deliver accountability and redress to conflict victims. Thus, there is a recognized urgent need to devise practical responses to support meaningful political projects.

As a constructive intervention to this very timely set of challenges, this policy brief responds with the following three sections: Section 1 provides a brief gender audit of initiatives to date to deal with the past; Section 2 reviews relevant international comparative and local civil society practice in gender and dealing with the past, with a focus on possible lessons for implementation of the Stormont House Agreement; and Section 3 gives an overview of the relevant international obligations and standards to support the meaningful inclusion of gender in upcoming processes and mechanisms to deal with the past.

Some preliminary questions to be addressed before proceeding to the substance of the brief are: what does gender mean in the context of transitional justice? What would a good transitional justice process from a gender perspective look like? In the policy brief, and in broader related work, 'gender' functions as a useful shorthand for thinking about how certain processes and mechanisms to deal with the past are particularly receptive to the inclusion of both women and men, while others privilege the inclusion of one group over another; certain processes and mechanisms recognize and acknowledge harms conflict and conflict legacy harms experienced by men and women, boys and girls, while other processes privilege for recognition and redress the experiences of one gender group; certain processes and mechanisms integrate an understanding of how political and ethnic identities intersect with one's gender identity in determining conflict experiences and legacy needs, while other processes and mechanisms recognize only political and ethnic identities as pertinent identity claims. Moreover, the policy brief operates not just with an understanding of gender, but with a commitment to respecting and advancing gender equality through dealing with the past. This policy brief seeks therefore to avoid a conflation of 'gender' and 'women', and sees valuable opportunities of a focus on gender to open up questions concerning, for example, the conflict experiences and legacy needs of sexual minorities, and the impact of conflict and transitional justice on certain forms of masculinity. The paper nevertheless recognizes that women's disproportionate experience of inequality, means that a failure to consider gender in dealing with the past will disproportionately disadvantage women. Further, it is women who highly disproportionately experience physical exclusion from relevant negotiations and decision-making around dealing with the past. Three useful indicators for the effective integration of gender into any process to deal with the past are, firstly, the inclusion of both women and men in relevant decision-making and mechanisms; secondly, the recognition of gender-specific harms experienced by men, women, boys and girls in transitional justice processes and mechanisms; and finally, the acknowledgement of gender inequality and unequal gender relations in both the causes and experiences of conflict and any subsequent effort to deal with the conflict legacy.

One example from Northern Ireland that illustrates the ways in which gender analysis can enrich our understanding of dealing with the past in the jurisdiction and contribute to better policy responses concerns the gender profile of the victims sector. It has a distinctively female composition, in terms of workers, volunteers and clients. Further, women are in decision-making positions in these organizations. Indeed, a Review (Potter, 2004) of the victims' sector concluded:

A predominance of women in the victims sector suggests that victims' issues are to a certain extent gender issues. Negating the needs of victims primarily affects women.

Moreover, in terms of women's involvement in the victims sector, it has been found that there is:

[A] gender division ... in the role of groups, those being 'self-help' groups in nature largely being led by women (examples being given were WAVE, SAVER/NAVER, Cross, Lifeline and Shankill Stress) and those having a more political role being male-led.

In short, it was found: 'the more political it gets, the more masculine it gets.'

A specifically gender analysis reveals, therefore, a gendered division of labour in dealing with the past in Northern Ireland. Through their involvement in the women's and victims sector, women deal with the (private) material consequences of the conflict (such as trauma, poverty, lack of education and training) deemed to be 'apolitical'; men deal with the 'political' consequences of the conflict (truth, prosecutions, public enquiries, police investigations). Given the critical role of gender segregation in facilitating gender inequality, a legitimate aim of any process to deal with the past should be diversify gender roles in dealing with the past and to disrupt this gender-stereotyping.

### **Section 1. Gender Audit of Dealing with the Past Initiatives to Date**

#### *'Ad hoc and piecemeal' Approach*

The Belfast/Good Friday Agreement did not provide for a process or mechanism to deal with the past. In its absence, what Christine Bell has called a 'piecemeal' and 'ad hoc' approach has instead unfolded (2003). Dealing with the past continues through a series of 'surrogate' processes and institutions, such as public inquiries, police investigations, isolated prosecutions, coroners' inquests and OPONI investigations into conflict-related killings. These initiatives have been driven and heavily shaped by litigation and scrutiny from the European Court of Human Rights concerning procedural obligations of the European Convention's article 2 right to life. Efforts to deliver criminal accountability for past harms in Northern Ireland evidence therefore a pattern of *hyper-legalization*, which has been exclusionary to many and damaging more broadly to efforts for accountability for harms against women, due to the overwhelmingly male profile of those who lost their lives during the conflict. The narrow scope of the mandates of institutions involved in investigating possible criminal liability does not bode well for comprehensive understanding of the harm and violence of the conflict emerging from these legal processes. Of course, certain women are called into view through these legal processes: Mairead Farrell, whose death was also the subject of article 2 litigation at the European Court; Rosemary Nelson, whose death was the subject of a public inquiry. The women we often see, though less often hear from, in these legal processes are the surviving female family members, seeking accountability for the deaths of their loved ones. They are the visual icon of claims for justice and the need to deal with the past, but they are subjects, not agents, in this conversation.

