universität wien

DIPLOMARBEIT

Titel der Diplomarbeit

Reconciliation through Transitional Justice Interventions?
The experience of Northern Ireland

Verfasserin

Valerie Kainz

angestrebter akademischer Grad

Magistra (Mag.)

Wien, 2010

Acknowledgements

Abbreviations and Acronyms

CAIN	Conflict Archive on the Internet
CAJ	Committee on the Administration of Justice
CCRC	Criminal Cases Review Commission
CGP	Consultative Group on the Past
CIRA	Continuity Irish Republican Army
CVSNI	Commission for Victims and Survivors in Northern Ireland
GB	Great Britain
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
IRA	Irish Republican Army
INLA	Irish National Liberation Army
NGO	Non-governmental Organisation
NI	Northern Ireland
PIRA	Provisional Irish Republican Army
RIRA	Real Irish Republican Army
RUC	Royal Ulster Constabulary
TJ	Transitional Justice
TJI	Transitional Justice Institute
UFF	Ulster Freedom Fighters
UDA	Ulster Defence Association
UK	United Kingdom of Great Britain and Northern Ireland

Table of Contents

I. Introduction

Over the course of my studies in international development, I have been developing a great interest in conflicts and conflict transformation. I have always been curious about understanding why people have been fighting and committing terrible atrocities for millennia. Such behaviour is often explained as being natural for human beings. I could never accept this theory, regarding it more as an excuse not to deal with the core issues. Understanding a conflict, I have always assumed, is much more complex than just believing human beings are evil.

Two years ago, I attended a course called "Integrative Conflict Transformation" offered by Dr. Wilfried Graf, my academic advisor, and Gudrun Kramer, who also helped me to conceptualise my thesis. Over a period of eight months I was provided with theoretical knowledge about conflict transformation and at the same time gained an insight into practical conflict work. During this course, I further recognised my interest in this issue and decided to write my thesis about conflicts. As I also study law, I desired to find a topic that would also include judicial elements. Over the course of conducting my research, I came across the concept of Transitional Justice (TJ), which encompasses legal and non-legal instruments that are necessary for transition to a peaceful democratic society after violent conflicts and gross human rights violations. After a while I realised that I wanted to connect it with a topic which did not just focus on the atrocities and injustices, like TJ, but on the human beings themselves. This led me to the decision to combine it with reconciliation. From these thoughts the following research question evolved:

To what extent do TJ interventions serve or hinder reconciliation?

Soon I found out that neither Transitional Justice nor reconciliation is precisely defined in literature; there rather exist various assumptions about their meaning which enormously vary. Additionally, the concepts strongly overlap, especially when talking about reconciliation in the context of transitional societies. For that reason, in the first part of this thesis I will conduct a discourse analysis, illustrating the meaning of those two concepts and their interfaces. On the one hand, it should underline the possibilities and difficulties of the particular processes and instruments. On the other hand, it should provide the basis for the second part of this thesis: a case study of Northern Ireland. Including the insights of this theoretical framework, the second part should exemplify practical experiences with TJ

interventions and illustrate whether they have served or hindered the reconciliation process in Northern Ireland. Expert interviews and literature analyses are used for this study. The third part summarises the findings of part one and two and finally tries to answer the question to what extent reconciliation can be achieved through Transitional Justice interventions.

The reasons why I decided to write about this conflict were personal and strategic. Concerning the first motive, I have always been interested in the country itself, since I really admire the culture and nature. I have always wondered why such a small part of Ireland is so conflict-torn, while the rest lives in peace. As part of my research I intended to go abroad, regarding it as a chance to enrich my work. My academic advisor recommended that I spend some time at the Transitional Justice Institute at the University of Ulster. Because of my personal interest in the conflict in Northern Ireland and the excellent reputation of this institute, I tried to get in contact with them. They immediately offered me an internship and I moreover got the possibility to conduct expert interviews, visit conferences and take part in a summer school. This research stay provided me with invaluable knowledge from experts and considerable insights into the conflict situation. Being aware of the fact that I can not assess the situation the same as somebody who has lived there, this stay highly enriched my work. Before discussing the experiences of Northern Ireland in detail, the next part of this thesis will illustrate the concepts of Transitional Justice and reconciliation.

II. Introduction to a theoretical framework

1. Transitional Justice

1.1. A brief history of Transitional Justice

The concept of Transitional Justice encompasses the instruments and efforts that are necessary for the transition to a peaceful democratic society after violent conflicts and gross human rights violations.

The United Nations Report (2004) of the Secretary General defines Transitional Justice as

> *"The notion of "transitional justice" [...] comprises 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. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof."[1]*

Transitional Justice focuses on the atrocities of the past to prevent further violations and restore justice. Buckley-Zistel outlines the main aims as follows:

> *"[D]ie Wahrheit über Verbrechen soll aufgedeckt, die Verantwortlichen identifiziert und zur Rechenschaft gezogen, die Würde der Opfer wiederhergestellt, zur Aussöhnung und friedlichen Koexistenz ermutigt sowie zukünftigen Konflikten und Straftaten vorgebeugt werden.[2]*

Transitional Justice was influenced by legal instruments. Although the term itself came to prominence in the 1990s, the tribunals of Nuremburg (1945-49) are often quoted as the moment of origin of Transitional Justice because it was the first time an international body

---

[1] United Nations quoted after Huyse 2008: 3
[2] Buckley-Zistel 2007: 2. "The truth about the crimes shall be disclosed, the ones responsible shall be identified and held responsible, the dignity of the victims shall be restored; the process shall encourage conciliation, peaceful co-existence and shall prevent future conflicts and crimes." (translated by Valerie Kainz)

accused perpetrators of war crimes and genocide in the name of humanity.[3] The degrading treatment of human beings by the Nazi regime was instrumental in enforcing the human rights law. On the one hand, it defined that international law can address individuals directly when the national state fails, and on the other hand, it forced the state to implement human rights into its constitutional law.[4] As well as that, the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 and the four Geneva conventions of 1949 emphasised the need for accountability.[5]

In the mid-to-late 1980s the Transitional Justice debate had to face new challenges. The self-amnesty of military juntas in many countries in Latin America, as well as in Spain, led to new debates in the international community. Questions evolved like, "Is it possible that prosecutions could endanger a transition to democracy?" or "Would amnesty be a legal alternative in favour of the truth?"[6] A number of strategies of impunity arose like the *Pact of Forgetting* in Spain after the demise of the Franco regime (1975), the Amnesty law in Brazil (1979), the *Naval Clug Agreement* in Uruguay (1984) and the *Puncto Final* in Argentina (1987). Seeing them as not very sufficient for the survivors, Truth Commissions were established which aimed to combat impunity and amnesia, and to find out the truth about human rights abuses and injustices. Nevertheless, most of the trials ended without prosecution.[7]

The unsatisfactory outcome of these Truth Commissions, and the global growth of a human rights culture, set off a new debate about developing internationally effective norms and practices to call to account those responsible for crimes against humanity, genocide and war crimes.[8] Furthermore, in the early 1990s, a global trend towards democratisation evolved, which was based on the assumption that a sustainable democratic society needed an adequate strategy that would deal with past abuses.[9] The result of these discussions was a call for *retributive justice*, which is based on the idea that wrongdoings have to be punished.[10] This

---

[3] See Kayser-Whande; Schell-Faucon 2008: 8
[4] See Safferling 2004: 1471-1472
[5] See Huyse 2008: 2
[6] See Ordentlicher 2007: 11-13
[7] See Buckley-Zistel 2008: 6
[8] See Huyse 2008: 2
[9] See Buckley-Zistel 2007: 2
[10] See Huyse 2008: 2

request led to the establishment of the International ad hoc tribunals for former Yugoslavia (ICTY/1993) and Rwanda (ICTR/1994).[11]

The applicability of systematic prosecution proved to be very difficult, because of political, social, economic and cultural circumstances. The danger of too much or too little criminal justice was also the reason why questions emerged about an application of alternative mechanisms. On account of the success of the South African Truth and Reconciliation Commission (TRC) with its principle of "amnesty for truth", [12] the need for a more "victim-focused" approach was acknowledged. This led to a broader understanding of justice and resulted in the implementation of certain other elements into the concept of Transitional Justice, like reconciliation, forgiveness or apology. The positive contribution of non-judicial instruments to Transitional Justice processes was increasingly acknowledged. The establishment of the Gacaca-courts in Rwanda, which was a combination of an international tribunal, national courts and a local approach to justice, underlined the necessity of traditional methods of justice in post-conflict societies and made an important contribution to the international Transitional Justice discourse.[13]

Nonetheless, there was still a need for *"a common basis in international norms and standards"*[14] that would set a legal basis of how to punish the most serious crimes when the state was unwilling or unable to undertake national proceedings. With the provision of the International Criminal Court (ICC) in 2002, which is based on the Rome Statute, this international body was established with the intention of justice being done in regard to a person who has committed most serious crimes.[15]

These are defined as follows:

> (a) *"The crime of genocide;*
> (b) *Crimes against humanity;*
> (c) *War crimes;*
> (d) *The crime of aggression."*[16]

---

[11] See Kayser-Whande; Schell-Faucon 2008: 9
[12] See Huyse 2008: 2
[13] See Kayser-Whande; Schell-Faucon 2008: 9-10
[14] Report Secretary General transitional justice quoted after Ambos 2007: 13
[15] See Ambos 2007: 57-58
[16] Rome Statute of the International Criminal Court. Part 2, Article 5

The effectiveness of this court is still uncertain because the inquiries often last very long and there have not been any proceedings yet.[17] Nonetheless, it was more concerned about the victims' needs after violent conflicts.

