

# International Gender Equality Norms and the Local Peacemaking Political Settlement

A Case Study of the United Nations  
Special Rapporteur on Transitional  
Justice in Northern Ireland

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**Abstract** The Working Paper considers the relationship of international gender equality norms to the treatment of gender in local peacemaking political settlements through the case study of the recent Report of the United Nations Special Rapporteur on Transitional Justice on Northern Ireland. The paper contends that the Report has impacted the local peacemaking political settlement by establishing an intrinsic connection between the two ostensibly separate objectives of, firstly, devising a process to deal with the past that meets the needs of victims (an objective which does have some elite buy-in) and, secondly, addresses gender (an objective currently without significant elite buy-in). The Working Paper elaborates on five shared grounds identified in the Report for both the specific failings on gender and the broader failings of efforts to date to deal with the past, namely: (1) the focus on deaths to the neglect of other harms; (2) the 'events-based' approach, which overlooks structural dynamics and patterns of violations; (3) the absence of baseline data on the violations that occurred and efforts at redress; (4) the fragmented nature of official efforts to deal with the past, that continually disaggregate criminal justice initiatives from truth, reparations and guarantees of non-recurrences; and (5) the striking failure to deliver on reparations to victims. These identified five deficiencies underpin both a failure to address gender and the broader structural limitations of efforts to date to deal with the past in Northern Ireland. Thus, the Report of the Special Rapporteur has made improvements on gender an essential element of overall improvements to official efforts to deal with the past. The Working Paper concludes with some proposals for leveraging the Report to advance the integration of gender in dealing with the past in Northern Ireland and reflects on the implications of the Northern Irish case for similar efforts elsewhere.

### **Key Findings**

1. International interventions can be useful in offering a new diagnostic and prognostic framing for existing local public policy challenges.
2. Where international interventions are shaped by meaningful commitment and expertise in international gender equality norms, they can re-structure local incentives, by establishing the relationship between gender-inclusive peacemaking and peacemaking *per se*.
3. External interventions based on international gender equality norms can usefully challenge local civil society to address their own silences and exclusions. From such a basis, the potential for new and inclusive civil society alliances is supported.
4. Gender is important as a matter of both process and outcome. Where international interventions validate local gender equality actors by taking them seriously, this can in turn help to re-shape local perceptions of which actors matter in the local political settlement.
5. Specific external normative interventions are best leveraged by being connected to broader international, peer and domestic enforcement mechanisms that are aligned to the same normative commitments.

**Keywords** Transitional justice; international law; gender equality; Northern Ireland; United Nations

## **Introduction: The Context of the Report**

Two decades of the steady proliferation of international standards and obligations regarding the treatment and rights of women affected by conflict confront ongoing challenges of efficacy. Do international legal and normative developments matter to the lives of women living in conflict-affected and post-conflict settings? The Working Paper addresses this larger question through the specific case study of the recent report of the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence on his Mission to Northern Ireland.

Northern Ireland is a setting in which efforts to agree a process to deal with the past have been long-running and the occlusion of gender as a consideration has been constant. The Working Paper argues that the Report of the Special Rapporteur has made an important intervention into the local peacemaking political settlement in Northern Ireland, by establishing an intrinsic connection between the two ostensibly separate objectives of, firstly, devising a process to deal with the past that meets the needs of victims (an objective which does have some elite buy-in) and, secondly, addresses gender (an objective currently without significant elite buy-in). The Report of the Special Rapporteur therefore evidences the role that can be played by such external interventions, shaped by international gender equality norms, by offering a new diagnostic (defining the problem) and prognostic (identifying the solutions) framing to existing local public policy challenges.<sup>1</sup> The Working Paper concludes with some proposals for leveraging the Report to advance the integration of gender in dealing with the past in Northern Ireland and reflects on the implications of the Northern Irish case for related efforts elsewhere.