#### *Healing Through Remembering, 2002*

In Northern Ireland, in the aftermath of the Belfast Agreement, more general civil society initiatives to deal with the past began to emerge. Most significant in this regard was *The Report of the Healing Through Remembering Project*, an impressive proposal of possible options for truth-recovery, commemoration and advancing reconciliation in Northern Ireland. Those responsible for the Report consulted widely and involved a large breadth of civil society organizations. However, of all of the groups and organizations either targeted or submitting consultations, the women's political party, the Women's Coalition, was the only dedicated women's organization consulted. The Healing through Remembering initiative drew heavily on international expertise, however, international gender-expertise was not specifically sought or included. Regrettably, therefore, the Report did not ensure that the learning curve undertaken internationally in enhancing the treatment of gender issues in dealing with the past would be adopted locally.

#### *Consultative Group on the Past ('Eames-Bradley'), 2009*

While the Consultative Group on the Past was established with the avowed intention of providing an alternative to legal processes, it in fact operated with priorities and categories of harm determined by criminal

accountability processes. The flagship recommendation of the Consultative Group on the Past was to establish a single body (the 'Legacy Commission') to help society towards a shared future; review and investigate historical cases; conduct a process of information recovery; and examine linked or thematic cases emerging from the conflict. Focusing on deaths in the conflict, and the state's concomitant obligations to investigate those deaths, the Report made no specific mention of women, even in the context of secondary victimhood. Local experience and international best practice cautions that an exclusive focus on deaths establishes and reinforces a narrative of the conflict that posits men as the only victims of the conflict. Further, the Report's overwhelming focus on deaths resulting from the conflict works to obscure a broader range of harms, most pronounced in the Report's failure to deal with socioeconomic harms of the conflict. To the extent that socioeconomic issues are acknowledged in the Report, the account is oddly masculine. The impact of bombs on businesses, of deterring tourists, and boycotts of businesses by one community are documented (Consultative Group on the Past, 2009: 28). However, there is no acknowledgement of the poverty exacerbated by the conflict, the difficulties experienced by families and communities in meeting basic needs. The only form of discrimination identified by the Report is sectarianism. Northern Ireland continues to be marked by high levels of discrimination against women and ethnic and sexual minorities. A consideration of the impact of the conflict on these particular groups might have provided a more comprehensive picture of the societal consequences of the conflict. Such a picture might have also provided a sounder basis for ensuring that efforts to deal with the past bring attention to these broader issues of discrimination.

### *Haass-O'Sullivan, 2013*

Most substantial section of the Haass-O'Sullivan proposals concerned 'Contending with the Past', the main elements of which were: support for victims and survivors; acknowledgement; narratives and archives. A promising development in the proposed Historical Investigations Unit was the provision for investigations of cases resulting in living injured, and not only those who lost their lives. Perhaps even more significantly, Haass-O'Sullivan retained the themes idea first proposed by Eames-Bradley: the proposed Independent Commission for Information Retrieval would include a themes unit to investigate the causes and patterns of violence, and reveal broader level of accountability. Whilst gender was not listed as a proposed theme, subsequent responses by the women's sector and others to the Haass-O'Sullivan proposals identified this a potential site of opportunity.

### *Repeating and Reinforcing Gender Dynamics to Date*

This very summary gender audit points, therefore, to the following set of repeating and reinforcing gender dynamics: firstly, the physical absence or unequal presence of women from negotiations and institutions; secondly, highly legalised and individualised processes; thirdly, a focus on those who lost lives; fourthly, a gendered division of labour between 'political' and 'material' work of dealing with conflict legacy; and finally, little recognition of gender-specific conflict harms or gender as a structural factor of conflict.