Until now we have not had "The Transitional Justice Concept" with adequate instruments and measures that are applicable for all post-conflict societies because no conflict situation equates another. As Kayser-Whande and Schell-Faucon argue, we now have something like a "TJ toolbox" that is full of interventions like trials, Truth Commissions, reparation programmes and economic reforms. The challenge for each individual post-conflict society is to choose an approach that tackles past abuses and, at the same time, is as comprehensive as possible. Up until now there has not been any TJ process that has solved the legacies of a violent conflict in a completely sufficient way[18] *"that it has punished perpetrators, rehabilitated and compensated survivors, discovered the truth behind (all) violations, managed to offer sufficient trauma work and spaces for mourning and for comprehensive transformative of collective identities as well as constructive education for oncoming generations [...]."[19]*

1.2. The meaning of Justice

Before demonstrating the TJ concept in detail, I think it would be helpful to start with a general overview of what is understood when talking about justice. For millennia the meaning of justice has been discussed in many different disciplines, like philosophy, law or politics. Additionally, traditions, education and cultural norms and values influence the personal understanding of what is perceived as just or unjust. If the meaning of justice is dependent upon personal attitudes, the question arises of how to address the past of a violent conflict in a just way. Punishing offenders is the legal approach that seeks to create a balance between perpetrators and victims, also known as "retributive justice". Those who inflicted harm on somebody should be penalised. In order to achieve reconciliation after violent conflicts, Assefa argues a juridical approach is not sufficient for victims, since it does not acknowledge and repair their suffering. In addition, perpetrators do not necessarily perceive their actions as wrong just because they are judged by legal mechanisms. In many cases antagonistic attitudes remain. Approaches in which offenders would recognise their wrong behaviour and try to

---

[17] See Buckley-Zistel 2008: 10-11
[18] See Kayser-Whande; Schell-Faucon 2008: 10
[19] Ibidem, pp. 10-11

restore victims' harm, also known as "restorative justice", are indispensable in order to achieve reconciliation.[20]

> *"Reconciliation takes the concern for justice a step further and is preoccupied with how to rebuild a more livable, and psychologically healthy environment between former enemies where the vicious cycle of hate, deep suspicion, resentment and revenge does not continue to fester."[21]*

Although a broader understanding of justice would, according to Assefa, foster reconciliation, many victims demand retributive interventions in order to obtain justice. This leads us to the question of whether universal norms concerning justice can be defined at all. Many legal experts insist that human rights will settle this claim. The Preamble of the International Bill of Human Rights states:

> *"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,"[22]*

In order to grant every human being his or her rights, which would be regarded as the precondition for attaining justice, "*states are obliged to respect, fulfil and protect all human rights.*"[23] Galtung criticises this claim on universality of human rights, since the concept predominantly focuses on Western ideas. He does not totally reject the basic thoughts, but desires an implementation of other cultural understandings of universal norms and values.[24] Instead of defining justice according to human rights, Galtung puts a greater focus on the fulfilment of basic needs. In contrast to rights, which are located between people,[25] "*[b]asic human needs are what define us as human beings.*"[26] Through dialogue work, he developed four basic needs; survival, well-being, freedom and identity,[27] which are interdependent. Although societies and human beings tend to make prioritisations on certain needs, Galtung

---

[20] See Assefa 1999: http://www.peoplebuildingpeace.org/
[21] Ibidem
[22] United Nations General Assembly 1948, Preamble
[23] Novak 2003: 48
[24] See Galtung 1994: 4
[25] Ibidem, p. 115
[26] Graf; Kramer; Nicolescou 2008: 15
[27] See Galtung 1994: 140-141

assumes them as equally important and universally valid without denying differences in cultural values.[28]

> *"Human beings have basic human needs, shared by all human beings, and at the same time universal (regardless of one's biographies, cultural meanings or social structures) and particular (embedded in one's biographies, cultural meanings or social structures)."[29]*

As a conclusion we can say, that the perception of what is just and unjust is highly dependent upon cultural values and norms. In this chapter the idea of retributive and restorative justice approaches was explained. Those who favour retributive mechanisms are convinced that offenders have to be punished in order to create a balance between perpetrator and victim. In contrast to that, restorative initiatives aim to acknowledge wrongdoings and repair harm. It is further argued that in order to achieve reconciliation, the application of restorative justice approaches is indispensable. As the decision of victims to either demand retributive or restorative justice approaches is highly dependent upon personal values, the question arises of whether one can define universal norms for what is just. Legal experts would argue that granting every person human rights would be just. On the contrary, Galtung defines the parameter for justice in the fulfilment of all four basic human needs, regarding them as universally applicable without denying differences in cultural values. After providing a general overview about the different ideas of justice, the next chapter will show the development of the meaning of justice in the concept of Transitional Justice.

1.2.1. The Justice in Transitional Justice

When the field of Transitional Justice emerged, it was deeply influenced by legal experts who wanted to impose criminal law with an emphasis on human rights law on an international level. Therefore, it is not surprising that the term Transitional Justice is often associated with international humanitarian law and human rights law. As already mentioned, the Transitional Justice discourse has expanded in the last decades and supplemented traditional mechanisms such as Truth Commissions or reparations programmes. For this reason, a vast amount of literature nowadays exists which deals with the many different approaches of justice which

---

[28] See Graf; Kramer; Nicolescou 2008: 14-16
[29] Ibidem, p. 14

often overlap. They differ between[30] *"retributive, legal, rectificatory, reparative, retributive, restorative, distributive and transformative justice."*[31] After describing the meaning of retributive and restorative justice in the last chapter, I will now turn my attention to the three dimensions of justice that Mani developed. In her book "Beyond Retribution" she demonstrates the three kinds of injustices that a conflict causes and explains why all of them have to be restored after violent conflicts. She distinguishes between legal justice (concerning the rule of law), rectificatory justice (concerning the restorative capacity of Transitional Justice) and distributive justice (referring to political and economic inequalities).[32]

In April 2009 I had the pleasure of listening to, and was greatly impressed by, one of Rama Mani's speeches at a conference in Nuremberg.[33] Similar to the argument of Kayser-Whande and Schell-Faucon who underline the necessity of finding an approach that is as comprehensive as possible,[34] Mani talked about the importance of what she calls *"Inclusivement",* in a Transitional Justice process. She criticised that many post-conflict societies just tend to focus on one element in a transitional process. They either focus on the establishment of trials or Truth Commissions instead of finding a way to combine both. This is because of the assumption that the application of trials would automatically exclude the provision of a Truth Commission. Meanwhile, she highlights that they complement one another in most cases, because trials focus on perpetrators, whereas Truth Commissions draw their attention to victims' concerns. Besides these two provisions in society that have to deal with past abuses, there is also always a need for other restorative initiatives, like reparation programmes as well as economic and institutional reforms. This is not to deny the necessity of the particular TJ instruments, but rather to make their interdependency clear. To attain *inclusivement*, she is certain that all three dimensions of justice have to be addressed in a comprehensive way.[35] To sum it up, the more inclusive you apply TJ interventions to a

---

[30] Ibidem, pp. 14-15
[31] Kayser-Whande; Schell-Faucon 2008: 15
[32] See Mani 2002
[33] Dr. Rama Mani (The World Future Council, Hotonnes) holding a speech on „Versöhnung und Aufbau der Zivilgesellschaften nach gewaltsamen Konflikten", 3. April 2009; in the course of the conference "AFK-Jahreskolloqium, Tagung 30: Nach Krieg, Gewalt und Repression: Der schwierige Umgang mit der Vergangenheit", Nürnberg, 3.-5. May 2009
[34] See Kayser-Whande; Schell-Faucon 2008: 10
[35] Dr. Rama Mani (The World Future Council, Hotonnes) holding a speech on „Versöhnung und Aufbau der Zivilgesellschaften nach gewaltsamen Konflikten", 3. April 2009; in the course of the conference "AFK-Jahreskolloqium, Tagung 30: Nach Krieg, Gewalt und Repression: Der schwierige Umgang mit der Vergangenheit", Nürnberg, 3.-5. May 2009

society that has to deal with past violations, the higher the probability of getting over the atrocities of the past and paving the way for a peaceful future.

On the one hand, this thesis aims to show how TJ mechanisms and reconciliation are connected, and on the other hand, and perhaps the most importantly, endeavours to demonstrate that all aspects of Transitional Justice should be used together as a complete concept in order for it to be effective and successful. Therefore, the next step is to give a general overview of Mani's three dimensions of justice to discuss TJ interventions further in detail.

1.2.1.1. Legal Justice

Legal justice refers to the rule of law, which, she argues, is usually destroyed or delegitimised during and after a violent conflict. In a transitional process it is essential to rebuild the legal system entirely with reforms of police, prisons and the judiciary in order to return to stability and security. Otherwise you will not achieve trust in that society. The pre-eminence of the government has to be abolished and all citizens must be considered equal before the law, independent of their identity and background. A stable law system has a deterrent effect because it signals to the conflicting groups that future perversions of the law will not be tolerated anymore. In addition, it is a precondition for distributive and rectificatory justice.

1.2.1.2. Distributive Justice

Distributive justice refers to socio-economic, political or cultural injustices. These inequalities are mostly shared by groups of the same religion, ethnicity or other factors, which often entails a strong feeling of affiliation. This again makes it easy for group leaders to mobilise these groups for their own needs. Mani argues that national governments as well as international players like politicians, the World Bank or IMF, often make their profits by exploiting resources and perpetuating poverty. During and after most conflicts there is a dependency on political structures, which often complicates a conflict resolution. To prevent a recurrence of conflict, one has to deal with inequitable access to political and economic resources.

1.2.1.3. Rectificatory Justice

Rectificatory justice refers to direct physical violence suffered by people during the conflict, which includes gross violations of human rights, crimes against humanity and war crimes.

There are three reasons why the state has to deal with the legacies of direct violence. Firstly, it has a legal responsibility under international treaty and customary law to deal with past abuses. Furthermore, it has the obligation to support the fundamental human rights and the victims' rights to redress. Secondly, there are political duties, like combating impunity, deterring future abuses and strengthening the rule of law. The third reason refers to the need of psychosocial healing that must be addressed for promoting reconciliation. Societies in transition have adopted a lot of different measures to overcome direct violence inflicted on people, like trials, Truth Commissions, compensation, symbolic gestures or commemoration. It is always unclear to what extent retributive and restorative approaches should be adopted for each individual post-conflict situation.[36]

1.3. Transitional Justice Interventions

In this chapter the characteristics of the specific TJ interventions will be explained. Additionally, it should prove why the concept of TJ cannot be seen as static and it underlines the importance of an inclusive approach of TJ instruments. Although it is clear that legal and distributive justice is as important as rectificatory justice in order to deal with the legacies of violent conflicts, a greater focus is put on the latter as it refers to the relationship-building process after physical violence, the core issue of reconciliation. Beginning with local, hybrid, and international trials that bring out a punitive effect, the aims of alternative instruments, like Truth Commissions and forms of reparations will be explained. While all of these measures can be categorised as rectificatory justice, because of their intention to deal with direct violence inflicted on victims, a clear allocation of the last mentioned intervention, institutional reforms, is more difficult. They are often described as part of reparation in transitional processes because the provision of intact institutions is seen as a pre-condition for ensuring further repairing acts for the society, which would be categorised as rectificatory justice.[37] But it is also a concept that plays a crucial role in many other disciplines, like foreign, co-operative safety and development policies.[38] According to Mani's dimensions of justice, most of the institutional reforms are categorised as legal justice,[39] which is contradictory to the former assertion. So it can be seen as a TJ intervention that overlaps many realms. This is the

---

[36] See Mani 2002
[37] See Kayser-Whande; Schell-Faucon 2008: 24
[38] See Hänggi 2005: 1
[39] See Mani 2002

reason why it is mentioned here as an independent TJ intervention, although some authors describe it as a form of reparation and Mani would not allocate it to rectificatory justice.

