



Transitional justice from above and below: exploring the potential glocalising role of non-governmental organisations through a Northern Ireland case study*

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ABSTRACT

Non-governmental organisations (NGOs) have the potential to play a unique local-to-global role – ‘glocalisation’ – as intermediaries to international human rights bodies. NGOs are also significant actors in transitional justice societies and have the potential to make a positive contribution by linking local and global dimensions of transitional justice. Moving beyond analysis of legal transitional justice responses through domestic and regional courts and the United Nations (UN) treaty body individual complaints, this article calls for consideration of the role NGOs can play in transitional justice when they connect to quasi-judicial and political UN human rights bodies through state reporting mechanisms. As the work of these bodies is quite reliant on NGO expertise, particularly local NGOs, the article examines Northern Ireland NGO engagement with UN state reporting mechanisms regarding transitional justice.

The article concludes that, while the distinction between the state-centric review at the UN level and grassroots activities at a local level is ultimately a false dichotomy, this divide seems to be operating in practice in the case of Northern Ireland. We make a distinction between rights-focused and reconciliation-focused NGOs and find that reconciliation-focused NGOs in particular are largely absent from international reporting frameworks. We argue that NGOs have the potential to play a unique local-to-global role, ‘glocalisation’, but this only works if local NGOs are enabled and encouraged to engage at a global level. Hence, we recommend that, where possible, local NGOs must be involved in both grassroots activities and international monitoring via the UN in order to exploit their glocalising potential.

Keywords: transitional justice; NGOs; United Nations; human rights; UN Human Rights Council; peace; Northern Ireland; treaty bodies.

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INTRODUCTION

Transitional justice aims to deal with the past in the aftermath of violent conflict or dictatorial regimes and, given the diversity of strategies employed globally, is now understood as an umbrella term for a range of approaches.¹ Contemporary critique also recognises that, whereas victor's justice and the role of amnesties were initial focuses, this is now supplemented by other concerns such as the underlying politics, economic justice and the need to balance local and international agency.² Increasingly, it is recognised that an effective transitional process must engage with society as a whole, going beyond purely legal measures to promote a shift in the relationship between citizens and the state and between different social groups. Such socio-legal conceptualisations of transitional justice overlap considerably with the theory and practice of peacebuilding, a field that aims to support the achievement of sustainable peace and reconciliation in post-conflict societies.³ Similar to the expansion of transitional justice beyond purely legal concerns, peacebuilding is increasingly recognised as requiring transformative change in social relations as well as institutions.⁴ Scholarship in the fields of both transitional justice and peacebuilding debates the relative merits of either a 'top-down' or 'bottom-up' approach to achieving desired social changes.⁵

The dominant discourse is one of dichotomy; that transitional justice and related peacebuilding activities are best approached either from below – including efforts by civil society, grassroots organisations and communities – or above – including the activities of governments, funders and international organisations.⁶ However, this distinction is too simplistic and, increasingly, the capacity of civil society to not only

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- 1 Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun and Friederike Mieth, 'Transitional justice theories: an introduction' in Susanne Buckley-Zistel et al (eds), *Transitional Justice Theories* (Routledge 2013) 1.
 - 2 Khanyisela Moyo, *Postcolonial Transitional Justice: Zimbabwe and Beyond* (Routledge 2019).
 - 3 Dustin Sharp, 'Beyond the post-conflict checklist: linking peacebuilding and transitional justice through the lens of critique' (2013) 14 *Chicago Journal of International Law* 165.
 - 4 Brandon Hamber and Elizabeth Gallagher (eds), *Psychosocial Perspectives on Peacebuilding* (Springer 2014).
 - 5 See, for example, Nevin Aiken, Identity, *Reconciliation and Transitional Justice: Overcoming Intractability in Divided Societies* (Routledge 2013); Kieran McEvoy and Lorna McGregor (eds), *Transitional Justice From Below: Grassroots Activism and the Struggle for Change* (Hart 2008).
 - 6 See generally the scholarship that aims to elevate the voice of communities 'on the ground', as a response to formal legal institutions and international mechanisms, such as McEvoy and McGregor (n 5 above).

challenge and critique top-down legalistic approaches to transitional justice, but also complement and expand on them, is acknowledged.⁷ Similarly, the concept of ‘hybrid peace’, whereby internationally supported peace operations and local approaches to peace interface, has also gained traction in debates on local ownership in peacebuilding.⁸

The definition of transitional justice used here is from the then United Nations (UN) Secretary General Kofi Annan, who in 2004 defined it as comprising the ‘full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’.⁹ The Secretary General acknowledged that these ‘may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all)’.¹⁰ Despite this broad definition of transitional justice, some scholarship focuses solely on legal responses, particularly prosecutions, without acknowledging that this is only one (optional) part in a larger process.¹¹ Increasingly, however, transitional justice is recognised as a process that aims to not only (re)establish legal protections for human rights, but also to achieve a shift in attitudes and relationships among citizens towards support for peaceful coexistence, resulting in social reconciliation.

As can be seen from these definitions, transitional justice shares a central goal with the field of peacebuilding which also aims to achieve reconciliation. Transitional justice is increasingly seen as one of a number of peacebuilding tools that can assist post-conflict societies, alongside other initiatives such as demobilisation, disarmament and reintegration (DDR) or security sector reform (SSR).¹² However, the fields have developed largely in isolation from one another, and scholars have identified clear differences in how each field aims to achieve reconciliation. While transitional justice focuses on accountability and legal justice for victims, peacebuilding places greater emphasis on achieving political cooperation, reintegrating perpetrators and

7 Kieran McEvoy, ‘Commentary on locality and legitimacy’ in Nicola Palmer, Phil Clark and Danielle Granville (eds), *Critical Perspectives in Transitional Justice* (Intersentia 2012) 311.

8 Roger Mac Ginty, ‘Hybrid peace: the interaction between top-down and bottom-up peace’ (2010) 41(4) *Security Dialogue* 391.

9 United Nations Security Council, ‘The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General’ UN Doc S/2004/616, 23 August 2004.

10 Ibid.

11 See, for example, Jaya Ramji-Nogales, ‘Designing bespoke transitional justice: a pluralist process approach’ (2010) 32(1) *Michigan Journal of International Law* 3.

12 Sharp (n 3 above).

building trust between communities.¹³ This is reflected in differences in international support, where progress in human rights and transitional justice is monitored through UN reporting frameworks while peacebuilding work receives less formalised support through the UN peacebuilding commission – an intergovernmental advisory body that supports peace efforts in conflict-affected countries.¹⁴

Opportunities for greater connection between these two fields in practice may be being missed currently. Non-governmental organisations (NGOs) that view their primary remit as peacebuilding may not perceive their potential to contribute to, and benefit from, UN human rights reporting mechanisms that support transitional justice and human rights.¹⁵

A distinction has been identified between NGOs which are predominantly *rights-based* in their approach to peacebuilding and those which favour a *reconciliation-based approach*.¹⁶

Rights-based NGOs (rights NGOs) naturally tend to align their work with a legalistic approach to transitional justice and may engage little with wider aspects of peacebuilding. For example, they have pursued strategic litigation in domestic or regional courts, or in international law by lodging petitions with UN treaty bodies. With regard to the conflict in Northern Ireland, much legal practice and scholarship has been dedicated to the impact of the domestic legal system on the conflict, the use of the European Court of Human Rights and, to a lesser extent, petitions to UN treaty bodies.¹⁷

Such legal avenues are important in the suite of transitional justice tools, but the use of international human rights law and

13 Catherine Baker and Jelena Obradovic-Wochnik, 'Mapping the nexus of transitional justice and peacebuilding' (2016) 10(3) *Journal of Intervention and Statebuilding* 281.

14 Simultaneously established by resolutions of the General Assembly and Security Council: United Nations General Assembly (UN GA) (2005) Resolution adopted by the General Assembly on 20 December 2005 (A/RES/60/180) and United Nations Security Council (2005) Resolution 1645 (S/RES/1645).

15 Maggie Beirne and Colin Knox, 'Reconciliation and human rights in Northern Ireland: a false dichotomy?' (2014) 6(1) *Journal of Human Rights Practice* 26.

16 *Ibid.*

17 See, for example, Charles Carlton, 'Judging without consensus: the Diplock Courts in Northern Ireland' (1981) 3(2) *Law and Policy* 225; Antoine Buyse and Michael Hamilton (eds), *Transitional Jurisprudence and the ECHR: Justice, Politics and Rights* (Cambridge University Press 2011); Michael O'Boyle, 'Torture and emergency powers under the European Convention on Human Rights: Ireland v the United Kingdom' (1977) 71(4) *American Journal of International Law* 674; Onder Bakircioglu and Brice Dickson, 'The European Convention in conflicted societies: the experience of Northern Ireland and Turkey' (2017) 66(2) *International and Comparative Law Quarterly* 263.

international human rights bodies to lobby for transitional justice in a non-litigious way, and the specific potential of reconciliation-based NGOs (reconciliation NGOs) to contribute, has typically received less attention. Reconciliation NGOs are more likely to engage in peacebuilding activities that focus on building positive relationships between communities and are less likely to engage with the legalistic aspects of transitional justice.¹⁸

However, this should not mean that international human rights law cannot be leveraged by reconciliation NGOs. In particular, the quasi-judicial role of UN human rights treaty bodies and the political role of states on the UN Human Rights Council are fora in which reconciliation NGOs could make a significant and unique contribution due to their connection to local communities and their insight into how legal decisions impact on intercommunal relationships at local level.

It is the potential of NGOs to play a unique role in connecting top-down legalistic transitional justice initiatives and bottom-up reconciliation efforts that we explore in this article. The term 'glocalisation'¹⁹ has been adopted to express the intermediary role that NGOs can play between the global and local. At the global level, UN bodies are germane to the promotion and protection of human rights internationally. As such, post-conflict societies, where widespread human rights abuses have taken place, and where human rights may still be compromised, should warrant both scrutiny and support. The key monitoring mechanism of UN human rights bodies is that of state reporting, whereby a state's compliance with its international obligations is monitored by reviewing periodic reports submitted by

18 Beirne and Knox (n 15 above).

19 Initially a Japanese business term meaning the creation of products or services intended for the global market, glocalisation was later adopted by sociologists. See Habibul Haque Khondker, 'Glocalization as globalization: evolution of a sociological concept' (2004) 1(2) *Bangladesh e-Journal of Sociology* 14. The Oxford English dictionary definition of glocalisation is: 'The action, process, or fact of making something both global and local; specifically the adaptation of global influences or business strategies in accordance with local conditions; global localization': 'Glocalisation' (*Oxford English Dictionary Online*).

the state. State reporting is used by UN human rights treaty bodies,²⁰ quasi-judicial bodies comprised of independent experts, and the UN Human Rights Council, a state-centric, politicised peer-review mechanism.²¹ These mechanisms are generally co-operative rather than adversarial; they do not engage solely with legal questions and analysis, rather they engage frequently with broad human rights topics of relevance to people's day-to-day lives.

