

## **The Irish language, Ulster Scots, the Military Covenant and the definition of a victim of the conflict (S462)**

**CAJ Discussion Note, April 2017**

There have been a number of recent media reports citing various proposals that have reportedly been subject to the current political negotiations. These include a reported proposal for extending the St Andrews Agreement mandated Irish Language Act to also cover Ulster Scots; and proposals for the implementation of the UK Military Covenant in Northern Ireland as well as proposals to change the definition of a victim. The purpose of this briefing note is to provide commentary from a human rights perspective on these issues. In summary:

- **Irish Language Act:** in addition to the commitment in the (UK-Ireland) international agreement at St Andrews legislating to protect the Irish language engages the UK's human rights treaty-based commitments at the UN and Council of Europe, who have made half a dozen calls for implementation;
- **Ulster Scots:** international treaty bodies have consistently held that seeking artificial parity for Ulster Scots and Irish will damage the protection and development of both, to the detriment of speakers of both the Irish and Scots languages. Measures to promote Ulster Scots should be tailored to the needs of speakers and its preservation – not as a counterweight to Irish;
- **Military Covenant:** as in our evidence to Westminster on housing and health care issues we would urge a rights-based approach removing any barriers particular to service personnel to ensure equality of opportunity in access to services. This is different to any proposals to afford *preferential* treatment in housing and health waiting lists; this would dismantle the founding principles of the NHS and NIHE that decisions be on the basis of objective need;
- **Definition of Victim:** a definition of a victim of a conflict-related incident is currently provided for in the Victims and Survivors NI Order 2006. Proposals to change this to cover only 'innocent victims' may have a much greater scope than is often understood and have the effect of excluding almost all victims of the State (e.g. a child killed by a plastic bullet may no longer be considered a victim). The UN Special Rapporteur has recently highlighted a basis for reparations programmes that is not dependent on re-definition of victim;

## Irish Language Act

The commitment to legislate for the Irish language is provided for in the bilateral (UK-Ireland) St Andrews Agreement 2006. This states that:

The [British] Government will introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language.<sup>1</sup>

CAJ has been concerned for some time that this and other human rights provisions committed to in international agreements as part of the peace settlement have not been implemented.<sup>2</sup> In addition to the obligation entered into by the State Party at St Andrews, legislating to protect the Irish language engages the treaty-based human rights commitments entered into by the UK with the UN and Council of Europe. In 2009 the UN Committee for Social, Economic and Cultural Rights expressed concern that the Irish Language Act had not been legislated for, and called for its enactment.<sup>3</sup> In 2010 Council of Europe assessed UK compliance with its commitments under the European Charter for Minority Languages. The Committee of Experts (COMEX) who oversee compliance with the Charter urged legislation to promote and protect the Irish language and agreed with the Northern Ireland Human Rights Commission that a legislative basis is even more important in the environment of political conflict as a means of achieving reconciliation.<sup>4</sup> In 2011 another Council of Europe treaty body, the Advisory Committee on the Framework Convention for National Minorities (FCNM), included the following provision among only three ‘Issues for Immediate Action’ by the UK to ensure compliance with its obligations under that treaty:

Develop comprehensive legislation on the Irish language in Northern Ireland and take resolute measures to protect and implement more effectively the language rights of persons belonging to the Irish-speaking community.<sup>5</sup>

The Committee also stated it was ‘deeply concerned by the failure to adopt legislation on the Irish language’. In 2014 COMEX reiterated its position on the Irish language Act. In 2016 the UN Committee on Economic Social and Cultural Rights also reiterated its concerns about the lack of effective measures to promote the use of the Irish language in NI and reiterated its

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<sup>1</sup> St Andrews Agreement, 2006; Annex B.

<sup>2</sup> See CAJ ‘Mapping the Rollback? Human Rights Provisions of the Belfast/Good Friday Agreement 15 years on’ Report of a conference held in the Great Hall, Queens University Belfast, 26 April 2013 (November 2013).

<sup>3</sup> CESCR called for “the State party, or the devolved administration in Northern Ireland, adopt an Irish Language Act with a view to preserving and promoting minority languages and cultural heritage...”

UNDOC E/C.12/GBR/CO/5, 22 May 2009 (ICESCR Concluding Observations on UK) paragraph 37.

<sup>4</sup> Council of Europe, (UK Third Monitoring Report) Report of the Committee of Experts on the Charter ECRML 2010(4), Paragraph 14.