1.3.1. Local, hybrid and international trials

Each state has a legal obligation to prosecute those responsible for most serious crimes[40], which directly derives from international treaties, international human rights law and customary international law.[41] The Rome Statute states:

> "[t]he States Parties to this Statute,
>
> _Affirming_ that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, [...]
>
> _Recalling_ that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes [.]" [42]

This does not just underline states' duties to prosecute most serious crimes, but also highlights the prohibition of blanket amnesties, which means absolving people of their responsibility for core crimes.[43] Besides the legal obligation, it additionally entails a moral ground, because it serves as a form of deterrence.[44] Although an institutionalisation of international standards and norms constantly develops, in most post-conflict societies, conducting fair trials are impossible. On the one hand, this society can relapse into a corrupt and abusive system,[45] which again underlines the dependence on a stable rule of law. On the other hand, there is often a lack of political will to prosecute, because political leaders fear getting punished themselves. Additionally, most post-conflict countries do not have enough financial and material resources for conducting fair trials.[46] To overcome these obstacles, international provisions play a crucial role. If a nation is not able to guarantee a stable law system, the

---

[40] See Chapter II, 1.1
[41] See Mediation Support Project 2009: 5
[42] Rome Statute of the International Criminal Court, Preamble
[43] See Mediation Support Project 2009: 5
[44] See Mani 2002: 89
[45] See Mobekk 2005: 273-274
[46] See Mani 2002: 90-94

international community can decide either to establish a hybrid tribunal,[47] using the knowledge and judges from both national and international sources,[48] or an international tribunal.[49]

The establishment of international courts has made an important contribution to strengthening criminal justice as a response to mass conflict[50] and defend universal principles of international law.[51] Moreover, the growing number of such provisions supports the international fight against impunity[52] and thereby sets an important step in acknowledging victims' harm.[53] One of the biggest successes of the establishment of international courts is their stabilising effect on domestic justice systems concerning prosecutions of most serious crimes.[54] Nonetheless, it is clear that the provision of international courts cannot solve all problems that evolve after violent conflicts; on the contrary, their establishment often creates deep bitterness.[55] A big failure of those provisions is that in the majority of cases they do not observe defined end terms. The full closure of the outcomes of ICTY and ICTR, for example, will not be published before 2013[56], although they were established at the beginning of the 1990s.[57] Another problem is their high cost, whereas it can be noted that hybrid tribunals are much cheaper than other forms of international courts.[58]

Concerning rectificatory justice, the establishment of trials, whether national or international, do not, and cannot, completely compensate for what has happened during conflicts. By means of punishment victims' needs, i.e. hunger, safety or health, cannot be entirely satisfied.[59] Additionally, victims often do not demand retribution in order to engage with their loss, but greatly desire alternative initiatives, for instance reparation forms which would acknowledge

---

[47] See Mobekk 2005: 274
[48] See ICTJ 2009b: http://www.ictj.org/
[49] Until now the United Nation established the following ad hoc tribunals: International Crime Tribunal for the former Yugoslavia (ICTY), International Crime Tribunal for Rwanda (ICTR), Special Panel for Serious Crimes for Sierra Lione and Timor-Leste (SPSC), Extraordinary Chambers in the Courts of Cambodia (ECCC). (see Buckley-Zistel 2008: 10)
[50] See Wierda 2009: 1-2
[51] See Mani 2002: 97
[52] See ICTJ 2009a: http://www.ictj.org/
[53] See Mani 2002: 99
[54] See ICTJ 2009b: http://www.ictj.org/
[55] See Wierda 2009: 5
[56] See Reiger 2009: 2
[57] See Kayser-Whande; Schell-Faucon 2008: 9
[58] See Mobekk 2005: 275
[59] See Mani 2002: 101

and restore their harm.[60] Furthermore, it is not possible to bring all perpetrators to trial and deal with thousands of victims' claims;[61] in particular, local judicial systems do not have the capacity for it.[62] This should not dispraise prosecution at all; again, it rather highlights the demand for an inclusive approach to dealing with past abuses.

The conclusion we may draw is that every state has an obligation to prosecute those who are responsible for most serious crimes. Due to a lack of political will or financial resources, fair trials are often not conducted in post-conflict societies. For such cases, international courts have a duty to prosecute those who have committed serious violence. Interestingly, victims often do not demand retributive measures to engage with their loss, but rather require initiatives, which would acknowledge and restore their harm. The next chapters will demonstrate those TJ interventions which are more focused on victims' needs than on punishment.

1.3.2. Truth Commissions

The establishment of Inquiry Commissions, or more popularly called Truth Commissions, is a widespread measure applied in post-conflict societies. Although the aims of Truth Commissions are highly dependent upon the individual conflict context,[63] common characteristics are apparent. They are non-judicial, time-limited provisions that intend to disclose past violations through individual statements of witnesses or their testimonies.[64] Truth Commissions always focus on the past and try to depict an overall picture of former events. At the end of the proceedings, a report for the government with recommendations regarding the engagement with perpetrators, proposals for reparations, as well as, institutional reforms, is expected. The Truth Commission is obliged to entail secure space for victims' voices in order to get as much information as possible.[65]

As already mentioned, Commissions of Inquiry have had different purposes. In Zimbabwe, Zambia and Chile they chose a Truth Commission that gave blanket amnesty to all perpetrators,[66] which isn't permissible anymore under international law. Peace agreements

---

[60] See Chapter II, 1.2
[61] See ICTJ 2009a: http://www.ictj.org/
[62] See Mobekk 2005: 278
[63] Ibidem, p. 265
[64] See Buckley-Zistel 2008: 15
[65] See Mani 2002: 102
[66] See Graf 2004: 35

that would include blanket amnesties will not be acknowledged by the United Nations and cannot prevent prosecutions conducted by international tribunals. Only under certain circumstances is giving individual amnesties allowed.[67] South Africa, for example, established a Truth and Reconciliation Commission that was equipped with the duties of either giving amnesty when the perpetrators admitted their criminal acts and begged for forgiveness, or arresting them and publishing their names in the end report.[68]

Authors often highlight that Inquiry Commissions make an important contribution in disclosing long-silenced facts, thus giving a broader view of historical correlations and creating space for further conversations about a society's past.[69] What is more, they have a therapeutic effect on victims, because it is often their only chance to tell their story[70] and get public acknowledgment of their harms.[71] However, proceedings of Truth Commissions can also be very hurtful and frustrating, especially when the numbers of deaths are published. It is also often criticised that instead of dealing with individual traumas and experiences, Inquiry Commissions often just deal with the most serious conflict problems. Furthermore, the possibility of giving amnesty to perpetrators often means that the victims have to renounce their individual wish of retribution so that the truth can come to light.[72] It even gets worse when a regime makes use of giving amnesty in the sense that they see it as a possibility not to call themselves to account. It has already happened that perpetrators told their stories without any remorse, knowing that they could not be punished, while the victims were left alone with their harm, not getting any form of reparation.[73] This shows that the outcomes of a Truth Commission are highly dependent on political will. One more difficulty is the fact that Truth Commissions are often badly conducted. Common mistakes are to fill those positions with international personnel who leave the country as soon as the procedures have come to an end, so there is no one who puts pressure on the fulfilment of the recommendations. In addition, they are often established in big cities that are far away from the local areas where the violence has taken place.[74]

---

[67] See Mediation Support Project 2009: 5
[68] See Graf 2004: 35
[69] See Kayser-Whande; Schell-Faucon 2008: 20-21
[70] See Mani 2002:102
[71] See Minow 1998: 58
[72] See Buckley-Zistel 2008: 16-17
[73] See Mobekk 2005: 268
[74] See Buckley-Zistel 2008: 16-18

Altogether you can say that the establishment of Truth Commissions should not be overestimated, because they often entail lots of negative effects. Nonetheless, they try to achieve a bigger balance between victims and perpetrators, in contrast to trials, which primarily focus on the latter. Simply because of the victims' rights to get to know the truth about past atrocities, the advantages of an appropriate provision is indisputable when the political will and the essential resources are available. It is also clear that for achieving rectificatory justice it can only be a contribution to other TJ mechanisms,[75] at least because prosecuting human rights violations is necessary for strengthening the institutionalisation of the rule of law.[76]

1.3.3. Reparation

Mani makes it clear that the application of trials and Truth Commissions are indeed very important for dealing with past abuses, but these Commissions only often enjoy partial success. For achieving rectificatory justice, a more comprehensive approach is required, which additionally includes diverse forms of reparations. It can be noted that reparation is often equated with monetary compensation, although, in fact, it encompasses many more elements.[77]

> *"Meanwhile, the idea of repairing the impact of the wrongs and harms of the past spans a broad and complex spectrum of measures and interests, reaching from the direct exchange of compensation between violator and violated to symbolic acts of states such as public apologies, naming holidays or designating public spaces for remembrance and mourning."[78]*

Although there are various kinds of reparations, they all pursue the same aim and that is to repair victims and communities of wrongdoings.[79] Dependent upon who is responsible for past atrocities, either the offender him/herself,[80] or the government, one has to find a way to repair caused violence. This is based on a legal obligation under international law[81] or national law, or it can be an act of political will. Mostly, Truth Commissions recommend the

---

[75] See Mani 2002: 101-109
[76] See Minow 1998: 57
[77] See Mani 2002: 109
[78] Kayser-Whande; Schell-Faucon 2008: 23
[79] See Teitel 2000: 127
[80] See Buckley-Zistel 2007: 5
[81] See Teitel 2000: 119

frame of reparations.[82] They can suggest individual measures, like compensation, restitution or rehabilitation or collective measures, for example symbolic acts.[83]

1.3.3.1. Individual measures

Monetary Compensation is seen as a form of valuation of the past wrongdoings. It is a symbolic act that should acknowledge the harm of victims. On the other hand, it can be an indispensable need for survival, especially for poor families that have possibly lost a capacity to work. It is always extremely problematic to ensure an equitable distribution and decide a monetary value on a human being's life. Which victim is entitled to get compensation and which is not? This often creates new hierarchies of victimisation and entails new conflict potential. Furthermore, a state cannot often afford huge amounts of compensation.