State reporting as a mechanism was once described as 'the weakest in the range of implementation techniques' in international human rights law.²² However, Brett later argued that providing information to UN treaty bodies in state reporting can raise issues of concern that may not meet the definition of 'violations', such as proposed laws where preventive action is required.²³ Further, the introduction of the Universal Periodic Review (UPR) – the cornerstone of the UN Human

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- 20 See, for example, Anne F Bayefsky (ed), *The UN Human Rights Treaty System in the 21st Century* (Kluwer Law International 2000). State reporting obligations are outlined in each of the core international human rights law treaties, see section six below for further discussion. Ordered by date of adoption by the General Assembly, the nine core treaties are: International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) (ICERD); International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (ICCPR); International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (ICESCR); Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981) (CEDAW); International Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) (CAT); Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) (CRoC); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, opened for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003) (CRMW); International Convention for the Protection of All Persons from Enforced Disappearance, opened for signature 20 December 2006, 2716 UNTS 3 (entered into force 23 December 2010) (CED); Convention on the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) (CRPD).
- 21 Human Rights Council, *Institution-building of the United Nations Human Rights Council*, HRC Resolution 5/1, Human Rights Council 9th meeting, UN Doc A/HRC/RES/5/1 (18 June 2007).
- 22 Dana D Fischer, 'International reporting procedures' in Hurst Hannum (ed), *Guide to International Human Rights Practice* (University of Philadelphia Press 1984) 165.
- 23 Rachel Brett, 'State reporting: an NGO perspective' in Anne F Bayefsky (ed), *The UN Human Rights Treaty System in the 21st Century* (Kluwer Law International 2000) 57, 57.

Rights Council's Institution-building package,²⁴ has reasserted the importance of state reporting in international human rights law. As a mechanism, the UPR has been found to have significant potential in influencing state behaviour.²⁵ Treaty body state-reporting mechanisms have also been identified as having potential to address human rights issues related to conflict, including by forging synergies with transitional justice mechanisms and broader post-conflict recovery policies.²⁶ Further, several domestic factors may positively affect the effectiveness of treaty body state reporting, particularly the mobilisation of domestic actors.²⁷ As such, UN state-reporting mechanisms warrant examination as a key tool in the monitoring of international human rights law.

In addition to considering reports from states, UN bodies are reliant on NGOs in terms of their understanding of the issues on the ground, and in the development of appropriate recommendations.²⁸ It has been established that the role of NGOs in UN human rights bodies requires further examination.²⁹ Previous studies have examined the role in UN state-reporting mechanisms and heralded their importance, but often

24 Human Rights Council, *Institution-building* (n 21 above).

25 See, for example, Rochelle Terman and Erik Voeten, 'The relational politics of shame: evidence from the universal periodic review' (2018) 13(1) *Review of International Organizations* 1.

26 Evelyne Schmid, 'Socio-economic and cultural rights and wrongs after armed conflicts: using the state reporting procedure before the United Nations Committee on Economic, Social and Cultural Rights more effectively' (2013) 31(3) *Netherlands Quarterly of Human Rights* 241.

27 Jasper Krommendijk, 'The (in)effectiveness of UN Human Rights treaty body recommendations' (2015) 33(2) *Netherlands Quarterly of Human Rights* 194.

28 Fiona McGaughey, 'The role and influence of non-governmental organisations in the Universal Periodic Review – international context and Australian case study' (2017) 17(3) *Human Rights Law Review* 421; Fiona McGaughey, 'Advancing, retreating or stepping on each other's toes? The role of non-governmental organisations in United Nations Human Rights treaty body reporting and the Universal Periodic Review' (2017) 35 *Australian Year Book of International Law* 187.

29 See, for example, Linda Camp Keith, 'Human rights instruments' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 353, 364, 372; Fiona McGaughey, *Non-Governmental Organisations and the United Nations Human Rights System* (Routledge 2021).

without empirical evidence.³⁰ More recent scholarship has provided empirical evidence of the influence of NGOs on both UN treaty bodies and the UN Human Rights Council's UPR, but without a specific focus on transitional justice.³¹ Therefore, more research on this essential role for NGOs is required with regard to transitional justice. It is argued here that both local NGOs and UN human rights institutions have the potential to play a critical role in supporting transitional justice. However, the effectiveness of both will be enhanced when there is active engagement between the local and the global – when NGOs play a *glocalising* role. It is acknowledged that NGOs undertake a range of international advocacy activities, in addition to engaging in UN state-reporting mechanisms, but these are outside the scope of our research.

A note of caution with regard to some of the scholarship in this area is that NGOs or civil society are often understood as unified, homogeneous entities.³² It has been argued that conceptions of civil society have been limited to human rights NGOs, and that a rigorous conceptualisation of the role that civil society plays in transitional justice processes has been lacking.³³ Two main categories of NGOs (rights and reconciliation) and one sub-category (victim and survivor) are posited in the section below on 'Transitional justice from below in Northern Ireland'. However, these categories offer a lens through which to analyse NGOs' *glocalising* role in transitional justice and are not utilised to obscure the rich diversity of organisations differing in purposes, religiosity, locality, target groups, membership and so forth.

30 In relation to the ICESCR Committee, see, for example, Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Polity Press 2011) 152. More generally, see, for example, Laurie S Wiseberg, 'The role of non-governmental organizations (NGOs) in the protection and enforcement of human rights' in Janusz Symonides (ed), *Human Rights: International Protection, Monitoring, Enforcement* (UNESCO Publishing 2003) 347, 350; David P Forsythe, *Human Rights in International Relations* (Cambridge University Press 2006) 203–204; Suzanne Egan, 'Strengthening the United Nations Human Rights treaty body system' (2013) 13(2) *Human Rights Law Review* 209, 227.

31 Lawrence C Moss, 'Opportunities for nongovernmental organization advocacy in the Universal Periodic Review process at the UN Human Rights Council' (2010) 2(1) *Journal of Human Rights Practice* 122; Edward McMahon et al, *The Universal Periodic Review, Do Civil Society Organization – Suggested Recommendations Matter?* (Friedrich-Ebert-Stiftung, Dialogue on Globalization 2013) . McGaughey (n 29 above).

32 Fiona McGaughey, 'From gatekeepers to GONGOs: a taxonomy of non-governmental organisations engaging with United Nations human rights mechanisms' (2018) 36(2) *Netherlands Quarterly of Human Rights* 111.

33 Paul Gready and Simon Robins, 'Rethinking civil society and transitional justice: lessons from social movements and "new" civil society' (2017) 21(7) *International Journal of Human Rights* 956.

Method

This socio-legal study situated within a human rights normative framework adopts a case study approach. With Northern Ireland as our case study, we focus on the space between top-down and bottom-up approaches, in which local NGOs have the potential to play an important intermediary role.³⁴ Case study research involves the detailed examination of a single example of a phenomenon.³⁵ While each case will have unique elements, this method allows for the development of hypotheses that can be further examined in other similar cases. Case studies can be a useful method for the examination of causal mechanisms and modelling and assessing complex causal relations.³⁶ In particular, process tracing can be used in case studies to map out complex interactions and track causality.³⁷ Here, we analyse whether recommendations in UN reports can be traced to NGO influence, or whether there are other causal links, although this is not process tracing as a distinct method *per se*, but it was informative in developing the current methodology; in particular, using documentary analysis to trace the influence of NGO reports through two UN human rights mechanisms.

A limitation of case studies is that it may be prohibitively time consuming to undertake case studies for a large number of situations or events,³⁸ and here we use only one case study – Northern Ireland. Northern Ireland has been selected as an appropriate case to explore the potential glocalising role of NGOs in an expanded transitional justice process for several reasons. It has a well-developed NGO sector with 140 charities focused on ‘Conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity.’³⁹ It is an interesting jurisdiction for a case study because there has been an absence of a coherent top-down transitional justice process,⁴⁰ meaning local NGOs have had to develop innovative bottom-up processes to address past violence with little institutional support.

34 The UN now tends to adopt the broader term ‘civil society’, as such the term civil society is used in the article where relevant.

35 Bent Flyvbjerg, ‘Five misunderstandings about case study research’ (2006) 12 *Qualitative Inquiry* 219.

36 Alexander L George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (MIT Press 2005) 21–22.

37 *Ibid.*

38 Lisa Webley, ‘Qualitative approaches to empirical legal research’ in Cane and Kritzer (eds) (n 29 above) 926.

39 Northern Ireland Council for Voluntary Action, ‘*State of the Sector: Profile*’ (2022).

40 See, generally, Lauren Dempster, *Transitional Justice and the ‘Disappeared’ of Northern Ireland: Silence, Memory, and the Construction of the Past* (Routledge 2019).

Whether to select one or more case studies varies by academic discipline, for example sociologists favour multiple case studies and anthropologists favour a single case study.⁴¹ As legal research has traditionally used doctrinal rather than empirical methods,⁴² there is no accepted standard for the selection of, or number of, case studies in legal research. The lack of generalisable findings can also be a limitation; however, case-study research is designed to focus in detail on one selected situation rather than to provide findings that are generalisable to other situations.⁴³ Nevertheless, it may be possible to reach general conclusions, depending on the selected case.⁴⁴

A systematic documentary analysis of UN human rights body reviews of the United Kingdom of Great Britain and Northern Ireland (the UK) was carried out to establish whether transitional justice issues are included in the UN deliberations and recommendations.⁴⁵ Submissions made by NGOs were also analysed. For UN treaty bodies, NGO reports are listed on the relevant website and were sourced from there. For the UPR, a 'stakeholder summary report' is prepared by the UN which lists NGOs which made submissions. These were used to assess which NGOs are engaged and whether transitional justice issues and recommendations are put forward by them. This allowed us to identify which types of NGOs – rights-focused or reconciliation-focused – are actively engaged with UN reporting frameworks. This article discusses the consequences of such engagement for transitional justice and makes recommendations for how the 'glocalising' potential of NGOs could be better supported by international mechanisms in societies emerging from mass violence.

In this article, section two charts current understandings of NGOs in transitional justice and human rights. Section three discusses the glocalising role of NGOs in the space between the global and local, which is followed by context-setting in relation to the conflict and post-conflict situation in Northern Ireland in section four. An examination of transitional justice 'from below' is presented in section five, including the work of the two main categories for the purposes of this article – rights-focused NGOs and reconciliation-focused NGOs. Grassroots activities are juxtaposed with UN human rights bodies'

41 Ibid.

42 Terry Hutchinson and Nigel Duncan, 'Defining and describing what we do: doctrinal legal research' (2012) 17(1) *Deakin Law Review* 83, 85.