## **Section 2. Comparative Practice: Possible Lessons for Stormont House Agreement**

The gendered shortcomings of the approach to date in Northern Ireland are not inevitable. International, comparative and local civil society practice tells us that there are opportunities for constructive interventions and ways of doing things better. The Stormont House Agreement (2014) draws on several of the innovations of previous proposals, such as the Historical Investigations Unit which will deal also with serious injury, and scope for thematic investigation within the Implementation and Reconciliation Group. Uniquely, the Stormont House Agreement also includes express recognition of importance of women's participation, meaning that there is potential for a commitment to gender equality to inform and structure the resulting institutions and mechanisms for dealing with the past. The section turns to practical proposals, based on comparative and local civil society experience, to deliver on the potential with Stormont House Agreement.

Gender can be considered in processes to deal with the past in the following ways:

### *Specific harms*

International and comparative practice, led principally by international legal developments requiring criminal accountability for conflict-related sexual violence, means that transitional justice processes now routinely provide expressly for accountability and redress for experiences of sexual violation (International Criminal Court; Criminal Tribunals for Rwanda, former Yugoslavia, informing transitional justice practice in several domestic settings, for example, Chilean Torture Commission, 2005).

Broader categories of harm might usefully include the social and health impacts of poverty and the damage caused to individual men, women, boys and girls by gender stereotypes (of which, more in the final section).

### *Thematic inquiry*

One example of the thematic investigation of gender comes from the South African Truth and Reconciliation Commission, which hosted dedicated 'Gender Hearings'. The thematic investigation of gender in an opportunity to investigate questions like: what was the impact of gender as a broader structural factor in conflict or political violence? Possible sub-questions could investigate:

- (a) What harms were experienced most routinely by women, and most routinely by men?
- (b) What role did the state play in preventing, or exacerbating, such harms and their gendered patterns? Did military or paramilitary status of perpetrators mean impunity and what were the gendered patterns in the harms resulting most often in impunity?
- (c) In what ways did gender shape the survival strategies of women, men, boys and girls in the context of such harms?
- (d) Have these harms ceased in line with the cessation of conflict?

### *Emblematic cases*

The Colombian transitional justice process is complex, multi-layered and being delivered through a multiplicity of institutions and processes. Micro-truths emerging from individual prosecutions have also been supplemented with attempts to reach a macro-truth of the conflict through the work of the Group on Historical Memory (*Grupo de Memoria Histórica*, GMH). This independent group of academics was constituted to produce the report on the causes for the emergence and development of illegal armed groups in Colombia. The group's membership and autonomy means that the working group is unique in terms of its legitimacy among a wide number of civil society organizations, including the human rights community and victims sector. While the mandate given to the group by the CNRR was quite specifically to investigate the origins and emergence of paramilitary groups since 1964, the group has chosen to interpret its mandate widely, announcing that:

[T]he GMH seeks to construct a comprehensive memory... a memory that integrates the voices not only of all of the armed actors, but also of all of the victims, as the foundation of understanding and transformation of the conflict (2007, 1.2).

The Group's progressive and integrated approach to gender has been amply demonstrated in its work to date. The GMH's Plan of Research explicitly acknowledges 'the political character of memory', 'a site of contestation in which the view of the past that prevails... is constructed from asymmetrical power relations' (2008). Thus, 'not all memories accede in conditions of equality to the public sphere'. Early on, the Group committed to an agenda of work to facilitate the recovery of historical memory from women and minority groups.

The Group on Historical Memory has proceeded through examination and reporting on a series of emblematic cases. The first such case concerned the experiences of the town of Trujillo in the Valle region in the North of the country, which endured several massacres over two decades at the hands of state, paramilitary and guerrilla forces. The GMH Report clearly worked from a premise that gender is determinative of one's experience of harm and from a commitment to reveal structural gender inequalities. Moreover, from this premise, the Report moved quickly from its focus on the public harms of the massacres to expand that to deal also with ostensibly private harms experienced by women. In fact, the Report adopts a gender perspective to challenge the very terms of its own investigation: thus the 'before' and 'after' of the massacres were acknowledged to be misleading terms, when one considers the gender-based violence that pervades normal

life in Trujillo. The section brought out gender-specific experiences of violence and discrimination within families in the area, concluding that:

[M]any of the accounts that emerged about 'before the massacre' and ordinary life demonstrate how the lives of women proceeded within practices of violent masculine domination... For them, the 'before' does not appear to have been an idyll of peace and respect for their rights in the domestic ambit (2008: 220).

The understanding of structural gender inequalities in the Report is highly-sophisticated. The Report concluded that, in spite of the way the violence destabilized some of the gender strictures of the society, this did not result in the overcoming of 'dominant violent masculinity' (2008: 229). This enlightened gender work has continued and is evident in the methodology developed by the group (2009), each of the group's reports, and is further developed within the group's reports that are dedicated to questions of gender and memory (2012).