In contrast to monetary compensation, *restitution*, the return of misappropriated objects that were wrongfully removed, seems easier to handle.[84] Although it may be sufficient to repair the harm of the victims, in fact, it entails great difficulties. What for example should be done with innocent individuals that cultivate land for a long time which was taken away from the original inhabitants hundreds of years ago. Should you then punish the "new" land owners although their families have worked and lived there for many generations?[85]

Another individual measure of reparation that has to be considered is *rehabilitation*, which includes, for example, medical care, psychological and psychiatric intervention.[86] As it is impossible to discuss all forms of rehabilitation that can be applied after violent conflict, and seeing that this matter is constantly increasing, it makes sense to mention just one example that has gained particular attention in the TJ discourse, namely trauma work. One of the reasons for its special interest is its aim to reach a broad range of a society that has to deal with past abuses. Perpetrators, victims, and child soldiers are confronted with traumatic experiences as a result of violent conflicts, as well as relatives of people who have disappeared. Although the expectation that trauma can be healed completely is unrealistic, psychological support can make an important contribution to a more comprehensive engagement with fears, stress or other symptoms that traumatic experiences can cause.

---

[82] See Zupan; Servaes 2007: 12
[83] See Mediation Support Project 2009: 3
[84] See Buckley-Zistel 2007: 5
[85] See Minow 1998: 108
[86] See Mediation Support Project 2009: 3

Another reason for the popularity of trauma work is the openness to diverse methods that this concept offers, beginning with poetry, painting and music, as well as formal conversations. Nonetheless, it also entails difficulties, like the right timing of appropriate measures. Many experts emphasise the necessity of a secure and stable environment before starting with trauma work, otherwise, they argue, it could be difficult for the victims to build social relationships (again). It is often criticised that especially international aid and development workers neglect cultural traditions of mourning, dealing with death and suffering, and thus prevent healing processes of traumatic experience. [87] In summary, we can say that trauma work can make an important contribution to Rectificatory Justice, but it should not be ignored that each conflict experience is different and therefore the outcome is dependent upon the applied measures.

1.3.3.2. Collective measures

Besides individual measures, various types of collective measures of reparation also exist which involve public recognition by the state or some kinds of symbolic acts to restore victims' dignity.[88] An *apology* of a head of state or a government member for crimes that were conducted or paid for by the state is a verbal acknowledgement of responsibility for wrongdoings. If it is taken seriously and has not been forced, it can entail a very positive impact on the civilian society, otherwise it could lead to mistrust of the government.[89]

Another form of collective reparation is *commemoration*, which gives victims and a society space to remember crucial past events. How to deal with remembrance can take various forms, like creating memorials and monuments, launching a day of remembering or building a museum.[90] A side effect of the latter is that it provides information for the survivors, as well as for further generations. Commemorations also aspire to talk about past events, which can entail positive as well as negative effects because it often leads to contestations about hierarchies of victims.[91] Nonetheless, all these mechanisms offer acknowledgement for the victims' suffering and additionally they have a deterrent effect for further crimes.[92]

---

[87] See Kayser-Whande; Shell-Faucon 2008: 29-32
[88] See Graf; Kramer 2006: 18-19
[89] See Mani 2002: 114-115
[90] Ibidem, p. 115
[91] See Buckley-Zistel 2007: 6-7
[92] See Mani 2002: 115

In conclusion, one can say that measures of reparation often make an important contribution to the survival of people that suffer under the legacies of a violent past. They entail a huge symbolic value and help a society which has been strongly shaped by crime and harm to build trust in a new and different state.[93] Additionally, through such approaches harm is acknowledged and restored, and at the same time, responsibility for wrongdoings is taken.[94] However, it has to be born in mind that the chosen measures should be applied as comprehensively as possible to avoid hierarchies and marginalisation. It is recommended to mix material with symbolic reparations and follow cultural traditions.[95]

1.3.4. Institutional Reforms

Institutional reforms are conducted to achieve two aims: firstly, to stabilise democratic and good governance, and secondly, to strengthen efficient security forces.[96] This does not only demand a reform of the security sector (SSR) but also the *lustration* of criminal and corrupt staff members who have worked in state institutions. Especially organs of the judiciary have to be purified to guarantee fair trials as well as politicians not continuing with old dictatorial structures. Corrupt state members can be a huge problem, since the process of lustration is strongly dependent upon political will and a stable government.[97] Additionally, and very often, it is exactly these people who are needed to perpetuate a functioning state structure.

Another part of institutional reform is *Demobilisation, Disarmament and the Reintegration (DDR)* of former soldiers and ex-combatants.[98] When a violent conflict ends, they often feel worthless, useless and robbed of their former income. Suddenly everything they have fought for seems to have been lost and they tend do build new groupings. As a result, there is a real need for integration of former fighters in violent conflicts.[99] Furthermore, good co-operation especially with former ex-combats or paramilitaries could entail enormous positive effects for the whole society. When they, the ex-combats, for example, tell the hiding places of old landmines, further acts of violence can be prevented. On the other hand, these relationships can also be very risky when they still keep in touch with former networks.

---

[93] See Kayser-Whande; Schell-Faucon 2008: 23
[94] See Minow 1998: 94-95
[95] See Zupan; Servaes 2007: 12
[96] See Hänggi 2005: 5-6
[97] See Buckley-Zistel 2007: 6
[98] See Kayser-Whande; Schell-Faucon 2008: 26
[99] See Buckley-Zistel 2007: 6

Altogether, we can say reforming institutions after violent conflicts is a very important step in a transitional process. It is often quoted that more money should be invested into institutional reforms instead of "wasting" it on international trials. Nonetheless, good concepts are limited, and the realisation is often very difficult because of its dependence upon the political will of a corrupt political leadership.[100]

1.4. Conclusion

As already mentioned in the beginning, the TJ concept is neither complete nor generally valid. The explanation of the particular TJ interventions should give one an idea of what is needed for a society in transition and it demonstrates their possibilities and limitations. The individuality of every conflict makes it difficult to see Transitional Justice as a stable concept. It is recommended to see it as described by Kayser-Whande and Shell-Faucon: a tool-box which offers possible measures combined with appropriate positive or negative experiences societies have come through.

Nevertheless, there are some rules that have to be obeyed, including legal obligations under international law and moral obligations to restore victims' dignity. To what extent retributive and restorative justice mechanisms should be applied is highly dependent upon political will and relates to the personal wish of victims. It would be desirable to find an approach that is as inclusive as possible to attain a comprehensive way of dealing with the past. This is not just restricted to measures of rectificatory justice, but should also include ways for achieving legal and distributive justice.

This thesis aims to demonstrate to what extent the TJ interventions serve or hinder reconciliation by referring to the case of Northern Ireland. Before describing the special circumstances of the conflict and the experiences with the reconciliation process in Northern Ireland, the next chapter is dedicated to giving an overview of what is meant by reconciliation.

---

[100] See Kayser-Whande; Shell-Faucon 2008: 26

2. Reconciliation

Reconciliation is greatly needed in post-conflict societies, but, in fact, a universal understanding of the term and the processes it entails are not available.[101] Moreover, it has to be seen as an approach with multiple meanings, differing from context to context.[102] Originally, the term derives from the Latin word "conciliatus"[103], which means coming together. Assefa suggests a general definition as follows:

> *Essentially, reconciliation means the restoration of broken relationships or the coming together of those who have been alienated and separated from each other by conflict to create a community again.[104]*

Another definition of Bloomfield:

> *"At its simplest, it [reconciliation] means finding a way to live alongside former enemies – not necessarily love them, or forgive them, or forget the past in any way, but to coexist with them, to develop the degree of cooperation necessary to share our society with them, so that we all have better lives together than we have had separately."[105]*

It is often difficult to imagine how a society that has been deeply divided for many years should return to normality and find a way to live in harmony. But on the other hand, future violence is predestined if relationship building is neglected. Finding the right application of reconciliation is dependent upon the individual conflict context and the culture of the society.[106]

2.1. Reconciliation and Transitional Justice

Reconciliation is often associated with Christianity, as it plays a crucial role in the Bible. A lot of theological literature highlights the necessity of reconciliation in combination with

---

[101] See Assefa 1999: http://www.peoplebuildingpeace.org/
[102] See Hamber; Kelly 2005: 19
[103] conciliatus: Vereinigung, Verbindung (Stowasser; Petschenig; Skutsch 1994: 105)
[104] Assefa 2004: 9
[105] Bloomfield 2003: 12
[106] See Sarkin; Daly 2004: 665

forgiveness, repentance, confession and rebirth.[107] Nowadays, this focus has shifted and many authors and peace workers, especially those who defend a human rights perspective, intend not to define reconciliation as a religious concept anymore. According to them, forgiveness does not necessarily occupy a central position,[108] whereas they put a greater emphasis on the regulation of social interactions and the prevention of further violations in post-conflict societies.[109] Huyse stresses the techniques that are important for reconciliation as follows:

> *"Healing the wounds of the survivors; some form of retributive or restorative justice; historical accounting via truth-telling; and reparation of the material and psychological damage inflicted on the victims."[110]*

Additionally, he states that these mechanisms are linked and have to be applied together.[111] Interestingly, this definition, as well as others, sounds very similar to those of Transitional Justice, which leads to the question about differences between both concepts. Kayser-Whande and Shell-Faucon observed that, when talking about transitional justice, a focus is put on the processes that deal with injustices, while, when observing transitional justice processes with the lens of reconciliation, the relationship aspect gains greater emphasis.[112]

> *"**Transitional Justice** [...] is always concerned with a conscious strategic and political process to deal with injustice during and after political change.*
>
> *The perspective that places ‚**Reconciliation**' at the centre of transitional justice processes is concerned with a broader process aimed at individual and social transformation that involves a range of social dimensions."[113]*

According to the quotation of Kayser-Whande and Schell-Faucon, reconciliation is defined as concerning a "broader process", which would signify not to be an end term. But observing the statements of politicians and also the UN Report[114], which was quoted above, reconciliation is often defined as a goal of Transitional Justice. In his book, Bloomfield deals with this