43 Webley (n 38 above).

44 R K Yin, *Case Study Research Design and Methods* 2nd edn (Thousand Oaks 1994).

45 The documentary analysis was informed by Grant's scholarship: Aimee Grant, *Doing your Research Project with Documents: A Step-By-Step Guide to Take You from Start to Finish* (Policy Press 2022).

engagement with transitional justice in Northern Ireland in section six. In particular, that section considers whether UN bodies' engagement with transitional justice – or lack thereof – is related to the work of NGOs. Section seven reflects on the key findings, with conclusions and recommendations presented in the final section.

TRANSITIONAL JUSTICE FROM ABOVE OR BELOW: A FALSE DICHOTOMY

Transitional justice 'from above' typically refers to legalistic measures involving international or national institutions,⁴⁶ such as criminal prosecutions. The concern with prosecutions has arguably increased since the introduction of the Rome Statute in 1998,⁴⁷ and the growth of the principle of universal jurisdiction. Concomitant with the growth of truth commissions and criminal trials, however, has been an awareness of the need for civil society participation in these mechanisms.⁴⁸ These types of measures continue to be recommended to societies emerging from mass violence, despite mixed evidence of their effectiveness in supporting wider reconciliation. 'From above' can also refer to recommendations and views issued by UN bodies – the quasi-judicial mechanisms considered in this article.

The limitations of what has been called 'legalism' in relation to transitional justice have been well established. McEvoy, writing in 2007, declared: 'The field of transitional justice is increasingly characterized by the dominance of legalism, to the detriment of both scholarship and practice'.⁴⁹ Criticisms of the top-down approach to transitional justice point to failures of formal mechanisms to achieve their transitional

46 Kieran McEvoy and Lorna McGregor, 'Transitional Justice from Below: An Agenda for Research, Policy and Praxis' in McEvoy and McGregor (eds) (n 5 above) 1, 5.

47 Rome Statute of the International Criminal Court (opened for signature 17 July 1998) 2178 UNTS 3.

48 See, generally, Wendy Lambourne, 'Outreach, inreach and civil society participation in transitional justice' in Nicola Palmer, Phil Clark and Danielle Granville (eds), *Critical Perspectives in Transitional Justice* (Intersentia 2012) 235; Kjersti Lohne, 'Global civil society, the ICC, and legitimacy in international criminal justice' in N Hayashi and C M Bailliet (eds), *The Legitimacy of International Criminal Tribunals* (Cambridge University Press 2017); Sarah Williams and Emma Palmer, 'Civil society and amicus curiae interventions in the International Criminal Court' (2016) 1 *Acta Juridica*. See with regard to Kenya, Christine Bjorkt and Juanita Goebertustt, 'Complementarity in action: the role of civil society and the ICC in rule of law strengthening in Kenya' (2011) 14(1) *Yale Human Rights and Development Law Journal* 205.

49 Kieran McEvoy, 'Beyond legalism: towards a thicker understanding of transitional justice' (2007) 34(4) *Journal of Law and Society* 411.

justice aims and to build sustainable peace.⁵⁰ A number of scholars have therefore argued that transitional justice aims can be best achieved through bottom-up initiatives that emerge from local organisations that are connected to grassroots communities and are sensitive to local complexities.⁵¹ They argue that the sustainability of transitional justice initiatives is dependent on local ownership and participation, without which they lack legitimacy and will be ineffective.⁵² It has also been asserted that top-down legalistic approaches are overly structured and lack transformative potential,⁵³ and that transitional justice should pursue socially transformative aims.⁵⁴

A number of locally led and/or locally implemented transitional justice processes have been studied, such as Rwanda's Gacaca courts and Northern Ireland's truth-telling and storytelling projects.⁵⁵ A common argument made in their favour is that, as locally implemented processes, they enjoy a legitimacy and a level of engagement with ordinary citizens that externally mandated legal processes often lack. Local NGOs often lead these processes, although some rely on traditional leadership structures such as tribal elders – depending on context.⁵⁶ However, local initiatives also have their limitations, including a vulnerability to being distorted by asymmetric power relations.⁵⁷ Without oversight, transitional justice may be misused by local power holders, a risk identified by Chakravarty with the Gacaca courts in

50 Patricia Lundy and Mark McGovern, 'Whose justice? Rethinking transitional justice from the bottom up' (2008) 35(2) *Journal of Law and Society* 265; Paul Gready and Simon Robins, 'From transitional to transformative justice: a new agenda for practice' (2014) 8(3) *International Journal of Transitional Justice* 339.

51 Aiken (n 5 above); Lundy and McGovern (n 50 above).

52 Ibid.

53 Gready and Robins (n 50 above).

54 See, for example, Gready and Robins (n 50 above); Kris Brown and Fionnuala Ní Aoláin, 'Through the looking glass: transitional justice futures through the lens of nationalism, feminism and transformative change' (2015) 9 (1) *International Journal of Transitional Justice* 127.

55 See Jessica Senehi, 'The role of constructive, transcultural storytelling in ethno-political conflict transformation in Northern Ireland' in Judy Carter, George Irani and Vamik D Volkan (eds), *Regional and Ethnic Conflicts: Perspectives from the Front Lines* (Routledge 2015) 227; see also Claire Hackett and Bill Rolston, 'The burden of memory: victims, survivors, storytelling and resistance in the North of Ireland' (2009) 2(3) *Memory Studies* 355.

56 Volker Boege, Anne Brown, Kevin Clements and Anna Nolan, 'On hybrid political orders and emerging states: what is failing – states in the Global South or research and politics in the West?' (2009) 8 *Berghof Handbook for Conflict Transformation Dialogue Series* 15, 15–35.

57 Adam Kochanski, 'The "local turn" in transitional justice: curb the enthusiasm' (2020) 22(1) *International Studies Review* 26.

Rwanda.⁵⁸ Local initiatives may also struggle to achieve societal level change if they work with only limited numbers of individuals and are not scaled up to the national level.

In fact, the debate over the relative merits of top-down and bottom-up initiatives may be a false dichotomy. Top-down transitional justice processes can achieve a much wider impact when they are complemented by grassroots activities.⁵⁹ Meanwhile, local-level transitional justice processes may in fact rely on the protection and resourcing provided by governmental and international support.⁶⁰ For example, Wahyuningroem notes that Indonesia benefited from practices of transitional justice pioneered elsewhere and from the support of international organisations and donors – but that, alongside this, domestic human rights NGOs played important roles as norm entrepreneurs, helping to change how the public felt about human rights and pushing the state to change its behaviour.⁶¹

Hence, top-down and bottom-up approaches to transitional justice are not mutually exclusive. Instead, as explored in the next section, they play an intermediary role between local and international systems as a distinct contribution that locally grounded, internationally connected NGOs can make to transitional justice processes. This contribution, we argue, can be made by NGOs regardless of whether they view their primary aim as promoting human rights or supporting social reconciliation.

THE SPACE IN BETWEEN: A UNIQUE GLOCALISING ROLE FOR NGOS

NGOs have a role to play in transitional justice both locally and at the international level. In terms of engagement with UN human rights bodies, there are only limited opportunities provided for ‘consultation’ with NGOs in article 71 of the UN Charter, and as such, NGOs began as almost extraneous to the international human rights system.⁶² In the last 71 years however, they have become increasingly important. In 1994, the UN Secretary General noted that ‘NGO involvement has not

58 Anuradha Chakravarty, *Investing in Authoritarian Rule: Punishment and Patronage in Rwanda’s Gacaca Courts for Genocide Crimes* (Cambridge University Press 2015).

59 Aiken (n 5 above).

60 Lina Strupinskienė, “What is reconciliation and are we there yet?” Different types and levels of reconciliation: a case study of Bosnia and Herzegovina’ (2017) 16(4) *Journal of Human Rights* 452.

61 Sri Lestari Wahyuningroem, *Transitional Justice from State to Civil Society: Democratization in Indonesia* (Routledge 2019) 121.

62 Charter of the United Nations (opened for signature 26 June 1945) 1 UNTS 16.

only justified the inclusion of Article 71 ... but that it has far exceeded the original scope of these legal provisions.’⁶³ NGOs play a significant role in international human rights law, including their role in drafting international laws, bringing strategic litigation cases, and providing alternative reports in state-reporting mechanisms.⁶⁴ The information they provide to UN bodies is well reflected in UN recommendations, such as the human rights treaty bodies’ concluding observations and the Human Rights Council’s recommendations in its UPRs.⁶⁵

At a local level, NGOs also play an important role in holding governments to account, and the UN human rights system can provide support for their efforts. While much scholarship on NGOs has traditionally focused on large international organisations, and, indeed, many such NGOs play a critical role in transitional justice,⁶⁶ the role of domestic NGOs in international human rights law requires further analysis. Seminal works, such as those by Risse-Kappen, proposed a transnational model to explain NGO behaviour, focusing on international NGOs and networks, but with less recognition of domestic NGOs.⁶⁷ This emphasis on *international* networks and NGOs mirrors the initial focus at the UN, which was on engagement with international NGOs as reflected in article 71 of the UN Charter.⁶⁸ Significant change was effected in 1996 when ECOSOC Resolution 1996/31 (‘Consultative relationship between the United Nations and non-governmental organizations’) recognised in its preamble ‘the need to take into account the full diversity of the non-governmental organizations at the national, regional and international levels’.⁶⁹

More recently, scholars argue that *domestic* NGOs and other actors are significant and that international human rights law must be adapted locally. Simmons and Merry have proposed that, although a repressive regime may need to be addressed using transnational NGOs, in most

63 UN Secretary General, ‘General Review of Arrangements for Consultations with Non-Governmental Organizations: Report of the Secretary-General’.

64 McGaughey, ‘From gatekeepers’ (n 32 above); McGaughey, ‘The role and influence’ (n 28 above).

65 Ibid both articles.

66 See, for example, the [International Centre for Transitional Justice](#).

67 Thomas Risse-Kappen (ed), *Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures and International Institutions* (Cambridge University Press 1995).