The launch of the Report of Special Rapporteur was timely in some important respects: the report was published close to the second anniversary of the Stormont House Agreement, in which Northern Ireland's main political parties and the UK and Irish governments committed to establish four linked institutions to deal with conflict legacy issues.<sup>2</sup> The Stormont House Agreement's provisions on dealing with the past remain unimplemented. Further, the Report was published shortly before the chastisement of the UK issued by the Committee of Ministers of the Council of Europe, due to the unsatisfactory implementation in Northern

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<sup>1</sup> On diagnostic and prognostic framing, see further Jutta Joachim, *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights* (Georgetown University Press 2007).

<sup>2</sup> Stormont House Agreement, December 23, 2014, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/390672/Stormont\\_House\\_Agreement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf).

Ireland of the pertinent judgments of European Court of Human Rights.<sup>3</sup> Moreover, shortly after the Report was published, the Northern Ireland Lord Chief Justice made renewed calls to the government of meet its international legal obligation to fund legacy inquest reforms.<sup>4</sup> Finally, the Report was followed shortly thereafter by a visit to Ireland from United States Senator Gary Hart, to reiterate the US interest in full implementation of agreements to deal with outstanding legacy issues.<sup>5</sup>

The Report of the Special Rapporteur is unique in recent developments in Northern Ireland, in that it expressly deals with the absence of a gender perspective in the initiatives to date and future planned initiatives to address conflict legacy issues. Indeed, the opening 'Note' from the Report states:

With regard to truth-seeking initiatives, reparations programmes and the criminal justice system, [the Special Rapporteur] analyses the multiplicity of initiatives undertaken and the remaining challenges. He notes that most of the efforts have been “event-based” and have not allowed the patterns, policies and structural dimensions of violations and abuses to be addressed. The cases of death have been the focus of these measures, excluding most victims of torture, sexual abuse and illegal detention, *and have generally lacked a gender perspective*.<sup>6</sup>

Moreover, the Special Rapporteur not only prioritised gender thematically in the writing of the report, but also in the conduct of his visit. The Special Rapporteur specifically reached out to women’s groups working on general issues of gender inequality, as well as advocates working specifically on the integration of a gender perspective in dealing with the past.

An external perspective has always had a valuable role in conflict-resolution and longer-term peacebuilding in Northern Ireland, for three key reasons: firstly, this is a perspective that reminds relevant actors that the challenges faced are not entirely unique or exceptional to the jurisdiction. In fact, challenges around accountability are relatively common across conflict-affected and post-conflict states. Hence the existence of a role such as the Special Rapporteur’s. There is no need to craft entirely new approaches to local challenges. There is

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<sup>3</sup> Council of Europe Council of Ministers, *McKerr Group v. the United Kingdom* (Application No. 28883/95) *Supervision of the execution of the European Court’s judgments*, 1273rd meeting – 6-8 December 2016, Item H46-40, available at [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016806c51c5](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016806c51c5).

<sup>4</sup> BBC News NI, ‘Government has ‘legal obligation’ over Troubles deaths inquests’, 15 December 2016, available at <http://www.bbc.com/news/uk-northern-ireland-38322209>.

<sup>5</sup> US State Department, ‘Personal Representative Gary Hart Travel to Belfast and Dublin’, 12 October 2015, available at <http://www.state.gov/r/pa/prs/ps/2015/10/248093.htm>.

<sup>6</sup> Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence on his Mission to the United Kingdom (advance unedited version), 17 November 2016, UN Doc. A/HRC/34/62/Add.1 [hereafter Report of the Special Rapporteur].

a body of learning which may be drawn upon regarding appropriate approaches, compromises and trade-offs. Thus, when the Special Rapporteur reminds the UK government and broader human rights community that other settings have achieved state disclosure in ways that do not pose physical threat to disclosing individuals, and without vague and (deliberately) undefined 'national security' standards,<sup>7</sup> that is a valuable exhortation to do differently – and to do better – for victims. Moreover, the attention in the Report to the issue of gender is a reminder of the learning-curve that has taken place internationally on gender and transitional justice,<sup>8</sup> from which the Northern Ireland process can usefully draw.