<sup>5</sup> Council of Europe, (UK Third Opinion on the UK) Advisory Committee on the Framework Convention for National Minorities. 2011(006).

position that the UK adopt an Irish language act.<sup>6</sup> In March 2017 the Council of Europe Advisory Committee on the FCNM released its Fourth Opinion on UK compliance with minority rights urging the adoption of legislation protecting and promoting the Irish language and measures to ensure progress on the language rights of persons belonging to the Irish-speaking minority. The Committee was critical of “*Sectarian politics and a static interpretation of the notion of ‘good relations’ prevent reform of equality legislation and adoption of an Irish Language Bill*” regarding the lack of progress on language rights as:

...emblematic of a wider practice of sectarian-driven policy making that appears to dominate the political process, pushing the protection of the rights of other national and ethnic minorities to the fringes. Although the issue of language has become less sensitive in society, it continues to be perceived as an instrument with the potential to alter the balance between the two main communities, thereby becoming a hostage of a “good relations” policy which aims at avoiding tensions.

The Committee regarded the Irish language act as “a necessity to protect and promote the Irish language”. The Convention in particular provides for Bilingual signage and also promotes the use of bilingual Irish-English signage as a model of cultural pluralism stating that the use of bilingualism on signage and other public displays should be promoted where possible “*as a positive tool of integration to convey the message that a given territory is shared in harmony by various population groups.*”<sup>7</sup>

A number of further issues in relation to the Act were contained in CAJ’s submission to the DCAL consultation in May 2015.<sup>8</sup> Since this time further partnership research we have conducted with Conradh na Gaeilge in relation to Irish language provision has highlighted the fact that without legislative protections duties to promote the Irish language will not be implemented by many public authorities. As regards content of an Act there is a duty under Article 7(4) of the European Charter that in determining policy as regards the use of the Irish language states must take into consideration the needs and wishes expressed by speakers of the Irish language. To this end CAJ is conscious that the NGO POBAL has developed and published proposals for the Act which, in addition to being developed and supported by international experts, were developed by and with speakers of Irish, and would urge further consideration of them as the basis for the Act.

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<sup>6</sup> UNDOC E/C.12/GBR/CO/6, 14 July 2016 (ICESCR Concluding Observations on UK) paragraph 67-68.

<sup>7</sup> Council of Europe, (UK Fourth Opinion on the UK) Advisory Committee on the Framework Convention for National Minorities. ACFC/OP/IV(2016)005, paragraph 11, 105, 112.

<sup>8</sup> S443 CAJ’s Submission to the DCAL consultation Tograí faoi choinne Bille Gaeilge, May 2015.

## Ulster Scots

The rights of speakers of Scots also engage a number of treaty-based provisions and have been the subject of scrutiny by Council of Europe expert committees. The recent report of the Advisory Committee of the FCNM references the fate of the Ulster Scots strategy provided for under the St Andrews Agreement legislation that is yet to be adopted.<sup>9</sup> The Committee of Experts (COMEX) on the European Charter had recommended in 2010 the adoption of such “a strategy to enhance and develop Ulster Scots” in co-operation with Scots speakers and noted the lack of teaching of Scots in further education facilities. The most recent COMEX report in 2014 commended work by the Ulster Scots Agency to broaden the acceptance and usage of Ulster Scots; highlighted that qualified teachers would be able to help revitalise Ulster Scots within mainstream society and accordingly recommended the strengthening of support for the work of the Agency and steps to establish the teaching of Ulster Scots. The Committee of Experts also observed:

...that amongst speakers there was a spirit of mutual understanding between those wishing to promote the Irish language and the promotion of Ulster Scots. There was a realisation that the situation and needs of the two languages were different...

It commended work undertaken by the DCAL Minister to bring the two language communities together. In reference to this the report stated that “*This spirit of mutual tolerance and understanding appears to the Committee of Experts to be a valuable platform on which to build a political consensus.*”<sup>10</sup>

It is not clear from media reports referencing the potential for joint Irish and Ulster Scots legislation what, if anything, is actually being proposed to this end. There are a number of measures that international experts have highlighted to assist in the promotion and safeguarding of Ulster Scots. Any benefits to Scots from protection via legislation at its current stage of development are unclear and have not been recommended.