68 Charter of the UN (n 62 above) art 71.

69 Economic and Social Council, *Consultative Relationship between the United Nations and Non-Governmental Organizations*, ECOSOC Res 1996/31, 49th Plenary Meeting (25 July 1996).

states, domestic actors are the most significant.⁷⁰ Simmons argues that international human rights law is powerful in mobilising domestic NGOs in holding states to account and that this is an important counterbalance to the dominance of scholarship on mechanisms such as transnational alliances.⁷¹

This article relies on the work of Simmons and Merry, drawing on the finding that domestic NGOs often have local, in-depth expertise on the situation on the ground and play a useful role as intermediaries adapting international law to the local context through ‘localized globalism’.⁷² This has led to the current authors’ use of the term ‘glocalisation’, denoting a process whereby NGOs can translate international human rights law to the local situation in a top-down direction, whilst submitting information to the UN on compliance in a bottom-up direction. This two-way flow of information managed by NGOs contributes to a democratisation of the UN human rights system and to local and global governance.⁷³ Meanwhile it has been argued that the global governing environment is one where a range of actors work together, and where simplistic international/local dichotomies are not reflected in practice.⁷⁴ Hence we argue that NGOs should be acknowledged as often operating in the space between top-down and bottom-up approaches to transitional justice.

Democracy and accountable governance are seen as essential components of transitional justice.⁷⁵ There is empirical evidence of a robust correlation between strong and autonomous civil society and positive human rights indicators post-conflict.⁷⁶ Based on a 2007 study of 60 states that transitioned from authoritarianism or a communist past, Tusalem concluded that: ‘The strength of civil society prior to transition and its density post-transition not only play a significant role in the deepening of political freedoms and civil

70 Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2006); Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

71 Simmons (n 70 above).

72 Merry (n 70 above).

73 See, for example, Peter Willetts, ‘From “consultative arrangements” to “partnership”: the changing status of NGOs in diplomacy at the UN’ (2000) 6(2) *Global Governance* 191; Richard Falk, *On Human Governance: Toward a New Global Politics* (Pennsylvania State University Press 1995) 241–255.

74 Charlotte Ku, *International Law, International Relations and Global Governance* (Routledge 2013) 131.

75 Wendy Lambourne, ‘Transitional justice and peacebuilding after mass violence’ (2009) 3(1) *International Journal of Transitional Justice* 28.

76 Rollin F Tusalem, ‘A boon or a bane? The role of civil society in third-and fourth-wave democracies’ (2007) 28(3) *International Political Science Review* 361.

liberties among transitional citizens, but also lead to better institutional performance.⁷⁷ Similarly, Jeffery et al have argued that ‘transitional justice and civil society have always gone hand in hand’.⁷⁸ They argue for the need to acknowledge the critical roles played by religious civil society organisations in transitional justice, writing specifically with reference to the Solomon Islands, Timor-Leste and Bougainville.⁷⁹ Aiken has also outlined a model of transitional justice where local NGOs in post-conflict societies play an essential part in the ‘social learning’ required to move from hostility to reconciliation.⁸⁰ Hence, local civil society actors play a key role in implementing and expanding transitional justice processes at multiple levels of society.

The ability of NGOs to play a glocalising role in the wider field of peacebuilding has been recognised by scholars who point to the unique potential for local NGOs to create reconciliation processes that are tailored to a specific context.⁸¹ Since the end of the Cold War, internationally funded peacebuilding programmes have increasingly engaged with local NGOs as they seek to strengthen civil society capacities to sustain the post-conflict peace.⁸² This has been heavily influenced by Lederach’s model of conflict transformation which relies heavily on the agency of local civil society leaders and is driven by critiques that externally designed peacebuilding measures are ineffective at best, and at worst, cause harm to the post-conflict society.⁸³

However, it may be unrealistic to expect local NGOs to effectively take forward a society-wide programme of reconciliation and ensure a non-recurrence of violence without connecting to the high-level institutional support that can be provided by international reporting frameworks in the field of transitional justice. In societies emerging from mass violence, civil society may be deeply divided along ethnic, religious or ideological lines, with only a limited number of individuals

77 Ibid 361.

78 Renee Jeffery, Lia Kent and Joanne Wallis, ‘Reconceiving the roles of religious civil society organizations in transitional justice: evidence from the Solomon Islands, Timor-Leste and Bougainville’ (2017) 11(3) *International Journal of Transitional Justice* 378.

79 Ibid 378.

80 Aiken (n 5 above).

81 Lambourne (n 75 above); Brandon Hamber et al, ‘Towards contextual psychosocial practice’ in *Psychosocial Perspectives on Peacebuilding* (Springer 2015) 289–316; Ian Patrick, ‘East Timor emerging from conflict: the role of local NGOs and international assistance’ (2001) 25(1) *Disasters* 48.

82 Thania Paffenholz, ‘Unpacking the local turn in peacebuilding: a critical assessment towards an agenda for future research’ (2015) 36(5) *Third World Quarterly* 857.

83 Ibid.

interested in promoting reconciliation between groups.⁸⁴ In such cases, high-level international support may help to motivate greater efforts towards reconciliation among local civil society.

In a meta-analysis of civil society peacebuilding, Paffenholz found that, while reconciliation-focused NGOs tend to concentrate their efforts on ‘socialisation’ activities to change attitudes, this has little societal impact.⁸⁵ Instead, she found that ‘advocacy’ activities had much more impact, especially when local civil society engaged with institutional processes such as the drafting of peace agreements or constitutions. Similarly, Diltmann et al also conducted a meta-analysis that only found substantial support for the effectiveness of three local-level peacebuilding activities; in-group policing, peace messaging and advocacy.⁸⁶

The research to date therefore suggests that the time may be ripe for locally based reconciliation-focused NGOs to move beyond their traditional focus on improving intercommunal relationships to adopt a more advocacy-focused role where they engage with political institutions and legal frameworks in order to pressure reluctant political elites to engage in a meaningful process of transitional justice that could support social reconciliation.

NORTHERN IRELAND – TROUBLES AND TRANSITIONAL JUSTICE

The origins of the conflict in and about Northern Ireland are complex and contested.

It has been argued that its deepest roots, like many ethnic conflicts around the world, lie in the experience of colonisation,⁸⁷ even though the conflict is rarely described as such and Ireland is generally absent from lists of colonised nation states.⁸⁸ The period of ‘the Troubles’ saw sustained violence by paramilitaries and state forces from 1969–1998.

84 Rachel Rafferty, ‘Engaging with the violent past to motivate and direct conflict resolution practice in Northern Ireland’ (2017) 35(2) *Conflict Resolution Quarterly* 197.

85 Thania Paffenholz (ed), *Civil Society and Peacebuilding: A Critical Assessment* (Lynne Rienner Publishers 2010).

86 Ruth Diltmann et al, ‘Addressing violent intergroup conflict from the bottom up?’ (2017) 11(1) *Social Issues and Policy Review* 38.

87 Amy Maguire, ‘Self-determination, justice, and a “peace process”: Irish nationalism, the contemporary colonial experience and the Good Friday Agreement’ (2014) 13 *Seattle Journal for Social Justice* 537.

88 Marc Mulholland (ed), *The Longest War: Northern Ireland’s Troubled History* (Oxford University Press 2002).

More than 3,700 people were killed and over 40,000 were injured.⁸⁹ Further legacies of the violence include mental health impacts, with Northern Ireland suffering significantly higher rates of suicide than the rest of the UK and Ireland.⁹⁰

In the 1990s momentum gathered for a peace process that resulted in the 1998 Belfast Agreement (the Agreement).⁹¹ All the main political parties in Northern Ireland, leaders of the paramilitary organisations and the British and Irish Governments were involved in negotiations. The resulting Agreement made arrangements for political power-sharing between the two ethno-national communities. It contained strong commitments to human rights, including incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention. It also provided for the establishment of the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission (Northern Ireland), designed to ensure that there would be no return to the discrimination and human rights abuses of the past. The Republic of Ireland also committed to similar measures, including establishing a ‘Human Rights Commission with a mandate and remit equivalent to that within Northern Ireland’.⁹² The essential nature of the human rights obligations underpinning this peace agreement explains the concern of commentators with the implications of Brexit for Northern Ireland, particularly when it appeared that the UK Government might retreat from the ECHR.⁹³

The Agreement text also makes multiple references to the desirability of reconciliation, and the responsibility of the signatories to work towards this goal, but specific provisions for addressing the painful legacies of the past were not agreed. No formal comprehensive transitional justice process has been implemented in Northern Ireland. Indeed, to date, no agreement has been reached at the political level

89 Michael McKeown, ‘An examination of the patterns of politically associated violence in Northern Ireland during the years 1969–2001 as reflected in the fatality figures for those years’ (CAIN 2009).

90 Michael W Tomlinson, ‘War, peace and suicide: the case of Northern Ireland’ (2012) 27(4) *International Sociology* 464.

91 Also known as the Good Friday Agreement: ‘The Belfast Agreement’ (United Kingdom Government 1998). See, generally, Ian Somerville and Shane Kirby, ‘Public relations and the Northern Ireland peace process: dissemination, reconciliation and the “Good Friday Agreement” referendum campaign’ (2012) 1(3) *Public Relations Inquiry* 231.

92 ‘Joint Statement of IHREC and NIHRC’, Northern Ireland Human Rights Commission.

93 David Phinnemore and Katy Hayward, ‘UK Withdrawal (“Brexit”) and the Good Friday Agreement’ (European Parliament 2017); Amy Maguire, ‘Brexit creates a human rights crisis for Ireland’ (*The Conversation* 28 March 2017).

as to the nature of the past conflict, and as a result there is fierce contestation over how past events should be remembered and over how various parties that perpetrated violence should be treated. Irish Nationalist parties have expressed broad support for a process of truth-telling, and they also often call for public inquiries into abuses of human rights by state forces.⁹⁴ Meanwhile British Unionist parties have tended to reject any process they view as an amnesty for paramilitaries and instead advocate strongly for a narrative where state forces were noble defenders of law and order while paramilitaries can only be understood as murderous criminals.⁹⁵ At the same time, while the British Government has voiced generalised support for truth recovery where it pertains to the actions of paramilitary organisations, it has also directly refused to sponsor inquiries into alleged state-sponsored abuse such as collusion of members of the police with Loyalist paramilitaries.⁹⁶ In this environment of contested and competing narratives, despite a legal definition of ‘victim’,⁹⁷ victimhood has no agreed popular definition in Northern Ireland, and victims of the violence are used, and also at times choose to mobilise themselves, in support of political causes.⁹⁸

While formal inquiry mechanisms have on occasion been implemented to highlight human rights abuses by state forces,⁹⁹ it is less clear how justice can be achieved for victims of paramilitary violence as the perpetrators are often unknown and evidence can be insufficient for prosecution. Sinn Féin has called for a truth-telling process in place of prosecutions, but this has been largely rejected by victims from within the Protestant community who see it as a means to avoid justice for violent crimes.¹⁰⁰

94 John D Brewer and Bernadette C Hayes, ‘The influence of religion and ethnonationalism on public attitudes towards amnesty: Northern Ireland as a case study’ (2016) 22(4) *Nationalism and Ethnic Politics* 393.