Secondly, this external perspective is useful because its assessment and recommendations are set against universal human rights standards and obligations, and not against the perceived political expediencies of the local context. In this specific instance, universal human rights standards and obligations have made attention to gender an essential element of the Special Rapporteur's Report. Set against international standards, such as United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security,<sup>9</sup> the CEDAW Committee's General Recommendation Number 30 on the rights of women in conflict prevention, conflict and post-conflict situations,<sup>10</sup> and the civil society-led Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation,<sup>11</sup> the deficiencies of the Northern Ireland process are both apparent and troubling.

Finally, external intervention has proven important in situations of stalemate locally. The small size of the Northern Ireland population relative to the rest of the UK – combined with the small number of political representatives from Northern Ireland in the central Westminster parliament (18 / 650 House of Commons seats) – has historically meant that Northern Ireland's democratic 'leverage' on central UK government is low. Northern Irish issues have relatively little political traction in the wider UK context. International scrutiny,

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<sup>7</sup> *Ibid*, paragraphs 41-47.

<sup>8</sup> Catherine O'Rourke, 'Gender and Transitional Justice' in Cheryl Lawther et al (eds), *Handbook of Transitional Justice* (Edward Elgar Publishing, forthcoming 2017) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2839339](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2839339).

<sup>9</sup> United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security, 30 October 2000, UN Doc. S/RES/1325.

<sup>10</sup> Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation Number 30 on the rights of women in conflict prevention, conflict and post-conflict situations, 18 October 2013, CEDAW/C/GC/30.

<sup>11</sup> Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, 21 March 2007, available at [https://www.fidh.org/IMG/pdf/NAIROBI\\_DECLARATIONeng.pdf](https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf).

grounded in the UK's international legal obligations, has therefore proven useful in providing an impetus for the UK government to act on outstanding peace and human rights challenges. The Working Paper contends that the Special Rapporteur has made an intervention into ongoing contested efforts to deal with the past in Northern Ireland that is potentially highly valuable to those seeking to integrate gender into current efforts. The potential is significant for two key reasons. Firstly, the Report has named the failure to address gender as both an overarching deficiency of current efforts, as well as specifically identifying the failure to address gender in respect of justice, truth and reparations initiatives. By naming it in this manner, the Special Rapporteur has made deficiencies on gender increasingly difficult for state and civil society actors to overlook. Secondly, and I submit more importantly, the report carefully identifies how the grounds for the exclusion of gender are also the grounds for the fundamental deficiencies of the overall approach to dealing with the past in Northern Ireland. The Report has established in clear and uncertain terms that, without concerted and deliberate attention to gender, official efforts to deal with the past will continue to fail victims and society more broadly.

The Working Paper elaborates on five shared grounds identified in the Report for both the specific failings on gender and the broader failings of efforts to date to deal with the past, namely: (1) the focus on deaths to the neglect of other harms; (2) the 'events-based' approach, which overlooks structural dynamics and patterns of violations; (3) the absence of baseline data on the violations that occurred and efforts at redress; (4) the fragmented nature of official efforts to deal with the past, that continually disaggregate criminal justice initiatives from truth, reparations and guarantees of non-recurrences; and (5) the striking failure to deliver on reparations to victims. These identified five deficiencies underpin both a failure to address gender and the broader structural limitations of efforts to date to deal with the past in Northern Ireland. Thus, the Report of the Special Rapporteur has made improvements on gender an essential and unavoidable element of overall improvements to official efforts to deal with the past in Northern Ireland. The Working Paper concludes with some proposals for leveraging the Report to advance the integration of gender in dealing with the past in Northern Ireland and reflects on the implications of the Northern Irish case for similar efforts elsewhere.