It would be concerning and damaging for both Ulster Scots and Irish if there are further attempts to seek artificial parity between these two linguistic traditions where like is not being compared with like. The position of the international framework is clear that each are to be treated in accordance with their particular and quite distinct situation, and that measures for each should be tailored to their development and safeguarding. Under the post-St Andrews mandate this issue became a particular problem whereby there was an aborted attempt to combine the separate Irish and Ulster Scots strategies under the legislation with a view to generating artificial parity between them. The Council of Europe report held:

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<sup>9</sup> Council of Europe, (UK Fourth Opinion on the UK) Advisory Committee on the Framework Convention for National Minorities. ACFC/OP/IV(2016)005, paragraph 103.

<sup>10</sup> Council of Europe, (UK Fourth Monitoring Report) Report of the Committee of Experts on the Charter ECRML 2014(1), paragraphs 15, 39, 70 Finding I and Recommendations.

The St Andrews Agreement Act 2006 places a statutory duty on the NI Executive to adopt a strategy to enhance and protect the Irish language. So far no strategy has been adopted. However the Minister for Culture Arts and Leisure (DCAL) intends to bring forward one strategy entitled “A Strategy for Indigenous or Regional Minority Languages”, which is intended to be a single strategy for Irish and Ulster Scots. The Committee of Experts is concerned that the strategy will strive towards parity between the two languages and therefore not serve the needs of either the Irish-Speakers or the Ulster-Scots speakers and will hold back the development of both languages.<sup>11</sup>

The Human Rights Commission in its submission to the treaty body raised similar concerns:

To the extent that an approach posited on bringing about parity between two unrelated minority languages with, at present, very different levels of usage and need would require the diversion of resources from the more used to the lesser used minority language, it is clearly incompatible with the provisions of the Charter and other human rights instruments. It is the duty of the state party to respect, protect and fulfil through progressive realisation measures to promote recognised rights on an objective, fair and rational basis.<sup>12</sup>

The Council of Europe has also raised concerns that parity type approaches lead not only to inappropriate steps, but also risk no steps at all being taken to promote indigenous languages when measures should be different. For example, written translations may be effective in promoting Irish but not Scots which is largely a spoken tradition without a standardised written format. Alternatively Scots in the context of all but its most maximally differentiated forms being mutually comprehensible with English, has promotional opportunities not available to Irish, this is a strength that can and should be harnessed rather than belittled. COMEX notes that in their experience:

... the Committee of Experts [previously] observed that inappropriate claims for parity of treatment between Irish and Ulster Scots in a number of instances led to the result that no measures were taken for either language, since it was not practically possible to apply the same measures to Ulster Scots. The Committee of Experts encountered similar issues in the current monitoring round, in particular in the general support of the languages. For instance, the opinion was even presented to the Committee of Experts that before any further steps were taken to promote Irish, the Ulster Scots language should be brought into the same position. The Charter is based on treating each regional or minority language in accordance with its specific situation. The situation of the two languages is quite different, and language measures specifically directed towards each language are needed. That is the only way that both languages can be protected and promoted according to their specific needs.<sup>13</sup>

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<sup>11</sup> Council of Europe, (UK Third Monitoring Report) Report of the Committee of Experts on the Charter ECRML 2010(4), Paragraph s 16, 17, 20, 57 and Finding D cited in ‘Guidance on the European Charter for Regional or Minority Languages’ the evolving authoritative interpretation of provisions (DCAL, April 2016).

<sup>12</sup> NI Human Rights Commission (September 2009) *Parallel Report on the ECRML*, para. 50.

<sup>13</sup> As FN 11.

CAJ in partnership research conducted in 2016 of the new arrangements for local government observed ongoing issues. It was notable, for example, that none of the new Councils in areas of NI where the Ulster variant of Scots has been traditionally spoken had adopted Ulster Scots policies; and that the Councils that had adopted Ulster Scots policies were in areas where Scots was not traditionally spoken, and had done so in as a response or counterweight to Irish language policies. The view was expressed to CAJ that councils in areas where Scots was traditionally spoken had not been politically pressed to adopt Ulster Scots policies as if they did it would be difficult to justify not adopting Irish language policies. Such a scenario would provide an example of where hostility to the Irish language, also has the effect of preventing the promotion of Scots.

It should also be borne in mind that measures taken to support indigenous languages are different in rights terms to the issues that are to be considered in relation to the languages of recent migrants (for example, to ensure that non-English speakers can access essential services such as health care), or for users of sign languages. Steps taken to safeguard indigenous languages are taken to safeguard the languages themselves and their patrimony, as reflected for example through traditional and correct forms of place names. There is no need to apply such measures to languages such as Polish or Mandarin Chinese, spoken by minority ethnic communities here, as the languages themselves, with millions and millions of speakers are not in need of safeguarding. The issues in relation to provision for migrant languages also engage the human rights framework but are quite different.