95 Cheryl Lawther, ‘Denial, silence and the politics of the past: unpicking the opposition to truth recovery in Northern Ireland’ (2013) 7(1) *International Journal of Transitional Justice* 157.

96 *Ibid.*

97 Victims and survivors are defined in s 3 of the Victims and Survivors (Northern Ireland) Order 2006.

98 Laura Graham, ‘The “innocent” victims of the troubles and the enduring impediment to peace in Northern Ireland’ (2014) 17(1) *Shared Space: A Research Journal for Peace, Conflict and Community Relations in Northern Ireland* 37; Marie Breen-Smyth, ‘Hierarchies of pain and responsibility: victims and war by other means in Northern Ireland’ (2009) 25 *Trípodos, Facultat de Comunicació i Relacions Internacionals Blanquerna* 27.

99 Dermot P J Walsh, ‘The Widgery Inquiry’ in *Bloody Sunday and the Rule of Law in Northern Ireland* (Palgrave Macmillan 2000).

100 Breen-Smyth (n 98 above).

There have been a number of attempts to agree formal transitional justice mechanisms for Northern Ireland, but a coherent approach has not yet been implemented. In 2014 the Stormont House Agreement was signed by the major political parties in Northern Ireland and the British and Irish Governments. This agreement proposed the creation of an Historical Investigations Unit to investigate unsolved killings and allegations of police misconduct during the Troubles; an Independent Commission on Information Retrieval to allow families to privately receive information about the deaths of their relatives; an Independent Oral History Archive to record personal experiences of the conflict; and an Implementation and Reconciliation Group to oversee these legacy processes and promote reconciliation. More recently the British Government has tabled a Legacy Bill that, if passed into law, will offer conditional amnesty in exchange for cooperation with truth recovery mechanisms – proposals that have been widely rejected across Northern Ireland society.¹⁰¹ However, as of the date of writing, the Stormont House Agreement has not been implemented and the Legacy Bill has not passed into law, and instead Northern Ireland continues to have a disjointed and *ad hoc* approach to investigating deaths during the Troubles.¹⁰²

Northern Ireland has been relatively successful at preventing a recurrence of conflict and inter-community conflict, but some level of violence has continued,¹⁰³ and the deeper goal of social reconciliation remains out of reach. A number of initiatives have attempted to gain consensus on how to deal with the legacies of the violent past, but to date none have fully succeeded. For example, from May to October 2018, the Northern Ireland Office ran a public consultation process to gather public input on how to address the legacies of the conflict in Northern Ireland. The call for submissions was accompanied by a consultation paper that outlined plans, previously agreed in the 2014 Stormont House Agreement,¹⁰⁴ to establish legacy institutions and support victims and survivors.¹⁰⁵ Mallinder's subsequent qualitative analysis of submissions made to the 2018 consultation by Unionist political parties and Unionist-aligned organisations revealed strategic resistance to approaches to the past that are shaped by

101 Ross McKee, 'NI Troubles: amendments on controversial legacy bill revealed' (*BBC News* 24 November 2022).

102 Northern Ireland Affairs Committee, 'Addressing the legacy of Northern Ireland's past: the Government's New Proposals (Interim Report)' (26 October 2020).

103 Dale Pankhurst, 'Northern Ireland terror threat downgraded but Brexit tensions and threats of renewed violence remain' (*The Conversation* 30 March 2022).

104 'A Fresh Start: The Stormont Agreement and Implementation Plan' (17 November 2015).

105 Northern Ireland Office, 'Consultation Paper: Addressing the Legacy of Northern Ireland's Past' (May 2018).

international human rights obligations, and the significance of the ongoing ‘metaconflict’ in Unionist narratives about the past.¹⁰⁶ The Northern Ireland Office later published an analysis of the consultation process,¹⁰⁷ but actual progress on dealing with the past continues to be stymied by the metaconflict. There is no better reflection of this reality than the frequency and duration of suspension of the devolved power-sharing institutions – the Northern Ireland Assembly is suspended at time of writing, and was suspended from 2017–2020. It is within the gaps left by an absence of institutional transitional justice that NGOs in Northern Ireland have sought to achieve a measure of social reconciliation at the level of local communities.

TRANSITIONAL JUSTICE FROM BELOW IN NORTHERN IRELAND

Since the 1990s, a plethora of NGOs have emerged in the space created by Northern Ireland’s transition out of mass violence. Cochrane and Dunn’s analysis during the 1990s of ‘peace and conflict resolution organisations’ summarised the approach of the Northern Ireland NGOs as one of addressing symptoms rather than causes.¹⁰⁸ It has been argued that these organisations in Northern Ireland played a role in the peace process by creating new social forces and promoting an inclusivist ethos that was adopted by elites.¹⁰⁹ They also provided the opportunity for people to move out of paramilitary activity and into community activism (and sometimes political parties).

Having previously worked in this field, one of the authors observes that many NGOs have been explicitly devoted to an aim of social reconciliation, by focusing on reducing hostility and building trust and empathy between members of the Nationalist and Unionist communities. This peacebuilding work is known locally as ‘community relations’, and the Northern Ireland Community and Voluntary Association currently lists 140 community relations organisations out of over 7,486 NGOs and voluntary groups in the region.¹¹⁰ An example

106 Louise Mallinder, ‘Metaconflict and international human rights law in dealing with Northern Ireland’s past’ (2019) 8(1) *Cambridge International Law Journal* 5, 19.

107 Northern Ireland Office, ‘[Addressing the legacy of Northern Ireland’s past: analysis of the consultation responses](#)’ (July 2019).

108 Feargal Cochrane and Seamus Dunn, *People Power? The Role of the Voluntary and Community Sector in the Northern Ireland Conflict* (Cork University Press 2002).

109 Feargal Cochrane, ‘Unsung heroes or muddle-headed peaceniks? A profile and assessment of NGO conflict resolution activity in the Northern Ireland “Peace Process”’ (2001) 12 *Irish Studies in International Affairs* 97.

110 Northern Ireland Council for Voluntary Action (n 39).

of a community relations NGO contributing to social reconciliation is Towards Understanding and Healing (TUH). Its mission is to facilitate creative conversations and thinking that moves beyond personal and societal conflict.¹¹¹ This type of NGO can be categorised as a ‘reconciliation NGO’, following the distinction outlined by Beirne and Knox.¹¹² In the post-conflict period, these local NGOs have been resourced largely by external funding from the European Union and other major donors, such as the International Fund for Ireland and Atlantic Philanthropies.¹¹³

A much smaller number of organisations in Northern Ireland fall into the category of rights NGOs. These tend to take a more rights-based approach to transitional justice, advocating strongly for the importance of acknowledging state abuses of human rights and of achieving reparations for victims as understood by international law. Reconciliation NGOs often view these rights-focused NGOs as distinct and even oppositional to the relational aims of reconciliation, but this may be an unnecessary dichotomy.¹¹⁴ Rights-based NGOs in Northern Ireland also rely on external funding to carry out their work and they are more likely to engage with international frameworks to leverage support for their aims. A prominent example is the Committee for the Administration of Justice (CAJ). The CAJ was established in 1981 and is an independent NGO affiliated to the International Federation for Human Rights. Its aim is to ‘ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law’.¹¹⁵ The CAJ works with other domestic and international human rights groups and makes submissions to UN and European human rights bodies. We refer to this second category as ‘rights NGOs’. They may rely on external funding to carry out their work and engage with international frameworks to leverage support for their aims.

A third sub-set of Northern Ireland NGOs whose mission overlaps with the broad definition of transitional justice are support groups for victims and survivors of the Troubles. We term these ‘victims and survivors organisations’ (VSOs). This includes both rights and reconciliation NGOs. This category has a somewhat unique status as the interests of victims and survivors, services for them and consultation

111 ‘Towards Understanding and Healing – Work Plan’ (CAIN). There are many other important NGOs engaged in this work, but this one is offered as an example.

112 Beirne and Knox (n 15 above).

113 Sean Byrne, *Economic Assistance and Conflict Transformation: Peacebuilding In Northern Ireland* (Routledge 2018).

114 Beirne and Knox (n 15 above).

115 ‘Committee on the Administration of Justice – Promoting Justice/Protecting Rights’, Committee on the Administration of Justice.

with them are provided for in the Victims and Survivors (Northern Ireland) Order 2006 as amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008. This status is also reflected in the provision of funding specifically for victims and survivors by the Office of First Minister and Deputy First Minister in Northern Ireland. An amount of £50 million was allocated for victims and survivors for 2011–2015 through the Victims Support Programme (for groups) and the Individual Needs Programme (for individuals).¹¹⁶

Some of these victims and survivors organisations are focused on supporting mental health while others provide a platform for victim advocacy.¹¹⁷ We categorise these as support VSOs and advocacy VSOs. A further distinction across VSOs is that some organisations are cross-community, providing services for both communities, while others are single identity, comprising members from a single community. Where victims' advocacy groups focus only on the interests of their own community, this can limit their capacity to contribute to social reconciliation which requires recognition of the harms suffered by all parties to the conflict.¹¹⁸ An example of an NGO that supports victims on a cross-community basis, but as a result must avoid taking a stance on controversial issues relating to the past violence, is the WAVE Trauma Centre. WAVE was set up in 1991 and aims to 'offer care and support to anyone bereaved, injured or traumatised through the civil unrest in Northern Ireland, irrespective of religious, cultural or political belief. The philosophy and ethos of the organisation is one of inclusiveness.'¹¹⁹

The next section reviews the contributions made by Northern Ireland NGOs to international human rights bodies. We then analyse this in light of the above typography, identifying which types of NGOs do and do not contribute to these reporting mechanisms. From this, we discuss the potential to create an international transitional justice architecture that might encourage greater participation from a wide range of transitional justice-focused local NGOs and enable their glocalising potential, for the good of their society and for the sake of comparative learning across contexts affected by mass violence.

116 Michael Potter and Anne Campbell, 'Funding for victims and survivors groups in Northern Ireland NIAR 576-14' (Northern Ireland Assembly, Research and Information Service 2014).

117 Laura K Graham, *Beyond Social Capital: The Role of Leadership, Trust and Government Policy in Northern Ireland's Victim Support Groups* (Springer 2016).

118 Rachel Rafferty, 'Conflict narratives, action frames, and engagement in reconciliation efforts among community activists in Northern Ireland' (2020) 26(1) *Peace and Conflict: Journal of Peace Psychology* 9.