### **Five Ways that the Success of Dealing with the Past is Dependent on Improved Attention to Gender**

*(1) Broadening the Focus on Deaths, to Include Other Violations and Abuses*

One of the most prominent and oft-noted deficiencies of the Northern Ireland approach to dealing with the past has been the exclusive focus on accountability for deaths. This is typically attributed to obligations emerging from procedural elements of the European Convention on Human Rights' guarantee of the right to life to also include an obligation to provide an independent impartial investigation into killings.<sup>12</sup> While the high level of attention to deaths is understandable, the relative neglect of other non-fatal harms is neither useful nor inevitable. The Special Rapporteur identifies a dynamic in which, due to official processes focusing exclusively on deaths have in turn shaped civil society interventions, which respond to these same official processes. Such an approach is deficient in human rights terms, because it neglects a much broader swathe of human rights violations:

The responses given by government institutions and civil society organizations have focused on deaths, despite instances of other violations, including cases of illegal detention, severe bodily injuries, and torture, which far outnumber the actual cases of death. These cases deserve urgent attention, as victims have a right to comprehensive redress and because some of them are in situations of extreme vulnerability. Claims left without redress have a large impact on the credibility of institutions.<sup>13</sup>

Importantly, however, the Special Rapporteur highlights the specific gender deficiencies of an exclusive focus on conflict-deaths. The universe of victims who lost their lives in the conflict is overwhelmingly male, to the tune of 91% of all those killed.<sup>14</sup> Given the disproportionate role of women in caring for surviving family members, it was women who managed the financial and emotional burden of sustaining families who lost male relatives, as well as continuing campaigns for accountability:<sup>15</sup>

Furthermore, the gender-related dimension of violations and abuses committed during the Troubles' – particularly the heavy burden, disproportionately shouldered by women, of caring for traumatized and/or disabled family members – deserves sustained, thorough analysis and integration into policymaking.<sup>16</sup> Consequently, the Special Rapporteur recommends, as a priority, attention to a broader range of human rights violations.<sup>17</sup> In the implementation of this recommendation lies very significant potential for those advocating a gender-sensitive approach to dealing with the past.

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12 See further Catherine O'Rourke, *Gender Politics in Transitional Justice* (Routledge, 2013) 88-91.

13 Report of the Special Rapporteur, *supra* note 6, paragraph 18.

14 Bertha McDougall, *Support for Victims and Survivors: Addressing the Human Legacy* (Interim Commissioner for Victims and Survivors, 2007) 44.

15 Legacy Gender Integration Group, *Workshops Report: Developing Gender Principles for Dealing with the Past* (Belfast, November 2016), available at <http://bit.ly/29qs7qs>.

16 Report of the Special Rapporteur, *supra* note 6, paragraph 18.

17 *Ibid*, paragraph 126.

## (2) *Eschewing an 'Events-based' Approach that Obscures Patterns and Structures*

Intrinsically linked to the exclusive focus on deaths is the approach to violations which the Special Rapporteur describes as 'events-based':

The investigative mechanisms ... are designed to clarify a particular event, not to reveal structural or systemic aspects of violations, including patterns replicated in similar incidents, or other underlying factors, such as chains of command, orders or policies.<sup>18</sup>

There is currently no institution or official process charged with investigating and identifying patterns in the violations that took place during the conflict and the circumstances giving rise to those violations. This is an approach that eschews all structural dimensions to the conflict and its resolution. It is an approach, likewise, that has failed to call into view even the most basic of gender dynamics, such as the preponderance of women in unpaid caring roles for victims and survivors of the conflict,<sup>19</sup> or the routine practice of strip-searching imprisoned female members of proscribed organisations,<sup>20</sup> or the absence of effective recourse to the state's criminal justice institutions by female victims of gender-based violence.<sup>21</sup> As the Special Rapporteur notes, the failure to address the gender dynamics of the conflict is inherent to the broader failure to investigate and acknowledge broader structural dynamics of the conflict:

Event-based measures do not necessarily make a systematic assessment of cross-cutting thematic issues. The gender-related impact of violations and abuses has been understudied at an official level.<sup>22</sup>

Tellingly, the specific recommendation of the Special Rapporteur in this regard – to give the planned Implementation and Reconciliation Group a clear mandate and design to address patterns, themes and structural dimensions of the conflict<sup>23</sup> – reflects the established priority

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<sup>18</sup> *Ibid*, paragraph 35.