CAJ would urge that measures are taken to support and safeguard Scots in accordance with the recommendations of the treaty bodies.



## Military Covenant

Recent media coverage has also cited suggestions that legislation be introduced to provide for the UK Military Covenant in Northern Ireland, although we are not clear as to what has been proposed.

The legislative basis for the Armed Forces Covenant is provided for under the Armed Forces Act 2011.<sup>14</sup> The armed forces are largely an ‘excepted’ (non-devolved)<sup>15</sup> matter and the Covenant extends to Northern Ireland. The duty under legislation is for the Secretary of State (for Defence) to issue an Annual Report to Westminster about the effects on current or former service personnel in the fields of ‘healthcare, education and housing’, the ‘operation of inquests’ and any other matter the Secretary of State specifies. In preparing a report the Secretary of State must have regard to:

- “the unique obligations of, and sacrifices made by, the armed forces”
- “the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces; and”
- “the principle that special provision for service people may be justified by the effects on such people of membership, or former membership, of the armed forces.”

The duty under legislation therefore is one of producing an annual Armed Forces Covenant report - a Covenant per se was not legislated for. In order to prepare the annual report the Secretary of State must seek the views of any relevant government department and devolved administrations, including the Northern Ireland departments. The report must set out the views of the devolved administration, or if such views were sought and not obtained, the report must state that fact. If the Secretary of State considers that service personnel are at a particular disadvantage in any of the above fields this should be stated in the report along with the Secretary of State’s response to that. The Secretary of State is also under a duty to consider whether any ‘special provision’ in health, housing, education etc would be justified, and if so the report must reference this.

The most recent annual report (2016) makes reference to recognising the ‘special challenges’ of operating the Covenant in Northern Ireland, and states that the NI government will now send a representative to the Covenant Reference Group. The report does contain reports from the NI Departments on health, education and housing. The health section makes reference to specific mental health provision for service personnel and that the HSC ensures that service personnel and their families deployed in NI have their previous waiting times for NHS services taken into account. The education section makes reference to additional funding of just over £250,000 provided to NI schools for children who have a parent who is a member of the armed forces not normally resident in Northern Ireland and has established a dedicated bi-annual forum on the subject. In relation to housing, reference is made to the review of social

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<sup>14</sup> S2 of which amends the Armed Forces Act 2006 to insert section 343A-B.

<http://www.legislation.gov.uk/ukpga/2011/18/section/2>

<sup>15</sup> Northern Ireland Act 1998, paragraph 4, Schedule 3.

housing allocation in Northern Ireland and a proposal that housing and homelessness assistance for service personnel be ‘treated in accordance with the Covenant’s expectation’. Specific reference is made to service personnel satisfying the ‘local connection’ requirement on that basis and not being disadvantaged due to ‘mobility whilst in service’. The report also makes reference to a Covenant Fund having made just over £100,000 of small grants to projects and activities in Northern Ireland.

From a rights perspective the issues of an Armed Forces Covenant in general are different to those addressed early in this paper on minority languages which engage the rights of speakers per se. Where there is an interface relates to engagement with rights to health and housing; the legislative vehicle where such rights were to be given further effect here was the Bill of Rights for Northern Ireland. Legislating for the bill of Rights would therefore provide for a legal duty to ensure the removal of undue barriers to housing and health provision for service personnel as well as other groups.<sup>16</sup>

In 2013 CAJ gave written and oral evidence to the Northern Ireland Affairs Committee inquiry at Westminster. In particular this focused on health and housing issues, and an allegation at the time that the implementation of the Armed Forces Covenant in Northern Ireland in these areas was being inhibited by the statutory equality duty under Section 75 of the Northern Ireland Act 1998. Both CAJ and the Equality Commission gave evidence that this was not the case. Essentially the issue appears to have been a red herring. The Committee ultimately concluded that they had been reassured that the equality framework in Northern Ireland did not create a greater barrier to the covenant than elsewhere in the UK, and urged service providers to be cognisant of this.<sup>17</sup>

In their evidence organisations working on service personnel welfare such as the British Legion sought to downplay suggestions there were gaps in the implementation of the Covenant in Northern Ireland or that its implementation here was presenting any particular problems.<sup>18</sup> The Committee itself concluded there was no serious material disadvantage to service personnel in Northern Ireland. The main implementation issue appeared to have been that the Northern Ireland Executive were not presenting an agreed report – and the Committee recommended that information instead be sought from individual NI Departments.