119 WAVE Trauma Centre, 'About Wave Trauma Centre'.

TRANSITIONAL JUSTICE FROM ABOVE IN NORTHERN IRELAND

Having discussed the ‘from below’ activities of NGOs in support of transitional justice in Northern Ireland, this section focuses on ‘from above’ activities by the UN human rights bodies in order to identify any intersection between the international architecture and local NGOs in this case. The UN human rights system was developed largely as a response to the atrocities of the Second World War, as reflected in the preamble to both the UN Charter¹²⁰ and the Universal Declaration of Human Rights.¹²¹

We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person ... (UN Charter preamble)¹²²

As such, an interest in preventing conflict was central to the establishment of the UN and the UN human rights bodies. Post-conflict societies often lapse back into conflict;¹²³ therefore, we argue that a concern for transitional justice should be germane to the purposes of the UN and its primary purpose of maintaining international peace and security. Furthermore, UN human rights bodies specifically should have regard to transitional justice-related issues, as it is well established that conflict correlates robustly with the violation of human rights.¹²⁴

Universal mechanisms for transitional justice have been the subject of criticism and debate. In terms of a ‘top-down’ approach, the flaws of existing universal mechanisms, such as the International Criminal Court, have been identified,¹²⁵ and it has been suggested by Ramji-Nogales that the UN could create a new body responsible for transitional justice.¹²⁶ Yet several bodies already exist. In addition to mainstream UN human rights bodies and the International Criminal Court, the UN Peacebuilding Commission has been in place since 2005. Part of its remit is to ‘bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-

120 Charter of the UN (n 62 above).

121 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)).

122 Charter of the UN (n 62).

123 See, for example, Stephen John Stedman et al, *Ending Civil Wars: The Implementation of Peace Agreements* (Lynne Rienner Publishers 2002).

124 UN General Assembly, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ A/HRC/35/22 (30 March 2017).

125 Ramji-Nogales (n 11) 3.

126 Ibid 70.

conflict peacebuilding and recovery'.¹²⁷ As such the UN Peacebuilding Commission could build on this remit to play a valuable role in linking international human rights architecture with national transitional justice processes and the grassroots transitional justice activities of local NGOs, in support of an overall goal of social reconciliation for post-conflict societies.

Resolutions A/RES/70/262 and S/RES/2282 state that the Commission would serve as a platform to convene all relevant actors within and outside the UN, including 'civil society, women's groups, youth organizations and, where relevant, the private sector and national human rights institutions'.¹²⁸ The purpose of bringing actors together includes the opportunity for them to provide recommendations and information to improve their coordination and to develop and share good practices in peacebuilding.

Further, a new UN Special Procedure for transitional justice was established – the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. Mr Pablo de Greiff from Colombia was appointed first Special Rapporteur for transitional justice and took up his functions on 1 May 2012; he was replaced by Mr Fabian Salvioli (Argentina) in May 2018.¹²⁹ Aside from the Special Procedure, the UN Peacebuilding Commission and the International Criminal Court, given the plethora of international, regional and domestic human rights mechanisms already in existence in most parts of the world,¹³⁰ we must question whether a new UN body as proposed by Ramji-Nogales is required. Whether such a body is required leads us to question what existing UN bodies are doing with regard to transitional justice.

The UN bodies that will be considered here are those charged with periodic review of states' human rights records. The first of these is the Human Rights Council, the UN's primary human rights body. It uses the UPR to review all UN member states' human rights records on all human rights issues every four-and-a-half years. It is a peer review mechanism, meaning that the review is carried out by states and is political in nature. The second set of UN bodies are the human rights

127 UN General Assembly, 'Resolution Adopted by the General Assembly on 20 December 2005' A/RES/60/180 (30 December 2005); United Nations Security Council, 'Resolution 1645 (2005)' S/RES/1645 (20 December 2005).

128 UN General Assembly, 'Resolution Adopted by the General Assembly on 27 April 2016' A/RES/70/262 (12 May 2016); United Nations Security Council, 'Resolution 2282 (2016)' S/RES/2282 (27 April 2016).

129 Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, United Nations Human Rights Office of the High Commissioner.

130 Acknowledging that two of the authors' current home of Australia has somewhat limited domestic protections and is not part of a regional human rights system.

treaty bodies. These are bodies established under the nine core human rights treaties, such as the International Covenant on Civil and Political Rights,¹³¹ which monitor states' compliance with their obligations under the treaty. The review is carried out by the treaty body members – voluntary, independent experts not representing their states of origin. Treaty bodies are thus quasi-judicial rather than political in nature. The treaty bodies consider only the issues relating to their treaty, so the review is thematic (rather than universal like the UPR), for example focusing on children's rights,¹³² women's rights,¹³³ economic social and cultural rights¹³⁴ and so forth.¹³⁵ The treaty bodies only review those states which have voluntarily ratified the treaty, although levels of ratification are currently high.¹³⁶ The timing of their reviews can be more sporadic, and states are less likely to comply with the treaty bodies' reporting processes than they are with the UPR.¹³⁷

As well as receiving reports from states, both the UPR and treaty bodies receive information from NGOs, and there is evidence that the NGO reports can influence the recommendations made by UN bodies.¹³⁸ The UPR also draws on a report summarising UN information – for example from Special Rapporteurs and treaty bodies – on the state under review, and this has also been shown to influence UPR recommendations.¹³⁹

UN human rights state reporting with regard to Northern Ireland takes place through the reviews of the UK. As only one of the regions in the UK, it is plausible that specific human rights issues in one of several regions could be overlooked in UN state-reporting processes. This is particularly true of the Human Rights Council's UPR which is a brief review based on three very concise reports for each state under review. However, Northern Ireland is also the region within the UK with a recent history of violent conflict and alleged widespread human rights abuses, both by non-state actors and the state. From a transitional justice perspective therefore, it arguably requires a disproportionate focus in UN human rights reviews. The following paragraphs consider the level of engagement with transitional justice issues in recent reviews

131 ICCPR (n 20 above).

132 CroC (n 20 above).

133 CEDAW (n 20 above).

134 ICESCR (n 20 above).

135 CAT; CRPD; ICERD; CRPD; CED; CRMW (n 20 above).

136 'Status of Ratification: Interactive Dashboard', Office of the High Commissioner for Human Rights.

137 McGaughey, 'Advancing, retreating' (n 28 above).

138 Ibid; McGaughey, 'The role and influence' (n 28 above).

139 Ibid.

by these two main UN human rights state-reporting mechanisms – the UPR and the UN human rights treaty bodies.

In the UK's UPR in May 2017,¹⁴⁰ out of a total of 227 human rights recommendations to the UK, states made only two recommendations clearly related to transitional justice in Northern Ireland.¹⁴¹ These were as follows:

134.156 Increase the necessary resources to the service of the Coroner to allow him to carry out impartial, swift and effective investigations on all the deaths linked to the conflict in Northern Ireland (Switzerland); and

134.157 Continue negotiations on transitional justice issues and implement transitional justice elements of the Stormont House Agreement (Australia).

A third recommendation is also likely to be driven by concerns for transitional justice:

134.67 Provide reassurance that any proposed British Bill of Rights would complement rather than replace the incorporation of the European Convention on Human Rights in Northern Ireland law and acknowledging this is a primary matter for the Northern Ireland Executive and Assembly – that a Bill of Rights for Northern Ireland to reflect the particular circumstances of Northern Ireland should be pursued to provide continuity, clarity and consensus on the legal framework for human rights there (Ireland).

The topic of a Bill of Rights for Northern Ireland has been contested for many years and, despite strong support and recommendations from the NIHRC, no action has been taken. A letter from the NIHRC to the Secretary of State in 2008 noted that, based on extensive consultations, '[w]hile there is agreement on having a Bill of Rights for Northern Ireland, this process has shown that there remains a diversity of opinion on the contents of such a Bill'.¹⁴²

In addition to the UPR recommendations above, there was one transitional justice-related comment (rather than recommendation) from Ireland. It noted that the UK had changed its position on some

140 UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review – United Kingdom of Great Britain and Northern Ireland' A/HRC/36/9 (11–29 September 2017).

141 Interestingly, there was a post-colonial recommendation from the Syrian Arab Republic which could arguably be relevant to transitional justice in Ireland and Northern Ireland (ibid): 'Apologize to the peoples and the countries it colonized or it attacked and provide financial compensation to the peoples of these countries.'

142 'Advice to the Secretary of State for Northern Ireland' (Northern Ireland Human Rights Commission 9 March 2021).

previous recommendations and welcomed its commitment to establish an institutional framework to address the legacy of the Troubles.¹⁴³

States in the UPR have the opportunity to choose whether they accept recommendations in the weeks following the review. A 2014 study found that 74 per cent of all recommendations made in the UPR are accepted by the state under review.¹⁴⁴ While states do not currently 'reject' recommendations (although this was a practice initially), Human Rights Council Resolution 5/1 provides that states may 'note' recommendations. The UK accepted 96 recommendations and noted 131 recommendations, explaining that this meant that it has 'taken some steps but it is not fully implementing them'.¹⁴⁵ The three transitional justice-related recommendations listed above were noted, but not accepted by the UK.

Previous research has shown that key sources for the development of recommendations are the inputs provided to states in the form of the UN compilation report and the stakeholder summary report (including NGO submissions).¹⁴⁶ One case study suggests that the UN summary could be the more influential of the two reports.¹⁴⁷ Given the scant attention to transitional justice in the UK's UPR, could it be the case that the issue was also largely overlooked in the UN compilation and stakeholder summary reports? Did states fail to address the issue because stakeholders, and the UN, had failed to initially raise the issue?

Firstly, let us consider the UN compilation report. The coverage of transitional justice in this short report was not insignificant. Of the 80 paragraphs, six paragraphs were relevant to transitional justice and recommendations covered investigations into conflict-related human rights violations and addressing the legacy of violations and abuses committed during the Troubles. Other recommendations related to reparations, truth and justice initiatives, freedom of assembly (violations of the determinations of the Northern Ireland Parades Commission) and segregated education.¹⁴⁸

143 UN Human Rights Council (n 140 above) para 29.

144 UPR-Info, 'Beyond Promises: the impact of the UPR on the ground'.

145 UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review – United Kingdom of Great Britain and Northern Ireland – Addendum: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review' A/HRC/36/9/Add1 (7 September 2016).

146 McGaughey, 'The role and influence' (n 28 above); Moss (n 31 above); McMahon et al (n 31 McMahon).

147 McGaughey, 'The role and influence' (n 28 above).

148 UN Human Rights Council, 'Working Group on the Universal Periodic Review: Compilation on the United Kingdom of Great Britain and Northern Ireland. Report of the Office of the United Nations High Commissioner for Human Rights' A/HRC/WG.6/27/GBR/2 (22 February 2017).