<sup>19</sup> Michael Potter, *In Their Own Words: A Research Report into the Victims Sector in Northern Ireland* (Training for Women Network, Belfast, 2004). See further Catherine O'Rourke and Aisling Swaine, 'Gender, Violence and Reparations in Northern Ireland: A Story Yet to be Told', *International Journal of Human Rights* Special Issue: Transformative Reparations for Conflict-Related Sexual Violence, edited by Andrea Durbach and Louise Chappell (forthcoming 2017).

<sup>20</sup> O'Rourke, *supra* note 12, 45-46.

<sup>21</sup> Monica McWilliams and Joan McKiernan, *Bringing It out in the Open: Domestic Violence in Northern Ireland* (Belfast: HMSO, 1993).

<sup>22</sup> Report of the Special Rapporteur, *supra* note 6, paragraph 36.

<sup>23</sup> *Ibid*, paragraph 18. 'Given that the Historical Investigations Unit, like past mechanisms, will be case-based, the implementation and reconciliation group must be designed, staffed, funded and authorized to address the patterns, themes and structural dimensions of a conflict that cannot be properly understood or addressed as the sum of isolated cases. In the Agreement, the wording referring to the Implementation and Reconciliation Group is vaguer than for the other proposed institutions.'

of the key civil society group advocating for the integration of gender into the Northern Irish process for dealing with the past, namely '[e]nsuring that gender is both integrated into each of the themes as well as identified as a specific theme for investigation are practical measure to this end'.<sup>24</sup>

### (3) *The Need for Baseline Data*

The Report of the Special Rapporteur is withering in its criticism of the absence of essential baseline descriptive data as to the most basic aspects of the conflict, such as who – in organisational terms – was killed and injured, and by whom; how many conflict-related prosecutions have proceeded, with what outcome.<sup>25</sup> Likewise, the dearth of data with regard to services and compensation received by victims of the conflict is noted negatively.<sup>26</sup>

The surprising shortfall in data on virtually all aspects relating to truth, justice and reparation should be addressed. Lack of data informing assessments of costs, distribution and effectiveness fuel charges of partiality and do not contribute to clarity regarding necessary additional efforts. The United Kingdom has the institutional means to compile such information.<sup>27</sup>

The sustained nature of this observation throughout the report, and the priority given to its redress, dovetails in important ways with the Report's observation that:

The lack of attention to the impact, whether direct or indirect, of the violence of the Troubles on women is a particular concern. Since the violations and abuses, the hardships faced by women, many of whom have raised their families single-handedly with limited resources, have been exacerbated. While community groups do provide some assistance, the State has not engaged in a thorough analysis or sustained effort to address the gender-related dimensions of violations and abuses.<sup>28</sup>

There is a clear convergence of the need for improved baseline data and broader gender advocacy, because improved data collection and analysis would open to door to gender-disaggregated understanding of the conflict, its impact, and ultimately to redress measures that are tailored to gendered needs.

### (4) *Integrating "Fragmented" Initiatives to Deal with the Past*

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24 Legacy Gender Integration Group, *Gender Principles for Dealing with the Legacy of the Past* (Belfast, September 2016), Principle 8, available at [https://www.ulster.ac.uk/data/assets/pdf\\_file/0009/66285/Gender-Principle-Report-Sept-2015-Final-Version.pdf](https://www.ulster.ac.uk/data/assets/pdf_file/0009/66285/Gender-Principle-Report-Sept-2015-Final-Version.pdf). See further Ahmed, O'Rourke *et al*, 'Note from the Field: Developing Gender Principles for Dealing with the Legacy of the Past', *International Journal of Transitional Justice* (2016) 10 (3): 527-537.

25 Report of the Special Rapporteur, *supra* note 6, paragraphs 50-54.

26 *Ibid*, paragraph 67.

27 *Ibid*, paragraph 123.

28 *Ibid*, paragraph 78.