### *Collective approaches*

The community-based and peer-support led work of WAVE and Relatives for Justice and Windsor Women's Centre evidence powerful, if little-understood, coping strategies and mechanisms of those who access the formal civil and criminal justice system in order to deal with their individual conflict legacy needs, and those who eschew civil and criminal justice routes to dealing with the past. These are processes that have been effectively utilized over a prolonged period by the project partners, Relatives for Justice and WAVE Trauma Centre. Relatives for Justice operates three programmes dealing specifically with women service users: the first supports women participating in official legal and quasi-judicial processes that deal with the past, namely inquests, police investigations into historical killings, ongoing prosecutions, public inquiries; the second, 'Just mothers', engages with women who lost children as a result of the conflict, and seeks to document the diverse though gender-specific harms experienced by those women as a result of their loss; and the third, a creative writing programme, engages women who have largely eschewed official legal processes and sought instead non-legal, community-based and collective routes to describe their conflict experiences and to articulate their resulting needs and priorities. WAVE Trauma Centre operates two programmes that engages specifically with women service users: its women's group and its arts and crafts group. Importantly, a common element to each of these programmes, in addition to their gender-specificity, is that they are group-based and group-led. To date, these programmes have proceeded on a flexible and dynamic 'what-works' basis, in terms of, firstly, attracting women to the programmes, secondly, creating a safe space in order to ensure the continued participation of women, and thirdly, ongoing internal evaluation processes to ensure that the programmes are achieving their objectives of supporting and empowering the women involved, and changing approaches where necessary. This flexibility has been core to the success of the groups, and offers much experiential knowledge, expertise and effective practice to model the meaningful inclusion of women in processes to deal with the past.

*Where there are multiple processes, may be potential to knit together retributive, restorative and reparative justice*

### *Participation*

International experience, such as the Colombian example just discussed, demonstrates that a good and inclusive process to deal with the past has an important opportunity to redress an often-dominant negative feedback loop, in which issues of gender equality are relatively absent from advocacy agendas, academic research agendas, and official policy agendas in dealing with the past, and this absence is compounded by silos within civil society between women's and past-focused groups. There is substantial expertise and capacity within civil society, the women's sector, in the daily management of conflict and its legacy, and on the necessary components of an approach to dealing with the past that advances gender equality. This has not yet been integrated into official practice in this area. Currently, neither the inter-personal relationships nor the practical mechanisms for knowledge exchange exist. Any future mechanism or process in Northern Ireland has an important opportunity to make a proactive intervention to disrupt this negative cycle and initiate a positive one.

### Section 3. International Obligations and Standards

CEDAW: UK (and Ireland) as state parties bound by legal obligation to eliminate all forms of discrimination against women in their public activities, including dealing with the past. Beyond this general prohibition on discrimination, specific positive obligations concerning accountability and redress for particular violations, whether perpetrated by public or private actors (including article 5 obligation of states to challenged discriminatory gender stereotypes).

ECHR, more than article 2 relevant to dealing with the past, e.g. positive obligations on states to provide accountability and redress for gender-based violence (article 3, 8, 14). In addition, European Court of Human Rights increasingly understanding role of structural gender discrimination in causing human rights violations, for example, police de-prioritisation and judicial passivity in face of gender-based violence.

CEDAW General Recommendation No. 30 on the Rights of Women in Situations of Conflict and Post-Conflict, means that CEDAW Committee now increasingly scrutinizing transitional justice processes to ensure that they are inclusive of women, but also that they recognize women's gender-specific experiences of harm. Interestingly, the Committee has utilized its heightened monitoring capacity (i.e. ordering one-year follow-ups by the reporting state on two specific recommendations) to prioritise women's participation across peace negotiations (India, Syria), transitional justice processes (Central African Republic) and national reconciliation (Iraq) processes. Aside from States Parties reporting to CEDAW, there is a body of practical modalities emerging under the Women, Peace and Security agenda of the United Nations which States are increasingly using in dealing with the past.

### Bibliographic References

Catherine O'Rourke, *Gender Politics in Transitional Justice* (Routledge, 2013)

Potter, M. (2004). *In Their Own Words: A Research Report into the Victims Sector in Northern Ireland*. Belfast, Training for Women Network.

Grupo de Memoria Historica, C. N. d. R. y. R. (2008). *Trujilla: Una Tragedia que no Cesa, Primer Informe del Grupo de Memoria Histórica de la CNRR*. Bogotá, Colombia.

Bell, C. (2003). "Dealing with the Past in Northern Ireland." *Fordham International Law Journal* **26**: 1093.

Consultative Group on the Past (2009). *Final Report*. Belfast.