Was the transitional justice content of this report reflected in the recommendations made by states? Largely it was not. One of the recommendations from the UN compilation report was drawn from the UN Human Rights Committee and used similar language to Switzerland in its recommendation (above), recommending ‘independent, impartial, prompt and effective investigations are conducted on conflict-related serious human rights violations in Northern Ireland’.¹⁴⁹ Another recommendation from the UN compilation report referenced the Committee on Economic, Social and Cultural Rights which urged the UK to expedite the adoption of a Bill of Rights for Northern Ireland. However, the recommendation used different language from that in the recommendation from Ireland (see above).

Secondly, let us consider the stakeholder summary report, which is of particular interest given this article’s focus on NGOs. Very few Northern Ireland-based NGOs made submissions to the stakeholder summary. In fact no local NGO from any category (rights, reconciliation or VSO) made a submission, and only a few international NGOs who have a branch in Northern Ireland or a remit involving raising issues relating to Northern Ireland, such as Edmund Rice International and Amnesty International, made submissions. The few Northern Ireland-based NGOs which were referred to in the summary report do not work specifically on transitional justice issues, from either a rights, reconciliation or victim support perspective, and were cited with reference to other issues, such as the Council for the Homeless. In the report, only two organisations are quoted with reference to transitional justice – Amnesty International and the NIHRC.¹⁵⁰ As such, the coverage of transitional justice in this short report was less extensive than that of the UN compilation report. This means that grassroots voices from Northern Ireland on issues related to transitional justice – and recommendations that they might have – are largely absent from the UPR.

Of the 116 paragraphs in this report, only two focused on transitional justice and both of these had a legalistic focus on human rights issues but did not contain reference to the relational considerations of social reconciliation. The NIHRC called for ‘impartial, prompt and effective investigations [to] be conducted into all conflict related deaths in Northern Ireland with a view to identifying, prosecuting and punishing

149 Ibid para 30.

150 National Human Rights Institutions sometimes carry out consultations to inform such submissions but there is no reference to consultations in the NIHRC submission to the UPR.

perpetrators of human rights violations and abuses'.¹⁵¹ Amnesty International 'expressed concern that there had not yet been any concrete movement to create a human rights compliant mechanism for investigating and remedying past human rights violations and abuses that occurred during decades of political violence in Northern Ireland'.¹⁵² Again, there was one additional recommendation which related to a Bill of Rights for Northern Ireland, which could arguably be driven by transitional justice considerations.¹⁵³ The 'Discussion' section below includes reflections on this dearth of transitional justice issues in the stakeholder report.

The level of engagement with transitional justice in the Human Rights Council's politicised UPR is to be contrasted with that of the independent UN treaty bodies in their state-reporting mechanisms. In short, treaty bodies have engaged more extensively with transitional justice issues in reviews of the UK carried out during a similar time period to the UPR. The reviews by the UN Committee Against Torture and the UN Human Rights Committee took place during a similar time period.

The UK's compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been more recently considered in June 2019. At the Committee Against Torture 66th Session, Ms Thynne for the UK highlighted that 'an end to non-jury trials in Northern Ireland [would be possible], when safe and compatible with the interests of justice'.¹⁵⁴ The Committee referred back to recommendation 23 from its previous concluding observations in 2013. That recommendation was entitled 'Transitional Justice in Northern Ireland' and stated as follows:

The Committee recommends that the State party develop a comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators. In this context, the Committee is of the view that such a comprehensive approach, including the conduct of a public inquiry into the death of Patrick Finucane,¹⁵⁵ would send a strong signal of

151 UN Human Rights Council, 'Summary of other Stakeholders' Submissions United Kingdom of Great Britain and Northern Ireland: Report of the Office of the United Nations High Commissioner for Human Rights' A/HRC/WG.6/27/GBR/3 (27 February 2017).

152 Ibid para 69.

153 Ibid para 34.

154 UN Committee Against Torture, 'Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland', Summary of 1743rd Meeting (8 May 2019), CAT/C/SR1743 (14 May 2019) para 11.

155 Patrick Finucane was a lawyer killed during the Troubles, see, for example: BBC News, 'Q&A: the murder of Pat Finucane'.

its commitment to address past human rights violations impartially and transparently. The State party should also ensure that all victims of torture and ill-treatment are able to obtain adequate redress and reparation.¹⁵⁶

In 2019, the Committee concluded that ‘Transitional Justice in Northern Ireland’ had ‘not been implemented’.¹⁵⁷ The Committee noted with concern the lack of effective investigation of multiple allegations of killing, torture and ill-treatment in the context of the conflict in Northern Ireland, the lack of accountability for perpetrators or redress for victims.¹⁵⁸ The Committee also noted the UK’s failure to establish an independent historical investigations unit capable of examining killings and cases of alleged torture or ill-treatment where a detainee was not killed.¹⁵⁹ The Committee made six recommendations to the UK in relation to these matters, with a notable focus on independent investigation of torture-related allegations, transparency in process, ensuring that state agents are not immune from accountability, respect for the roles of journalists and human rights defenders, and redress for victims.¹⁶⁰

The UN Human Rights Committee reviewed the UK’s compliance with the International Covenant on Civil and Political Rights¹⁶¹ in 2015. Of the 25 substantive recommendations from the Committee, two related to transitional justice in Northern Ireland. These are detailed and robust recommendations, one entitled ‘Accountability for conflict-related violations in Northern Ireland’ and the other entitled ‘Fair trial and administration of justice’.¹⁶² The Committee’s recommendations included investigations, prosecution and remedies for victims, including investigation of all outstanding cases. It also recommended adequate resourcing of the Legacy Investigation Branch and the Coroner’s Court to review outstanding legacy cases effectively. This resonates with Switzerland’s recommendation to the UK in the UPR. This is evidence of the complementarity of the UPR and treaty bodies, as anticipated in General Assembly Resolution 60/251 which

156 UN Committee Against Torture, ‘Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, adopted by the Committee at its 50th Session (6–31 May 2013), CAT/C/GBR/CO/5, 24 June 2013, para 23.

157 UN Committee Against Torture, ‘Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, adopted by the Committee at its 1754th Meeting (16 May 2019), CAT/C/GBR/CO/6, 7 June 2019, para 7.

158 Ibid para 40.

159 Ibid.

160 Ibid para 41.

161 ICCPR (n 20 above).

162 Only part of the second recommendation relates to Northern Ireland.

stated that the UPR should complement, rather than duplicate, the work of UN human rights treaty bodies.¹⁶³ This refers primarily to non-duplication of the state-reporting mechanism.¹⁶⁴

Like the Committee Against Torture previously, the Human Rights Committee also recommended an official inquiry into the murder of Patrick Finucane.¹⁶⁵ Furthermore, the Human Rights Committee requested follow up information on two of its recommendations within one year, in accordance with rule 71, paragraph 5, of the Committee's rules of procedure. Of the two recommendations selected, one was on accountability for conflict-related violations in Northern Ireland, which is evidence of the seriousness of the issue for the Committee.

Therefore, it is clear that treaty body reviews of the UK engage more deeply with Northern Ireland transitional justice issues than does the UPR. Although there may be a number of reasons for this (as considered in the 'Discussion section below), it has previously been established that NGOs can influence recommendations in the UPR and in treaty bodies. There are indications that the opportunity for NGO influence is greater in treaty bodies.¹⁶⁶ Let us consider whether increased engagement by Northern Ireland NGOs could be part of the reason for this greater engagement with transitional justice.

In the UK's review by the Human Rights Committee in 2015, civil society organisations made submissions for the session.¹⁶⁷ These included domestic NGOs from Northern Ireland, most notably Relatives for Justice and the Committee on the Administration of Justice, both of which we categorise as 'rights' rather than 'reconciliation' NGOs due to their focus on achieving legal justice. Amnesty International's submission also engaged with transitional justice issues in Northern Ireland, again a rights-based NGO, although international rather than domestic. Some organisations made earlier submissions in order to influence the scope of the review – known as the development of the 'list of issues prior to reporting' (LOIPR). Several rights NGOs raised Northern Ireland transitional justice-related issues, including the

163 Resolution Adopted by the General Assembly: 60/251 Human Rights Council, GA Res 60/251, UN GAOR, 60th session, Agenda Items 46 and 120, UN Doc A/RES/60/251 (3 April 2006).

164 Felice D Gaer, 'A voice not an echo: Universal Periodic Review and the UN treaty body system' (2007) 7(1) Human Rights Law Review 121.

165 UN Human Rights Committee, 'Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland', CCPR/C/GBR/CO/7 (17 August 2015) para 8.

166 McGaughey, 'Advancing, retreating' (n 28 above).

167 See [UN Treaty Body Database](#).

Committee on the Administration of Justice, Rights Watch (UK) and Amnesty International.¹⁶⁸

The Committee Against Torture's review of the UK in 2019 also elicited engagement by several local rights NGOs from Northern Ireland on transitional justice issues.¹⁶⁹ For example, civil society organisations including the Committee on the Administration of Justice, Amnesty International, the Pat Finucane Centre and Relatives for Justice raised justice issues with the Committee Against Torture, including accountability for past human rights abuses, investigations into deaths and legacy issues emerging from the Northern Ireland conflict. Further, the NIHRC made submissions to the Committee regarding investigations into conflict-related deaths in Northern Ireland.¹⁷⁰ Therefore, we can conclude that domestic NGOs from Northern Ireland have engaged more with treaty bodies in recent reviews than they have with the Human Rights Council's UPR in the context of transitional justice. It can also be seen that rights NGOs, potentially overlapping with VSOs that have an advocacy focus (such as Relatives for Justice), have been active in contributing to international reporting mechanisms while reconciliation NGOs have not engaged with these processes.

DISCUSSION

The issues raised in the previous section require some further analysis, particularly the reasons for the lack of transitional justice issues reported to the UPR by stakeholders (including NGOs), the lack of transitional justice recommendations by states in the UPR, and the lack of engagement by reconciliation NGOs and VSOs in UN human rights mechanisms generally.