---

[107] Assefa compiled four dimensions of reconciliation according to the Old and New Testament. Reconciliation with God, Reconciliation with the "self", reconciliation with one's neighbours and the community at large and reconciliation with the nature, which are all interrelated with forgiveness. (see Assefa 2004: 9-16)
[108] See Hamber; Kelly 2005: 18
[109] Ibidem, p. 24
[110] Huyse 2003: 23
[111] Ibidem, p. 24
[112] See Kayser-Whande; Schell-Faucon 2008: 17-18
[113] Ibidem, pp. 18-19
[114] See Chapter II, 1.1

discrepancy and intends to consider reconciliation as both, a goal as well as a process, at best latter leads to the desired goal. Normally, reconciliation is a long-term issue which can last for some decades and even generations. Therefore, when regarding reconciliation as a process, a greater focus can be put on the issues of the present situation instead of longing for an ideal status of the future that maybe evokes expectations that cannot be fulfilled. Its pace cannot be planned and in most cases it is not a linear process. Additionally, it is a very deep and broad path, since attitudes and beliefs of a great part of the society have to be changed. Although establishing a relationship between victims and perpetrators is central in a reconciliation process, a community-wide inclusion is crucial, because in many conflicts a whole community could be regarded as enemies, like "the Protestants" or "the Palestinians".[115]

Huyse underlines the phenomenon of a collective guilt that often exists in a post-conflict society. According to him, three stages have to gone through to achieve reconciliation. Firstly, fear has to be replaced by non-violent co-existence between hostile individuals and the group by means of NGOs, political and community leaders and religious institutions. The next step is to try and build confidence and trust by acknowledging the humanity of the others. The last stage is to develop empathy, which can be achieved through victims' willingness to listen to those who caused violence, and on the other hand, through perpetrators' understanding of the desperation and anger of those who have suffered. More important, it has to be recognised that they both have a common identity as survivors of the conflict and, furthermore, as human beings.[116] As already quoted above, he suggests Transitional Justice interventions as the most applicable techniques for reconciliation.

This chapter should give an idea of how a differentiation between Transitional Justice and reconciliation can be made or rather how these two concepts are linked. While it was argued that the key element of reconciliation is building relationships, the concept of TJ puts a greater focus on the injustices themselves. However, they both stress the same interventions and are therefore interdependent. It was further referred to Huyse's idea of how reconciliation can be achieved. According to him, three stages have to be implied: rebuilding non-violent co-existence, gaining trust in former enemies and achieving empathy. This procedure takes a lot of time, so when defining reconciliation as a goal, Bloomfield argued, this would rather

---

[115] See Bloomfield 2003: 12-13
[116] See Huyse 2003: 19- 21

divert from the present situation, so seeing it as a process would be more helpful when dealing with past violations in a deeply divided society.

Concerning my research question, I intend to demonstrate how the past was dealt with in Northern Ireland and to what extent TJ interventions were implemented. At the same time, I aspire to highlight the experiences made with these methods and emphasise what is necessary for people to deal with their past. Additionally, I wanted to add some more innovative ideas concerning reconciliation and I therefore implemented two approaches that Galtung developed in order to achieve reconciliation.

2.2. Galtung's idea of reconciliation

Galtung also highlights that the concept of reconciliation is not uniformly acknowledged and it implies many different disciplines.

> *"Reconciliation is a theme with deep psychological, sociological, theological, philosophical and profoundly human roots – – and nobody really knows how to do it!"* [117]

Nonetheless, he clearly states what reconciliation means to him and points out important factors that characterise the concept. Galtung defines reconciliation as closure and healing.

> *"[...] closure in the sense of not reopening hostilities, healing in the sense of being rehabilitated."* [118]

He further states that reconciliation efforts always need to be embedded in the local culture in order to be successful and sincere reconciliation is only possible after the just resolution of the conflict. According to Galtung, the only parties that are able to reconcile themselves are perpetrators and victims, whereas they also have the potential to hinder the process. A Third Party[119], he adds, can just administer but never reconcile. To achieve healing and closure he proposes twelve approaches[120], not with the intention of applying all of them in every

---

[117] Galtung 1998: 64
[118] Ibidem, p. 64
[119] The Third Party is the source of Grace, Law and Justice: God (the Church), the State (the International Community), Society (the people). (See Galtung 1998: 64)
[120] 12 approaches of Galtung: 1. the exculpatory nature-structure-culture approach, 2. the reparation/restitution approach, 3. the apology/forgiveness approach, 4. the theological/penitence approach, 5. the juridical/punishment approach, 6. the codependent origination/karma approach, 7. the historical/truth commission approach, 8. the

conflicted society, but to offer a broad range of tools that can be applied in different modes, dependent upon the individual conflict situation. Some of them overlap with those we have already defined as TJ interventions, but additionally he suggests techniques that are not found in the Transitional Justice concept. It is not planned to explain all twelve approaches, but just two of them, joint reconstruction and joint sorrow, since they provide useful tools for demonstrating the extensiveness of the reconciliation building process in Northern Ireland.

The approach of *joint sorrow/healing* should provide an alternative to celebrating days that glorify the war. He underlines that survivors should recognise that their loved ones died because of incompetent politicians who were not able to transform a conflict, instead of believing that they gave their lives for a good cause. Former enemies should come together, share their harm and find ways of creating a peaceful future together. The key word is togetherness, the same as in the *joint reconstruction approach*. In contrast to joint sorrow, it refers to meetings between former enemies with the aim of reconstructing something that was damaged. After some time and this can take several years, when perpetrators reflected on the mad deconstruction with other perpetrators and victims did the same and they came to some form of a common understanding of their situations, encounter could be carefully tried between both, perpetrators and victims[121] *"to turn their tragedy into something meaningful through acts of cooperation."[122]*

The key issue of joint sorrow/healing and joint reconstruction is to foster togetherness between conflicted parties. I am convinced that, for achieving reconciliation in deeply divided societies, joint instruments are essential, which is the reason why I decided to implement those two approaches into my thesis. Galtung highlights that reconciliation can only be achieved between perpetrators and victims. With his suggestion of twelve approaches, he offers us useful tools for rebuilding broken relationships, but it has to be noted that making clear differences between who is a perpetrator and who a victim can be extremely difficult in divided societies. What kind of problems this entails will be demonstrated in the next chapter.

---

theatrical/reliving approach, 9. the joint sorrow/healing approach, 10. the joint conflict resolution approach, 11. the joint conflict resolution approach, 12. the ho'o ponopono approach. (See Galtung 1998: 65-91)

[121] See Galtung 1998: 81-84

[122] Ibidem, p. 83

2.3. Perpetrators, Victims and Survivors

Perpetrators and victims play a crucial role in every transitional or reconciliation process. It can be stressed that TJ interventions, which try to trigger these processes, are highly focused on these groups. While trials and institutional reforms concentrate on perpetrators, Truth Commissions and reparations put a greater emphasis on victims.[123] Mani criticises, that TJ interventions generally perpetuate a dichotomy between perpetrators and victims and tend to consider both groups as homogenous. Furthermore, victims' needs are stereotyped. This generalisation is very problematic, since, in fact, victim's desires can vary strongly, and clearly marked differences between both groups can be prejudicial to lasting peace.[124] This raises the question of who is a perpetrator and who a victim. In the words of Lindorfer, a psychologist with experience in post-conflict trauma:

> *"A"perpetrator" is somebody who, at a particular point in time, intentionally inflicts harm on somebody else."[125]*

This simple description can help to understand the meaning of the term on a general level, but has to be discussed in detail to get a better insight into the problems of the diversity of defining a perpetrator. Firstly, it has to be pointed out that not all offenders act under the same motives in violent conflict. While state actors justify their operations as conducted under orders, which are maybe not unlawful at that time, mostly non-state actors think of fulfilling a duty when fighting against state violence. Both do not perceive themselves as perpetrators. A common justification of state actors is being at war, while non-state actors are convinced of defending their community from state repression. Nonetheless, they both are so-called primary offenders with criminal guilt that can be brought before the court according to national or international law. Besides primary offenders, violent conflicts always entail indirect offenders whose guilt is normally of a political or moral nature. Normally, they are not involved in direct violence, but instead take advantage of structural injustices.[126]

---

[123] See Servaes; Birtsch 2008: 3
[124] See Mani 2002: 121
[125] Lindorfer quoted after Servaes; Britsch 2008: 5
[126] See Huyse 2003: 67-72

"They do not kill, torture, abduct or abuse physically. But they profit whenever scarce resources are allocated – job and income, heath care and education, housing and personal security, status and political power."[127]

Besides domestic beneficiaries who take advantage of an unjust situation, the notion of indirect perpetrators also includes bystanders, who are aware that violence happens, but do not do anything to change the situation.[128] This means, in other words, that every person who fails to do everything he/she can to prevent injustices can be defined as a perpetrator. According to that assertion, almost everybody in a violent conflict can be defined as a perpetrator. If the whole society consists of offenders, who are the victims? Again, in the words of Lindorfer:

"A victim is somebody who, at a particular point in time, is subjected to intended harm by somebody else."[129]

But this again is just a simplification of a very complex topic. Huyse points out various aspects of defining a victim. He differs between individual/collective, direct/indirect and first/second generation victims. In most violent conflicts, not just individual men or women have to suffer violence, but often collective victims are created that get targeted because of their ethnic, ideological or religious affiliation. They do not necessarily suffer from physical violence, but from structural and systematic injustices.[130] Mani agrees with this assertion but goes one step further and stresses that, in fact, the whole community suffers from gross violations.[131]

"Violence is so random and civilian-focused in most contemporary conflicts that all inhabitants of a society, regardless of their affiliation, may suffer chronic fear and insecurity during conflict, even if they manage to escape with their lives."[132]

In other words, a whole society could be victimised by a violent conflict. The fact that everybody could be a victim or a perpetrator is not very helpful in finding a way to deal with

---

[127] Ibidem, p. 67
[128] Ibidem, p. 68
[129] Lindorfer quoted after Servaes; Britsch 2008: 5
[130] See Huyse 2003: 54
[131] See Mani 2002: 120
[132] Ibidem, p. 120

past atrocities.[133] Huyse suggests further distinctions in direct and indirect victims, whereas he defines the latter as those who are affected indirectly when they are linked to a person that undergoes direct violence. Additionally, first and second generation victims have to be separated, because according to current studies also the children of first generation victims can bear bitterness and trauma, since they absorb it from their parents.[134]

As there are many kinds of victims, and regarding Mani's claim that everybody is in a way victimised, the question arises of who ultimately defines them and what consequences it entails?