The Report of the Special Rapporteur has been particularly valuable in drawing together under one evaluative framework the distinct truth, justice, reparations and institutional reform initiatives that form the overall package of transitional justice in Northern Ireland. This approach reflects broader international learning and UN policy-making in this regard, which understands transitional justice initiatives as essentially and appropriately linked (for example, the UN Secretary General Guidance Note on Transitional Justice<sup>29</sup>). Indeed, it is the highly siloed and ‘fragmented’ character of the current approach that motivates substantial criticism from the Special Rapporteur.

Analytically, the integrated approach to evaluating current efforts is extremely valuable in revealing to multiple and compounding gender exclusions across all official efforts to deal with the past. The Report is powerful in revealing the complete marginalisation of gender across truth, justice and reparations. It reveals this exclusion not as incidental to isolated elements of the current process, but rather as structural to the entire approach.

#### *(5) Delivering Comprehensive and Integrated Reparations*

The Report of the Special Rapporteur notes, unequivocally, that ‘[t]he area of least achievement in the context of Northern Ireland remains reparations, despite various programmes to assist victims’.<sup>30</sup> The Report notes, with particular concern, the departure in Northern Ireland from internationally-accepted norms in designing reparations. Reliance on multiple partial programmes intended for particular sub-groups of victims, but which fails to establish the experience of human rights violations as the core eligibility criterion, and involve an element of acknowledgment in their delivery, is the subject of particular critique in the Northern Irish process:

Programmes with different types of exclusions are rife: certain types of conditions are not covered (such as various forms of psychological disability), while some categories of person are ineligible, in particular any member of a group classified as terrorist or his/her family, barred from receiving benefits, a limitation already highlighted in 1998 that still causes a great deal of division and dispute [footnotes omitted].<sup>31</sup>

In addition, the Special Rapporteur notes: ‘Gender gaps identified in the provision of reparations reflect the broader challenge of ensuring reparations that are gender-sensitive’.<sup>32</sup>

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29 United Nations Secretary-General, Guidance Note on United Nations Approach to Transitional Justice, March 2010, available at [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf)

30 Report of the Special Rapporteur, *supra* note 6, paragraph 60.

31 *Ibid*, paragraph 68.

32 *Ibid*.

It is clear from the Report, therefore, that the failure on reparations and their gendered components are intimately linked: without a comprehensive and integration reparations process, its gendered deficiencies will remain unaddressed. Likewise, reparations that are not gender-sensitive will continue to fail to meet the needs and rights of victims and survivors.

### **An Observation and a Caveat**

#### *The Observation*

The Report of the Special Rapporteur is notable also for its identification of the success of institutional reform initiatives in Northern Ireland to guarantee the non-recurrence of past violations, in particular in respect of the police force,<sup>33</sup> but also criminal justice reform more broadly, and in the successful demobilisation of non-state armed groups. Thus, the Report notes, the Northern Ireland transition is distinguished by the success of its ‘forward-looking’ components, which contrast tellingly with past-focused transitional justice efforts.

In my own research on transitional justice in Northern Ireland and elsewhere, I found evidence that forward-looking institutional reforms often do yield dividends for women, even if that is not the primary objective of such reforms.<sup>34</sup> Moreover, I found that women’s movements were inclined to prioritise issues such as women’s political participation and domestic violence in transitions from conflict, tied to forward-looking developments in state institutions. Such dynamics presented a pattern of the ostensible de-linking of perceived forward looking gender equality issues from those gender equality issues more clearly rooted in past-focused accountability and transitional justice. Such de-linking can be strategic and advantageous in certain respects, as it can permit progress on forward looking reforms for women while stasis on accountability persists. Nevertheless, such de-linking of gender equality issues poses important and challenging questions for women’s civil society about its implications for the denial of the rights of women victims and survivors.

#### *The Caveat*

While the value of the international framework for prioritising gender has been noted, the Report includes a rather unhelpful aside regarding the applicability of the UN Security Council Resolution 1325 (2000) on Women, Peace and Security to Northern Ireland:

Given the State’s ambiguity with regard to the classification of the Troubles, Security Council resolution 1325 (2000) and related policy recommendations cannot be applied to Northern Ireland.<sup>35</sup>

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33 Report of the Special Rapporteur, *supra* note 6, paragraph 108.