The reasons for the lack of transitional justice recommendations by states in the UPR could be manifold. In the case of Northern Ireland, it may be perceived that the conflict has largely been resolved and is not a contemporary human rights priority area. This is a perception with which we disagree. It is also the case that states approach the UPR with their own agenda items and, if transitional justice is not one of them, it may be overlooked. Further emphasis on transitional justice as a core agenda item requires consideration by states. UPR recommendations can be associated with follow-up bilateral support and technical assistance – the type of approach that could support transitional justice. Another consideration is that, as a peer-review mechanism, the UPR is political in nature. It has been established

168 Ibid.

169 See UN Treaty Body Database (n 167 above).

170 Ibid.

that states may avoid certain issues due to fear of reciprocity, and that states' recommendations can be politically motivated.¹⁷¹ Conflict and transitional justice are inherently sensitive issues for many states and are infused with politically charged issues. However, in some states, such as Sri Lanka, transitional justice-related recommendations arising from the UPR are more common.¹⁷²

It is arguable that the UK may be exacerbating this problem through a lack of focus on Northern Ireland in its UN human rights reporting. The Human Rights Consortium has criticised the UK's 'consistent failures' in reporting on human rights with regard to devolved regions.¹⁷³ This means that it is all the more important for local NGOs to provide information to UN human rights reporting mechanisms. From the recommending states' perspective, there may be some inherent reluctance to identify a Western democracy such as the UK as requiring the input of other states on transitional justice. Nagy recognises that 'transitional justice almost always applies to non-Western, developing countries'.¹⁷⁴ This phenomenon reinforces a characterisation of Northern Ireland as a largely unrecognised colonial setting.¹⁷⁵

More broadly, we question whether states are making transitional justice-related recommendations in the UPR? A database of all UPR recommendations is populated and maintained by international NGO UPR-Info.¹⁷⁶ This allows for filtering of recommendations by category such as 'women's rights', 'poverty' or 'land', but unfortunately 'transitional justice' is not included as a category. A keyword search can be done using 'transitional justice', but results are limited to when states have actually used that exact phrase. A keyword search of the database shows that of a total of 90,938 recommendations as of July 2022, only 113 include the phrase 'transitional justice'. This potentially leads to a certain invisibility of transitional justice concerns within human rights reporting frameworks, which in turn undermines the ability to present

171 Edward R McMahon, 'Herding cats and sheep: assessing state and regional behavior in the Universal Periodic Review mechanism of the United Nations Human Rights Council' (University of Vermont 2010).

172 UN Human Rights Council, 'Working Group on the Universal Periodic Review: Draft Report of the Working Group on the Universal Periodic Review – Sri Lanka', A/HRC/WG.6/28/L14 (23 November 2017).

173 'Database of Recommendations' UPR INFO.

174 Rosemary Nagy, 'Transitional justice as global project: critical reflections' (2008) 29(2) *Third World Quarterly* 281, cited in Kristine Höglund and Camilla Orjuela, 'Friction and the pursuit of justice in post-war Sri Lanka' (2013) 1(3) *Peacebuilding* 300.

175 Amy Maguire, 'Contemporary anti-colonial self-determination claims and the decolonisation of international law' (2013) 22 *Griffith Law Review* 238.

176 'Database of Recommendations' (n 173 above).

holistic recommendations. This is despite the likelihood that many more recommendations could relate to transitional justice – they just have not been framed in that language.

That may provide some understanding of state behaviour, but the question remains as to why transitional justice-related issues were largely absent from the UPR stakeholder summary report to which NGOs made the most significant contribution. The list of submissions which formed the basis of that report reflect little representation from NGOs exclusively based in Northern Ireland, and there were even fewer submissions from organisations working on transitional justice issues in the region. The international NGO Amnesty International did include transitional justice in its submission, as did the NIHRC. Both had recommendations included in the stakeholder summary report. However, there were no submissions from reconciliation NGOs or VSOs.

The lack of engagement with UPRs by NGOs that have the potential to make an important contribution to transitional justice requires further research as it means the globalising potential of these organisations is currently unfulfilled in the Northern Ireland context. Possible reasons include a lack of awareness of the UPR as a mechanism, lack of inclusion of these groups in government consultations and coalitions,¹⁷⁷ lack of resources for engagement, and restrictions on advocacy work as a result of funding terms and conditions.¹⁷⁸ The failure of *reconciliation* NGOs in Northern Ireland to engage with core UN human rights mechanisms may also be partly explained by the perception of incompatibility between the rights and reconciliation approaches to peacebuilding identified by Beirne and Knox. Their work points to a wariness about human rights among reconciliation NGOs, despite the potential the authors identify for synergy between the two fields.¹⁷⁹ More broadly, of course, it is important to acknowledge the highly politicised nature of rights debates in Northern Ireland.¹⁸⁰

This potential synergy has also been identified by Parlevliet with reference to the nexus of human rights and peacebuilding:

It has become increasingly clear that the relationship of human rights and peacebuilding is complex, dynamic, and context-specific. While this interface was long thought to be inherently conflictual, it has transpired

177 McGaughey, 'From gatekeepers' (n 32 above).

178 Beirne and Knox (n 15 above).

179 Ibid.

180 This is made clear by Mallinder in her analysis of Unionist responses to proposals for dealing with the past: Louise Mallinder, 'Metaconflict and international human rights law in dealing with Northern Ireland's Past' (2019) 8(1) *Cambridge International Law Journal* 5.

that it contains potential for considerable synergy too. Peacebuilding and human rights can complicate and strengthen one another.¹⁸¹

It has been argued therefore that NGOs ‘need to increasingly consider how “peace” as a concept might more effectively be incorporated into their human rights work’.¹⁸²

However, currently, in the case of Northern Ireland, there is neglected potential for reconciliation VSOs to play a glocalising role in support of transitional justice as they are currently not engaging with international frameworks such as UPR. This non-engagement is most likely due to the rights-based and legalistic focus of these frameworks and the perception among local NGOs that this is not relevant to their focus on building relationships and supporting the mental health of victim-survivors. The absence of local NGOs in glocalising work is significant because of their direct contact with grassroots Northern Ireland,¹⁸³ meaning that international frameworks are not capturing the experience of transition on the ground and that communities may be unaware of the potential support available to them at the international level to raise issues of concern.

The engagement by treaty bodies on transitional justice issues in Northern Ireland is more promising. One reason for this increased focus may be that the treaty bodies are not political bodies – they are independent experts who do not represent their home countries. Another reason is that there is evidence of more local NGO involvement in the treaty body state-reporting mechanisms, although this relates particularly to rights-focused NGOs, such as the Committee on the Administration of Justice. Northern Ireland’s reconciliation NGOs do not seem to be engaging with treaty bodies currently. Again, this is a missed opportunity for NGOs focused on reconciliation to play a glocalising role in support of transitional justice. International human rights treaties are seen as significant for protecting human rights and preventing conflict. The Special Rapporteur on transitional justice submitted a report to the UN General Assembly in October 2017 in which he recommended ratification and incorporation of international

181 Michelle Parlevliet, ‘Human rights and peacebuilding: complementary and contradictory, complex and contingent’ (2017) 9(3) *Journal of Human Rights Practice* 357.

182 Charity Butcher and Maia Carter Hallward, ‘Bridging the gap between human rights and peace: an analysis of NGOs and the United Nations Human Rights Council’ (2016) 18(1) *International Studies Perspectives* 81.

183 Rights NGOs may also have grassroots membership and contact but the nature of the community-based work of reconciliation NGOs makes this connection to grassroots stronger.

treaties and noted that human rights violations can fuel conflict.¹⁸⁴ This is a positive development, as the potential contributions of the UN treaty bodies and the UPR and other mainstream UN mechanisms have hitherto been under-considered in the UN approach to transitional justice.¹⁸⁵ Yet the fulfilment of this potential will also rely on successful engagement with local NGOs, and, as this case study of Northern Ireland indicates, work is needed to convince a much wider range of NGOs that engagement with such legalistic mechanisms can enhance their own potential to contribute to transitional justice and, ultimately, reconciliation.

CONCLUSION

While the distinction between the state-centric review at the UN level and grassroots activities at a local level is ultimately a false dichotomy, this divide seems to be operating in practice in the case of Northern Ireland, where local NGOs are largely absent from international reporting frameworks. In general, states are closely involved in grassroots activities through funding and other measures and civil society is closely involved in the UN in a form of dispersed global governance. NGOs have the potential to play a unique local-to-global or ‘glocalising’ role, but this only works if local NGOs are enabled and encouraged to engage at a global level. There is a lack of evidence of this taking place in the Northern Ireland case study, particularly in regards to the reconciliation and victim-support aspects of transitional justice.

While transitional justice mechanisms and processes should be ‘precisely tailored to particular events and societies’,¹⁸⁶ lessons can be learned from case studies, including the current study. As discussed above (under the heading ‘The space in between: a unique glocalising role for NGOs’), previous research demonstrates that, while reconciliation-focused NGOs tend to concentrate their efforts on ‘socialisation’ activities to change attitudes, this has little societal

184 ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence’ A/72/43099 (12 October 2017) 9.

185 As reflected in United Nations General Assembly, ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development – Resolution adopted by the Human Rights Council’ A/HRC/RES/12/11 (12 October 2009); UN Secretary General, ‘Guidance Note of the Secretary-General – United Nations Approach to Transitional Justice’; UN Human Rights Council, ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development – Resolution adopted by the Human Rights Council’ A/HRC/RES/21/15, 11 October 2012.

186 Ramji-Nogales (n 11) 3.

impact, but that advocacy activities have much more impact.¹⁸⁷ Other scholarship concludes that advocacy is one of the three most effective local-level peacebuilding activities.¹⁸⁸ Hence, the apparent lack of engagement in local-to-international advocacy by reconciliation and victims NGOs in Northern Ireland means NGOs are not maximising their effectiveness to contribute to transitional justice and, ultimately, reconciliation.

Concomitantly, at an international level it is clear that UN mechanisms have the potential to improve human rights situations on the ground. The UPR as the cornerstone of the Human Rights Council is a powerful tool, a mechanism with which all states engage and one which could do more to expressly consider transitional justice and make relevant recommendations based on both UN and local inputs. There is more evidence of NGO engagement with treaty bodies in the Northern Ireland case study and of more indepth engagement with transitional justice issues by treaty bodies.

Where possible, local NGOs must be involved in both grassroots activities and international monitoring via the UN in order to maximise their glocalising potential. Using international mechanisms to raise issues that become politicised and intractable at a local level can be an important part of the transitional justice approach, but, where only rights NGOs – and not reconciliation NGOs – engage, the results are likely to be skewed towards legalistic approaches to the detriment of a social reconciliation focus. Governments and funders should support the advocacy work of *all* NGOs to enable them to engage in UN mechanisms. Human rights should not just be the domain of lawyers and rights-based organisations.¹⁸⁹ For transitional justice to be fully effective, it is important that the voices of those working in and with communities are heard.¹⁹⁰

187 Paffenholz (n 85).

188 Diltmann et al (n 86).

189 See, for example, Jim Ife, *Human Rights from Below: Achieving Rights through Community Development* (Cambridge University Press 2009).

190 John Paul Lederach, *The Moral Imagination: The Art and Soul of Building Peace* (Oxford University Press 2005) 56.