In our evidence CAJ drew attention to two important and complementary equality principles. Firstly, that there are duties to target specific measures and initiatives to address the needs of

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<sup>16</sup> A right to education is already provided for under a protocol to the ECHR, yet was to be augmented by the Bill of Rights. In relation to rights to housing contrary to popular misconception this does not mean the state has to, for example, provide everyone with a house. It does however mean public authorities would be obliged to take appropriate measures to ensure any specific needs of disadvantaged groups are being redressed within available resources. This would include addressing the housing needs of service personnel where specific problems and disadvantage are identified.

<sup>17</sup> Northern Ireland Affairs Committee ‘Implementation of the Armed Forces Covenant in Northern Ireland’ First Report of Session 2013–14 HC 51, Paragraph 22 and findings.

<sup>18</sup> Oral Evidence Northern Ireland Affairs Committee ‘Implementation of the armed forces covenant in Northern Ireland’ Wednesday 17 April 2013 Colonel Richard Gordon dl and Brian Maguire.



particular groups facing disadvantage including, where applicable, service personnel. Secondly, that it is important in general that measures to tackle disadvantage through health and housing provision are undertaken on the basis of objective need. As well as the NHS we drew attention to the fact that this principle had long been incorporated into housing provision in Northern Ireland, referencing the establishment forty years ago of the Housing Executive as an independent body set up to allocate houses on the basis of objective need. This principle was also enshrined into the 2006 duty to adopt an anti-poverty strategy. Consistent with the evidence of the Equality Commission we gave evidence that removing particular barriers to equality of access for service personnel was consistent with the equality framework. More problematic however would for example be any scheme amending housing legislation to afford priority status to service personnel for housing provision on a basis other than objective need. This would, as within Great Britain, conflict with the equality law framework.

A copy of the text of the actual Armed Forces Covenant is reproduced within annual reports. It is described as a Covenant between both the British Government and the people of the UK with “All those who serve or have served in the Armed Forces of the Crown and their Families”. It reiterates a number of the service provision matters but also stresses that ‘the whole nation has a moral obligation’ to the armed forces that involves the whole of society. The Covenant is declaratory in nature rather than being intended to be legally binding. Within the context of freedom of expression within a democratic society British citizens are at liberty to support or not such sentiments and other ideological positions, such as pacifism, are permitted. In a context whereby the constitutional position is that the people of Northern Ireland are entitled to identify as and take British or Irish citizenship (or both) it should be recognised that any read over of the more symbolic elements of the Covenant should be done in a manner which is both compatible with freedom of expression and the provisions of the Belfast/Good Friday Agreement.

## Definition of a victim of the NI conflict

At present the Victims and Survivors (Northern Ireland) Order 2006 provides for a definition of a victim or survivor of a conflict-related incident. A ‘conflict-related incident’ is defined as a violent incident occurring in or after 1966 in connection with the affairs of Northern Ireland. A victim or survivor is (in summary) then defined as a person who:

- has been physically or psychologically injured (including by witnessing/providing assistance) in relation to a conflict-related incident;
- provides significant care to such an injured person;
- has been bereaved by a conflict-related incident.

There have been attempts at the Assembly and Westminster to amend this definition by the DUP in 2010 and 2013 respectively. The DUP have argued that the definition should only cover ‘innocent victims of terrorism’.<sup>19</sup>

In 2010 the Victims and Survivors (Disqualification) Bill as introduced the Assembly<sup>20</sup> would have amended the above definition in the 2006 Act, in relation to persons who had been injured in a conflict-related incident to exclude persons who had been ‘convicted of an offence in connection with any conflict-related incident’ or had been a member of a proscribed organization. The amendment would not have affected careers or persons bereaved by a conflict-related incident.

The amendment would have excluded injured persons from the definition of a victim if they had a conviction for any conflict-related offence at any other time, no matter how minor. For example a person convicted of a minor public order offence in 1968, who subsequently lost limbs in a bombing in the early 1990s, would no longer be considered a victim for the purposes of the Order.