Generally, politics, law and culture set social norms for defining who is a victim and who is not. Physical, psychological or economical harm is not necessarily sufficient for someone to qualify as a "real" victim, if that person does not comply with constitutional norms. Referring to the political level, official agencies normally define victims, whereas initiatives of TJ interventions also contribute to this affiliation, since they decide the criteria of getting involved; mostly it requires a violation of fundamental rights. The inescapable conclusion is an exclusion of many groups of victims. This can, for example, happen when some crimes are not dealt with because they are either seen as irrelevant or did not occur in the period that is under examination. Not including them can be very hurtful and frustrating and often leads to re-victimisation. The second element in defining the categories of victims is the legal approach through criminal legislation of a post-conflict state; it includes national and international law as defined in the last chapter. Similar to political definitions, it cannot suffice all victims' needs. On the contrary, when, for example, only the most serious crimes are prosecuted, it is highly unrealistic to acknowledge all those who have suffered during a violent conflict. The last element is the culture that additionally influences the definition of victims. It often plays a crucial role concerning the acknowledgement of indirect victims. In many societies, in Africa and Asia for example, their traditions emphasise the necessity of community work and, therefore, often permit an approach that is more comprehensive than those in many European countries.

---

[133] Ibidem
[134] See Huyse 2003: 54-55

Not only external factors have to be taken into account when defining a victim, but full attention should be paid to the personal perception.[135] Because of the fact that the term victim implies suffering, passivity and the need for help, in fact many people do not want to identify with this notion.[136]

> "Individuals differ in the way they perceive what was inflicted on them. Some deliberately refuse to be labelled as victims. They see themselves as soldiers, heroes, freedom fighters or martyrs. Others prefer the label of "survivor" [...]."[137]

This stresses that the self-perception can strongly differ from legal or political notions.[138] For some, it is fairly important to be classified as a victim, others perceive it as a triumph to survive, and therefore want to be called "survivors".

To conclude this would mean that there are different categories of victims that do not necessarily comply with political, legal and cultural definitions. Furthermore, Mani states that every inhabitant that survived a violent conflict is a victim just because of the exceptional circumstances. Nonetheless, many of them do not perceive themselves as victims, but as survivors of the conflict. On the other hand, all of them could at the same time be defined as perpetrators due to political, moral or criminal reasons. What does this particularly mean for a transitional justice process and reconciliation? Mani suggests trying to adopt a better definition, which would permit a common future and not a perpetuation of divisiveness. Unfortunately, most of TJ interventions emphasise the distinction between individual perpetrators and victims and so avoid dealing with an important part of society's guilt and victimisation. According to Mani, building a common future would imply a redefinition of the whole post-conflict society as "survivors", regardless of whether victims or perpetrators. Not in the sense of denying individual guilt or suffering, but for providing a way of moving beyond the past.

Despite the problems these definitions entail, a distinction has to be made when trying to find ways of dealing with past atrocities. To discuss applications for achieving reconciliation in this thesis, the terms are still used according to their general definition. That means, when

---

[135] Ibidem, pp. 58-60
[136] See Mani 2002: 119-120
[137] Huyse 2003: 60
[138] Ibidem

talking about victims, we speak about people who suffer because violence was inflicted on them, while perpetrators are regarded as those who caused harm to somebody else. Later on, the practical example of the reconciliation process in Northern Ireland should again highlight the problems these definitions entail upon application in a deeply divided society.

3. Methodology

In the first part of this thesis I talked about TJ interventions and explained how they overlap with processes of reconciliation. As the second part of my research question deals in particular with experiences regarding the conflict in Northern Ireland, to enlighten myself, enhance and support my research, I decided to go and spend some time in Northern Ireland. This gave me the opportunity to conduct interviews with experts on this subject, hereafter known as expert interviews, during my time at the Transitional Justice Institute of the University of Ulster[139]. The staff members of the institute provided me with help in finding experts on my topic. I chose to conduct non-structured interviews, whereas I firstly devised an interview guide. I evaluated the interviews according to Mayring's qualitative content analyses.

In this chapter I will explain why I decided to apply this method and share my personal experiences by conducting interviews. Firstly, I will point out the differences between quantitative and qualitative research to further examine the main characteristics of expert interviews. In the course of that, I will explain why I decided to interview those particular five experts, how I conducted the interviews and the challenges they entailed. In the last part I will describe the qualitative content analyses and the categories I developed for analysing the interviews.

3.1. Qualitative and quantitative research

Since the 1920s the field of quantitative research has been provided with strict methods for analysing data. In contrast, researchers that deal with qualitative methods still try to improve and rarefy the techniques of assessing data. Because of the variety of social fields and research projects, setting universal norms is quite difficult.[140] Nonetheless, qualitative

---

[139] For further information see http://www.transitionaljustice.ulster.ac.uk/
[140] See Strauss 1994: 29

analysis has expanded into an important and more extensive field of research which, in the meantime, has a vast amount of literature about various qualitative methods.

Quantitative and qualitative methods differ greatly according to the way they are conducted. However, they have one common aim and that is to collect and assess the data that should answer the issues. In this process, researches of both methods have to consider the choice of the empirical material, the available time, and the kind of information they need for the project.[141] Apart from that, they vary in many ways. Strauss points out that their biggest difference lies in the way they analyse their data. Whereas quantitative research predominantly uses statistic and mathematic procedures, qualitative methods prefer other evaluation forms.

> *"Sobald Zahlenbegriffe und deren In-Beziehung-Setzen durch mathematische Operationen bei der Erhebung und Auswertung verwendet werden, sei von quantitativer Analyse zu sprechen, in allen anderen Fällen von qualitativer Analyse."[142]*

Gläser and Laudel criticise the way data is analysed in quantitative research. According to them, this mathematical approach prevents a broader understanding of social complexities, whereas the qualitative research is a good alternative, one that reconstructs and interprets social issues.[143] Strauss claims that qualitative analyses are very similar to those of an average person, when the latter thinks about his/her problems. Therefore he also calls it "natürliche Analyse",[144] but Strauss adds that, in contrast to the analyses of average people, the qualitative researcher uses this kind of thinking pattern in a more academic way.[145] Mayring explains that to have a better and broader understanding of the complexity of the whole issue one first has to explore the particular case.[146]

> *"Der qualitative-verstehende Ansatz "versteht" sich dabei immer dahingehend, Gegenstände, Zusammenhänge und Prozesse nicht nur analysieren zu können,*

---

[141] See Flick 2008: 252
[142] Mayring 2008: 16. "As soon as numbers and mathematical figures are used for evaluations, then we talk about quantitative analysis, in all other cases, we refer to qualitative analysis." (translated by Siobhan Langstadlinger)
[143] See Gläser; Laudel 2009: 27
[144] "natural analysis" (translated by Valerie Kainz)
[145] See Strauss 1994: 27
[146] See Mayring 2008: 17

sondern sich in sie hineinzuversetzen, sie nachzuerleben oder sie zumindest nacherlebend sich vorzustellen.“[147]

Scholars that conduct qualitative research put great emphasis on the context of social structures, whereas quantitative methods often neglect this point of view.[148] The latter focuses on the issue in general to further highlight it and divides it into small parts to try and achieve universal principles.[149] Mostly, their questionnaire does not allow the interviewee to explain his/her own approach, it just allows for answers to standardised questions. It is often criticised that a greater focus is put on the methodology than on the research itself,[150] saying that qualitative research is also criticised by many authors. Among others, Strauss claims that scholars who apply qualitative analyses are often not able to make cross-comparisons, since they just focus on particular situations, institutions or organisations. Furthermore, he is sceptical about universalising individual cases.[151] Mayring does not consider these two approaches as competing researches; according to him, they could also be applied in a mixed form. Even when evaluating the qualitative content analyses, quantitative elements can contribute to the evaluations.[152] He further explains that building categories for assessing data is without any doubt qualitative, but this could also be combined with quantitative methods, when, for example, counting and assessing the frequency of these categories.[153]

We now have a better insight into the main characteristics of quantitative and qualitative research. This leads us to the assumption that, although they differ in their ways of analysing, they do not necessarily exclude each other. Before explaining the qualitative content analysis according to Mayring, the next chapter will, on the one hand, give an introduction into the characteristics of expert interviews and, on the other hand, reveal my experiences in conducting interviews.

---

[147] Ibidem, p. 17. "The qualitative understandable approach is meant not just to analyse things, connections and processes but to be able to put yourself in that situation, to try and relive it, or at least to try and imagine what it would be like to relive it." (translated by Siobhan Langstadlinger)
[148] See Strauss 1994: 26
[149] See Mayring 2008: 17
[150] See Mayring 2002: 9-10
[151] See Strauss 1994: 26
[152] See Mayring 2008: 19
[153] See Mayring 2002: 117

3.2. Expert interviews

Gläser and Laudel explained why interviews conducted with experts can only be analysed using qualitative research. They argue that standardised methods, characteristically applied in quantitative research, do not permit asking the experts for their specific knowledge. This kind of research would rather prevent us from getting to know their particular insight on the topic, since quantitative research only allows the interviewer to ask limited questions, which he/she has prepared in advance because a quantitative interview form has to be standardised. The whole point of conducting expert interviews it to acquire the knowledge of these people.

However, when conducting expert interviews, the experts' particular knowledge is not known in advance; moreover, this is what we want to find out when interviewing them. Expert interviews serve the researcher in reconstructing social circumstances and processes to further find appropriate answers to his research question.[154]

> *„Es handelt sich um Untersuchungen, in denen soziale Situationen oder Prozesse rekonstruiert werden sollen, um eine sozialwissenschaftliche Erklärung zu finden. Wir bezeichnen solche Untersuchungen im weiteren als rekonstruierende Untersuchungen. Die Experteninterviews haben in diesen Untersuchungen die Aufgabe, dem Forscher das besondere Wissen der in die Situationen und Prozesse involvierten Menschen zugänglich zu machen.“[155]*

Regarding my research question, to what extent TJ interventions serve or hinder the reconciliation process in Northern Ireland, I was interested in opinions of people who have expert knowledge of the Northern Ireland conflict. As I had no personal experience with the conflict and had never visited Northern Ireland before my research, I was not really able to assess the conflict situation or see how the reconciliation process was developing. Although I had read a lot about this topic, I was convinced that expert interviews would make it easier for me to understand the complexities of this transitional situation. This proved to be true as they gave me an insight into their specific knowledge about the complexities of the conflict and the

---

[154] See Gläser; Laudel 2009: 37
[155] Ibidem, p. 13. "It deals with investigations in which social situations or processes should be reconstructed in order to find a social scientific explanation. We describe such investigations hereafter as reconstructed investigations. The task of the expert interviews in these investigations is to pass on the particular knowledge, about the people involved in these situations and processes, to the researcher." (translated by Siobhan Langstadlinger)

reconciliation process. The open form of interviewing allowed me to acquire the knowledge necessary to answer my questions. Before saying any more about interview forms, the next chapter will define the criteria needed for being an expert to further account for my choice.