34 O’Rourke, *supra* note 12, 191-234.

35 *Ibid*, paragraph 36.

It is significant, of course, that the Special Rapporteur did not need to determine Resolution 1325 to be applicable to Northern Ireland in order to nevertheless identify the gendered deficiencies of the Northern Irish process. This is a positive story in terms of the Special Rapporteur's mainstreaming of gender throughout his mandate. Nevertheless, the determination by the Special Rapporteur that Resolution 1325 does not apply is unhelpful - both locally and globally - for a number of reasons. Firstly, in global terms, the text of the resolution and its successors are clear that the implementation of the Women, Peace and Security agenda does not imply any determination about conflict thresholds or the application of international humanitarian law (IHL). While some provisions prevail exclusively in contexts in which IHL applies, the bulk of provisions involve no such prerequisite. The Special Rapporteur has unhelpfully conflated application of IHL and the application of the Women, Peace and Security resolutions. Secondly, in the specific context of Northern Ireland, the Special Rapporteur's position is expressly contrary to the position adopted by the CEDAW Committee. In the two most recent periodic examinations of the UK, the CEDAW Committee has challenged the government on its failure to implement the resolution in Northern Ireland and has made recommendations in this regard in the Concluding Observations.<sup>36</sup> Indeed, in its response to the Committee, even the UK government representative acknowledged that elements of the Resolution 1325 – such as the participation of women in foreign relations – apply to all UN member states.<sup>37</sup> On the whole, therefore, the Special Rapporteur has made an unfortunate misstatement of the legal and normative obligations attendant to Resolution 1325. It is important that he take the opportunity to correct this misstatement in future thematic and country reporting.

### **Conclusion: The Potential to Do Things Well**

The Report of the Special Rapporteur makes a welcome and hugely constructive intervention into ongoing debates on how to deal with the past in Northern Ireland. The Working Paper has focused in particular on the potential value of its repeated identification of gendered deficiencies of the current process and the relationship it establishes between those deficiencies and overall dissatisfaction with the process. The Report is additionally

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36 Committee on the Elimination of All Forms of Discrimination Against Women, *Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc. CEDAW/C/UK/CO/6 (2009) at para 285, calling on the UK to implement Resolution 1325 fully in Northern Ireland; Committee on the Elimination of All Forms of Discrimination Against Women, *Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc. CEDAW/C/GBR/7 (2013) at paragraph 43.

37 Committee on the Elimination of All Forms of Discrimination Against Women, Summary Record (Partial) of the 1143rd Meeting, Consideration of Reports Submitted by States Parties under Article 18 of the Convention (Continued) *Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland* (Continued), UN Doc. CEDAW/C/SR.1143 (2013), paragraphs 14 and 26.

helpful – coming as it does after many failed initiatives, abortive talks and false starts – because it eschews the understandably jaded perspective of local seasoned actors. Instead articulates the positive promise and potential of the Northern Irish process:

Northern Ireland is in some respects an auspicious environment for addressing the past: it is part of a well-established, affluent democracy, with strong institutions, both generally and in the area of human rights (including the Northern Ireland Human Rights Commission), and is proud of its culture of respect for human rights and the rule of law. Furthermore, it has a strong civil society and extraordinary expertise on transitional justice (largely underutilized by official institutions) among both academics and practitioners.<sup>38</sup>

The Special Rapporteur might well have added that the potential for a gender-inclusive process is likewise high in Northern Ireland, given the presence of experienced and talented women’s civil society and the concentration of gender expertise amongst academics.

Local human rights actors were excited by the Special Rapporteur’s visit and optimistic that it might inform more constructive input on dealing with the past from the UK government. Regrettably, the report has had a lower profile and less impact than might have been hoped. Coming after the Brexit referendum and after changes in both local and central UK government leadership (most notably, the changes to the Secretary of State for Northern Ireland and the Prime Minister), the Report may have been superseded by domestic developments. The key challenge, therefore, is to ensure that the Report’s emphasis on gender is amplified and utilised to inform both official practice and civil society advocacy going forward.