Furthermore many persons responsible for serious conflict-related incidents were never convicted and would not be excluded. The manner in which the criminal justice system operated will also mean there would be a disproportionate impact on different sections of the community if using this indicator as a measure. For example, there were different arrest policies for Protestants and Catholics at times in the ‘Troubles’.<sup>21</sup> Very few members of the security forces were convicted in relation to conflict-related offences. It is difficult to argue conclusively that this is purely a reflection of members of the security forces rarely having committed offences as there is significant evidence of deficiencies in investigative and prosecutorial processes applied to state actors at stages of the conflict.

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<sup>19</sup> See for example:

[http://dev.mydup.com/images/uploads/publications/DUP\\_Victims\\_White\\_A5\\_v3\\_no\\_crops.pdf](http://dev.mydup.com/images/uploads/publications/DUP_Victims_White_A5_v3_no_crops.pdf)

<sup>20</sup> [http://archive.niassembly.gov.uk/legislation/primary/2010/niabill6\\_10.htm](http://archive.niassembly.gov.uk/legislation/primary/2010/niabill6_10.htm)

<sup>21</sup> <http://www.patfinucanecentre.org/declassified-documents/arrest-policy-protestants>

The exclusion of persons that had been members of a proscribed organisation provided for in the amendment does not require a conviction, and it is therefore not clear how such a determination would be made.

There are differences between this 2010 amendment and that tabled by Jeffery Donaldson MP in 2013 in seeking to amend what became the Northern Ireland (Miscellaneous Provisions) Act 2013.<sup>22</sup> This amendment would have inserted a definition of ‘victim and survivor of the conflict’ into equality legislation. This definition of a ‘Victim and Survivor of the Conflict’ would have covered persons:

Who had suffered harm caused by an act related to the conflict in Northern Ireland, for which they are not wholly or partly responsible, that is in violation of the criminal law.

It also would have covered a person who provides regular care to a person meeting the above definition who suffered a physical or psychological injury. In addition a further exclusion is applied preventing any person benefiting from this definition if they had a ‘serious criminal conviction’ – defined as a conviction in Northern Ireland or elsewhere warranting imprisonment for over five years.

This differs from the 2010 definition in a number of ways. Firstly it excludes all persons who have a serious criminal conviction (whether conflict-related or not), rather than any conviction for any conflict-related offence. Secondly it would include the exclusion of carers for excluded persons. It does not exclude persons who were paramilitaries *per se* but excludes persons who were wholly or partly responsible for the act in which they suffered harm.

Most potentially far reaching is the qualification that the conflict-related act in question that caused the harm must have been ‘in violation of the criminal law’ for the harmed person to qualify as a victim under the definition. Given that very few actions of the security forces were ever held to be in violation of the criminal law, this definition tends towards an approach – that has been advocated in other jurisdictions – whereby only victims of paramilitaries are held to be victims, and almost all victims of State actors are not held to be victims. Under such a definition persons including a child killed by a plastic bullet could cease to be considered victims.

The United Nations Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence addressed the issue of contestation of a definition of a victim in his recent report, undertaken on the invitation of the UK government, into dealing with the past in Northern Ireland.<sup>23</sup> The Special Rapporteur, Pablo de Greiff, referenced the contestation over the definition of a victim and noted that “*Once a debate is framed in the field of victimhood, it is notoriously difficult to resolve given that this category is, by its very nature, both descriptive*

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<sup>22</sup> <http://www.publications.parliament.uk/pa/cm201314/cmpublic/northernireland/130716/am/130716s01.htm>

<sup>23</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 of Great Britain and Northern Ireland A/HRC/34/62/Add.1 November 2016

*and evaluative. This use of the notion of “victim” is one way that any discussion on the past remains a zero-sum exercise.”*

The UN report noted that in establishing reparations programmes “*most countries steer away from debates over the definition of “victim”*”. In accordance with broad human rights concepts, such as that all persons have human rights, questions about affiliation, past behaviour or identity (whether of the perpetrator or the victim) are considered irrelevant and set aside.<sup>24</sup> The report continues:

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

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

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

CAJ therefore highlights the impacts of proposed amendments to date to definitions of a victim of the conflict, which are more wide-spread than is often articulated; the difficulties, complexities and potential for discrimination any attempt to qualify or create a ‘hierarchy’ of victims will inevitably lead to; and the observations of the UN Special Rapporteur as a basis for dealing with reparations programmes in a manner that is not dependent on re-definition of victim.

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<sup>24</sup> As above paragraphs, 71 & 7.