3.2.1. Who is an expert?

When conducting interviews with experts, they themselves are not the "object" of the inquiry; they can rather be described as a source where the researcher gets his/her requested knowledge from. Feelings and thoughts of these experts are not a central concern of this method; to a certain extent they serve to reconstruct social structures which can be used by the researcher for further enquiries.[156]

> *""Experte" beschreibt die spezifische Rolle des Interviewpartners als Quelle von Spezialwissen über die zu erforschenden sozialen Sachverhalte. Experteninterviews sind eine Methode, dieses Wissen zu erschließen."[157]*

When contemplating on the word "expert", it brings to mind a person that has acquired exceptional knowledge in a specific field, like for example, a scientist or a technician. But this is a very narrow spectrum, since many other people possess knowledge regarding their profession. For example, a mechanic is also an expert in the field of car repairs, the same goes for a musician when we talk about his/her instrument. Finally, that would mean that everybody has specific knowledge about something. We know more about our environment, our working methods or events we visited than people who were not involved in these things. The difference between being an expert in his/her own field is that he/she has gained this information because he/she has been part of it. In contrast to that, social scientists study such social contexts, but are not part of it.[158]

3.2.2. Choice and access of experts

With regard to my research, I consider expert knowledge an invaluable source. This study allowed me to get information from those who have really dealt with the Northern Ireland conflict for years and have the know-how about applying TJ interventions and the

---

[156] Ibidem, p. 12
[157] Ibidem. ""Expert" describes the specific role of the interview partner as a source of special knowledge of the social cases that are being researched. Expert interviews are a method of finding this knowledge." (translated by Siobhan Langstadlinger)
[158] Ibidem, pp. 11-12

reconciliation process. I regard those people who have actually worked on these topics as experts, thus I would classify them as experts and judge them as qualified to conduct interviews with, hence assisting me with my assignment. During my internship at the Transitional Justice Institute (TJI) of the University of Ulster, I had the chance to get to know many qualified people. Besides the very competent members of the TJI, I further had the chance to meet people at the many events I was invited to. Altogether, I had the opportunity to conduct five interviews with the following people.

Professor Fionnuala Ní Aolàin[159], Co-Director of Transitional Justice Institute (TJI) and Dorsey and Whitney Chair in Law at the University of Minnesota

Dr Michael Hamilton[160], Co-Director of Transitional Justice Institute (TJI)

Ms Patricia MacBride[161], Commissioner, The Commission for Victims and Survivors, Northern Ireland (CVSNI)

Dr David Bloomfield[162], Chief Executive of Glencree Centre for Peace and Reconciliation

Dr Brandon Hamber[163], Director of International Conflict Research Institute (INCORE)

Prior to going to Ulster, I was convinced that two months would be enough time to conduct five interviews, but once there, I quickly realised that time was running out faster than I had expected. It was quite easy to get in contact with the two co-directors of the TJI, since I spent every day at the institute in Belfast, doing research regarding my thesis or compiling information for my upcoming summer school. Both interviews were conducted in their offices. Although the staff members of the TJI helped me to find additional qualified interviewees from other institutes, organising appointments was quite a challenge, since they were all very busy people. I was very thankful that one of the staff members of the TJI arranged the interview with Patricia McBride for me, because, as a Commissioner of the CVSNI, I thought she would be able to make a good contribution to my work. We arranged to meet at her office in Belfast. Furthermore, many people advised me to ask Dr. Brandon Hamber for an interview, too, since he is well acknowledged for his work regarding

---

[159] For further information see http://www.transitionaljustice.ulster.ac.uk/ and http://www.law.umn.edu/
[160] For further information see http://www.transitionaljustice.ulster.ac.uk/
[161] For further information see http://www.cvsni.org/
[162] For further information see http://www.glencree.ie/
[163] For further information see http://www.incore.ulst.ac.uk/ and http://www.brandonhamber.com/

reconciliation in Northern Ireland and has published quite a lot on this topic, as well. It proved to be a little difficult to organise an appointment with him, since he usually works in Derry, which is around 2 hours from Belfast. Luckily, we were able to arrange a meeting at his office at the University in Derry while I participated in the summer school which was offered by the TJI. Arranging an appointment with Dr. David Bloomfield proved to be quite a task, too. I first met him at a conference in Nuremberg[164], which I mentioned earlier. He held a speech there about a reconciliation programme he has conducted with citizens of Northern Ireland. I was fairly interested in his work and it really suited my field of research. After approaching him, I asked if we could arrange an interview during my stay in Northern Ireland, to which he immediately agreed. As he usually works in the Republic of Ireland, it was a little challenging to find a suitable date.

Eventually, I had all my interviews arranged. I would just like to state that I am extremely thankful that they all took the time to convey their knowledge and share their opinions with me even though they had busy schedules. What I learnt was that it would have been easier if I had looked for possible interviewees before going abroad. Without the assistance of the very helpful and accommodating TJI staff, I believe meeting these people would not have been possible.

3.3. Interview guide

Prior to conducting interviews, it is necessary to find out which kind of interview technique you want to apply. Gläser and Laudel claim the interview guide is the best method for expert interviews. Besides open and narrative interviews, the interview guide belongs to the group of non-standardised interviews.

Before explaining the interview guide in detail, a general overview describing the difference between structured, semi-structured and non-structured interviews should be given. This distinction relates to the degree of standardisation of questions and answers. In structured interviews, the questions, as well as the answers, are standardised. The interviewer offers a limited range of answers for the respondent to choose from. This method can only be applied

---

[164] Dr. David Bloomfield (Glencree Centre for Peace and Reconciliation) holding a speech on „Einführung und kritische Reflexion des Transitional Justice-Ansatzes", 4. April 2009; in the course of the conference "AFK-Jahreskolloqium, Tagung 30: Nach Krieg, Gewalt und Repression: Der schwierige Umgang mit der Vergangenheit", Nürnberg, 3.-5. May 2009

in quantitative research, since it does not allow for the interviewee's individual opinion. Semi-structured interviews are characterised by standardised questions, but permit open answers. Gläser and Laudel argue that both interview methods are not applicable for qualitative research, since they do not allow the interviewee to ask further questions beyond what the interviewer had already planned.[165]

> *"The former [structured interviews] aims at capturing precise data of a codable nature in order to explain behavior within preestablished categories, whereas the latter [unstructured interviews] attempts to understand the complex behaviour of members of society without imposing any a priori categorization that may limit the field of inquiry."[166]*

For deriving specific information, non-structured interviews are best qualified. As neither questions nor answers are standardised, this method enables one to find out important information which did not seem relevant before the interview. As already mentioned, non-structured interviews are split in open interview[167], narrative interview[168] and interview guide. Gläser and Laudel argue that the latter is best applicable for expert interviews, since it allows reference to many different aspects and topics, whereas it would be difficult to ask various questions in an open or narrative interview.

Although this research is a form of non-structured interviews, some authors would describe it as semi-structured, since they would argue that there are some standards that have to be followed.[169] The interview guide consists of questions which all have to be asked, but the way they are formulated and in which order they are answered is not of any importance. It demands skill to react to the individual answers. New information should be further enquired.[170]

---

[165] See Gläser; Laudel 2009: 41-42

[166] Fontana; Frey 2000: 653

[167] See Gläser; Laudel 2009: 42. "In open interviews the interviewer has prepared specific topics he wants to ask, but doesn't have a binding interview guide. The interview is similar to an ordinary conversation and deals with questions that are formulated freely." (translated by Siobhan Langstadlinger)

[168] Ibidem. "Narrative interviews often aim to find out more about the story of somebody's life. One complex question should initiate a detailed story of the interviewee. (translated by Siobhan Langstadlinger)

[169] In German they differ between: „halbstandardisierten" und „teilstandardisierten" Interviews." (Gläser, Laudel 2009: 41)

[170] Ibidem, pp. 41-42

Before I conducted the interviews with the experts in Northern Ireland, it took me some time to contemplate on which questions to I should ask. This involved a certain amount of time, adopting theoretical knowledge about TJ interventions, the different approaches of reconciliation in addition to background knowledge about the Northern Ireland conflict. As I have already mentioned, I visited various seminars and read a lot of secondary literature to get a broader understanding of the key issues. After some time I realised that my main interests rested in understanding the different aspects that influenced a reconciliation process and how this process was being implemented in Northern Ireland. I was aware that to get answers to these challenging questions, interviews with experts would help me to understand the facts of the conflict. As I had already devised the theoretical framework for my theses, I knew beforehand that there were different topics I would have to address. I could not prepare a standardised questionnaire, because I did not know the interviewees' answers in advance. These are the reasons why I decided to prepare an interview guide[171] with all of the questions that I thought appropriate, but without using standardised wording. I really enjoyed this kind of interview method, since it lent itself to me asking further questions when they mentioned some aspect I had not thought of in advance.

Before actually meeting the interviewees, I sent them an email with the main questions so that they could decide if they were capable of answering my questions. As well as this, I had a questionnaire which was more detailed. I decided not to hand this to them before our meeting so as not to infringe on their answers. They were also informed that, should they feel uncomfortable, for any reason, about any of the questions, then they were welcome to skip that particular one and could proceed to the next one, but as it turned out this never happened. All of the interviewees gave me their permission to use their name, profession and date of birth, and they were all informed that this thesis would be published at least at the University of Vienna. Furthermore, they allowed me to put the whole interview on tape so as to ease the transcription.

3.4. Transcription

After conducting the interviews I had to transcribe them all. Gläser and Laudel state that just summarising interviews is not acceptable in qualitative research, since it is not possible to give adequate instructions this way. Also analysing when the interviewee makes a longer

---

[171] See Appendix

break or coughs is not necessary when transcribing expert interviews; the purpose is to state the facts. Many authors say that transcribing is very exhausting, since it takes a very long time.[172] This I can say is true! It took me about ten hours to transcribe a one-hour interview. At this point I would like to mention that it was certainly more difficult for me because the interviews were not conducted in my mother tongue. Apart from Michael Hamilton's interview, which lasted for more than two hours, the others concluded in after about one hour.