This challenge – and its attendant opportunities – are not unique to Northern Ireland. They also have traction elsewhere. Northern Ireland is distinctive in terms of postconflict settings, given the dual presence of both functioning state institutions and a relatively high traction to international human rights norms. Nevertheless, the Northern Ireland case offers insights about international norms and how their promotion and intervention can help to leverage change in a process otherwise frozen by elite inaction. In earlier research, I established how exclusions and silences in the documentation and advocacy of human rights organisations led directly to the marginalisation of women and gender in subsequent official processes to deal with the past.<sup>39</sup> Thus, even if the impact of the Report of the Special Rapporteur is confined to civil society actors, it carries the promise of important material effect. Beyond this, there are reasons to believe that the Report will be agenda-setting for future planning to deal with the past, given both the ongoing scrutiny of international human rights actors over

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38 Report of the Special Rapporteur, *supra* note 6, paragraph 110.

39 O’Rourke, *supra* note 12.

Northern Ireland peacemaking and the significant local civil society buy-in to the findings and recommendations of the Report.

The paper concludes with some brief proposals as to how the Report can be further leveraged towards an agreed and gender-inclusive process to deal with the past. The proposals address both the specific context of Northern Ireland and the broader context of postconflict states confronting outstanding past-focused accountability challenges:

1. International and peer scrutiny: Reports such as the Special Rapporteur's can usefully leverage international and peer scrutiny on the specifically gendered components of peacemaking. For example, in the Northern Ireland case, the Report can, in particular, inform engagements with the Committee of Ministers of the Council of Europe and its ongoing oversight of the UK government initiatives to redress its current non-compliance with procedural elements of the right to life. Moreover, the Special Rapporteur's report would no doubt be of keen interest to the CEDAW Committee in its next periodic review of the UK. Likewise, other treaty monitoring procedures may offer similar potential. Further, the report might usefully inform peer monitoring of the UK by the Irish Government, which is an international leader on the implementation of Resolution 1325, as well as a key actor in dealing with the past in Northern Ireland.
2. Official domestic scrutiny: Independent and political bodies involved in scrutinising the government's human rights performance should be encouraged to draw on the Report to inform their work and to become advocates for attention to gender. In particular, the role of the Northern Ireland Human Rights Commission is potentially significant, given its dual mandate to promote accountability and to advance the prohibition of discrimination against women. Likewise, Westminster Committees such as the Joint Committee on Human Rights and the Northern Ireland Affairs Committee constitute potential allies, if the Report can be used to convince them that gender is integral to the success of official efforts to deal with the past.
3. Civil society human rights-based scrutiny: The Report constitutes an important measure towards the education of the human rights community and advocacy, which are typically quite variable in their attention to – and understanding of – gender and dealing with the past. Just as the Report treats gender as integral to dealing with the past, civil society human-rights based advocacy must do likewise. The potential should also be considered for relevant strategic litigation.
4. Broader civil society alliance-building: The Report's emphasis on gender creates unique and unprecedented potential to build alliances between those focused on

past-focused accountability and those focused on forward-looking gender equality issues, in Northern Ireland and elsewhere. Such opportunities should be actively pursued. The Report of the Special Rapporteur can form a useful basis for discussion.

**About the Author** Dr Catherine O'Rourke is Senior Lecturer in Human Rights and International Law and the Transitional Justice Institute, Ulster University. She coordinates the Gender Research Theme of the Political Settlements Research Programme. Dr O'Rourke is independent academic expert of the Oversight Group of the Irish Government's National Action Plan on Women, Peace and Security and is also a member of the Belfast-based Legacy Gender Integration Group, which has developed Gender Principles for Dealing with the Legacy of the Past. She is author of *Gender Politics in Transitional Justice* (Routledge, 2013) and Irish Fulbright Scholar 2016/17 at the University of Minnesota Institute for Global Studies Human Rights Program.