3.5. Qualitative Content Analysis

After transcribing my interviews, I was confronted with huge amounts of texts which needed to be reduced. I decided to apply the qualitative content analysis according to Mayring, where he distinguishes three different types: the summary, the explication and the structuring. In this thesis the latter was adopted. Following the research question, specific categories are defined. According to these categories, crucial aspects of the texts are analysed and compared.[173]

Concerning my research question, my categories refer to the TJ Interventions trials, truth recovery interventions, reparations and institutional reforms, as well as to different dimensions of reconciliation. The second part of this thesis will demonstrate, by means of qualitative content analysis of the expert interviews as well as literature analysis, the experience of Northern Ireland with TJ Interventions to further give an idea to what extent reconciliation has been achieved.

---

[172] See Gläser; Laudel 2009: 193
[173] See Mayring 2002: 114-115

III. The experience of Northern Ireland

To understand what is needed for reconciliation and what could hinder the process, I think it is necessary to understand the conflict and its roots. Although the Troubles[174] began in 1968, the origins of the conflict go back to the twelfth century.

In total, the Troubles caused 3,523 deaths[175]; it is remarkable to note that Northern Ireland is such a small area with its population of 1.6 million. Most of those killed were civilians, followed by members of the security forces. A smaller number were victims of the Republican and Loyalist paramilitary groups.[176] The Republicans are those who fought for a common Republic of Ireland, while the Loyalists wanted to stay part of the United Kingdom. The largest of the Unionist paramilitary groups have been the Ulster Defence Association (UDA) with their cover name Ulster Freedom Fighters (UFF). Best known Republican paramilitary organisation has been the Irish Republican Army (IRA). Both sides had many subgroups. In 1969 the Provisional IRA split from the IRA;[177] at the moment the Real IRA and the Continuity IRA exist.[178] With their use of bombings, shootings, racketeering and community intimidation, these paramilitary organisations have tried to gain political leverage.[179] During the Troubles almost 60% were killed by the Republicans, 30% by Loyalists and 10% by the British and Irish security forces. Most of the killings took place in Northern Ireland, especially in Belfast, but the Republic of Ireland and large English cities were also affected. Some deaths occurred in Continental Europe, too, particularly against the British Army in Germany. The conflict did not only cause many deaths, but also injured around 47,000 people.[180] In contrast to other conflicts, like the genocide in Rwanda, where about one million people died in about 100 days, a British military officer once stated, the violence in Northern Ireland, which caused about three and a half thousand deaths, remained at "an acceptable level". Compared to the degree of violence in other conflicts, this might be

---

[174] The Northern Ireland conflict is usually called the "Troubles", meaning the time between 1968-1998.
[175] between 1969 and 2001
[176] 53% civilians, 16% British forces, 15% local security forces, 10% Republican paramilitaries, 3% Loyalist paramilitaries. (See Breen-Smith 2007: 67)
[177] See: Fitzduff; O'Hagan 2009: http://cain.ulst.ac.uk
[178] For further information about recent killings of RIRA and CIRA see for example: McAleese 2009a: http://www.belfasttelegraph.co.uk
[179] See Fitzduff; O'Hagan 2009 http://cain.ulst.ac.uk
[180] See Report of the CGP: 60-62. There were around 16,200 bombings, 37,000 shooting incidents, 22,500 armed robberies, 2,200 arson attacks. Furthermore 19,600 people were imprisoned for scheduled offence. This means offences that were conducted to pursue the conflict, including murders, serious attacks among others

true, but obviously Northern Ireland has been affected by contestations and battles for almost 400 years. This is the reason why attitudes and beliefs about one's own community and the other's have been deeply entrenched. Myths and historical events are still perpetuated in these divided mindsets.[181] To obtain a broader understanding of the real causes of the conflict, it is important to take a look at Northern Ireland's history.

1. Historical Overview of the Northern Ireland Conflict

Graham divides Northern Ireland's history into three main epochs. The first one is between the sixteenth and the end of the eighteenth century, the second one starts in 1800 with the Act of Union, and the third one takes place around the 1920s when the South and the North of Ireland split.[182]

Strictly speaking, the first English settlers arrived in Ireland in the 12th century. From this time on, the number of English and Scottish settlers increased steadily – they were all Protestants, in contrast to the predominantly Catholic Irish population. In 1610, the English confiscated Irish land and gave it to the colonists – this was known as the so-called "Plantation of Ulster", which provoked deep hostility between the English and Irish culture. This era was further marked by repression and conquest. The most remarkable victory of the Protestant king, King William of Orange, was against the Irish king, King James I, on 12th July, 1690 at the Battle of the Boyne, a river in the midlands of the Republic of Ireland. This success secured the ascendancy of the Protestants and strengthened the subordination of the Irish people under the British state. Nonetheless, some Irish Protestants quickly realised that England was not acting in their favour, but rather for their own benefit and so they became very dissatisfied. Inspired by the American Revolution and the French Revolution, Protestants united with Catholics and called for equality between those two groups, as well as, the removal of the Penal Laws.[183] As both the Catholics and Protestants could not agree on several issues, their unification immediately led to an internal sectarian conflict. Britain responded with the abolishment of the Irish government, which had been running under

---

[181] See Bloomfield 2003: 41
[182] See Graham 2007: 6
[183] Penal Laws were established for the English Throne after the Battle of Boyne in order to reduce the political and military potential of Catholics. They were excluded from the political and educational systems, legal profession and land inheritance, although they made up 70% of the population. (See Holloway 2005:8)

limited capacity. Direct rule was imposed through the Act of Union[184] in 1800, and the imperial State created the United Kingdom of Great Britain and Ireland (UK).

According to Graham, the Act of Union marks the second period, which lasted until the division of Ireland in 1920. This period was characterised by contestations regarding the "national question". Irish Nationalists, who were mainly Catholic, wanted to gain independence, while Irish Unionists, predominately brought up as Protestants, defended the authority and legitimacy of the United Kingdom.[185]

Irish Nationalists responded to the Act of Union with reprisals, but soon were overwhelmed by the famine which cost one million people their lives. Furthermore, about two million emigrated, many to America. The reasons for this catastrophe were the population growth, too few fields for too many people, and the reliance on a single subsistence crop, potatoes, which blight struck between 1845-1849. Land reform acts were demanded and agreed upon. Nevertheless, the political situation still deteriorated and Irish Nationalists called for Home Rule. This immediately led to the formation of Irish Unionists, who saw their civil and religious liberty jeopardised. Successive uprisings challenged the British state; most notably the Easter Rising[186], which in the end gave the impetus for negotiations for independence. Although not wanted by Irish Nationalists, but accepted as a compromise,[187] the country was split. Twenty-six counties formed the independent Irish Free State, which later became the Republic of Ireland. The other six of the nine counties of Ulster, at that time predominantly inhabited by Unionists, constitutionally remained part of what has now become the United Kingdom of Great Britain and Northern Ireland.

The third and current epoch started after the end of the War of Independence, when Northern Ireland was established.[188] Although they had their own government, Britain still possessed the authority. The Nationalist population of Northern Ireland felt isolated within the new Protestant state. They were structurally discriminated against concerning housing,

---

[184] See Holloway 2005: 6
[185] See Graham 2007: 6-7
[186] Easter Rising: In April 1916 Irish Nationalists took over the General Post Office in Dublin and declared an Irish Republic. Although the uprising failed, the leaders evoked much sympathy, which led to a triumph for the Nationalist party of Sinn Fein in the 1918 British General Election over the Irish Parliamentary Party. Under the leadership of Eamon de Valera they formed a provisional government and finalised a Declaration of Independence. At the same time a War of Independence took place under the leadership of Michael Collins, but was soon replaced by negotiations. (See Holloway 2005: 12)
[187] See Holloway 2005: 9-12
[188] See Graham 2007: 6-7

employment and access to elections. Public positions were only accessible for those who were loyal to the state. Furthermore, internment was conducted without trials, in particular regarding Nationalists. This led to sectarian violence and fastened an apartheid mentality.[189]

> *"The two communities pursued separate cultures and maintained opposed political aspirations. Their children were educated separately, taught different histories and played different sports."[190]*

As a response to this discrimination and the sectarian violence, the Northern Ireland Civil Rights Association was founded to call for social and legal reforms through non-violent means. Made up predominantly of Nationalists, their peaceful marches were attacked by Loyalists and they, the former, got no police protection. This happened around 1968-69 and is quoted as the beginning of the Troubles.[191] As the local administration was not able to handle the growing sectarian disputes, Britain sent troops to enforce order. Primarily, British soldiers were welcomed by the Catholic community, assumed as being their protectors, but the Catholics soon found out that the applied military methods were not to be used for the demands of the Civil Rights of the Catholic community.[192] Probably one of the most significant events was Bloody Sunday[193], when the British Army killed thirteen people who were peacefully demonstrating against internment that was being conducted without trials.[194] The Catholic minority reacted with an enormous increase of recruits to the newly formed Provisional Irish Republican Army (PIRA), which began a campaign of violence against the British army.

> *"Instead of the riots between Catholics and Protestants which had characterised 1969 and 1970, the conflict increasingly took the form of violence between the Provisional IRA and the British Army, with occasional bloody interventions by loyalist paramilitaries."[195]*

---

[189] See Holloway 2005: 14
[190] Ibidem, p. 14
[191] See Hollow 2005: 16-17
[192] See Darby 1995: http://cain.ulst.ac.uk
[193] Bloody Sunday took place on 20 January 1972 in the city of Derry (or Londonderry, but the prefix "London" was never accepted by the majority of the Nationalist population.) in Northern Ireland. British soldiers killed 13 men, one died later as a result of his wounds and many were seriously injured. No soldiers were injured by civilians. Until now it is not clear if the military operation was justified (See Hegarty 2004: 209-210)
[194] See Hegarty 2004: 209
[195] Darby 1995: http://cain.ulst.ac.uk.

The new protagonists were the British state represented by its army, Republican paramilitaries (besides the PIRA smaller violent groups emerged[196]) as well as Loyalist paramilitaries like the UVF. Britain quickly realised that it was not able to control the situation anymore and decided to suspend the Northern Ireland government and imposed direct rule from Westminster. Northern Ireland had been governed from London until the 1990s, with a British Secretary of State responsible for Northern Ireland's affairs.[197]

Between 1974 and the ceasefires of 1994 several attempts were made to reach a political and constitutional settlement.[198] In 1985 the British and the Irish Governments signed the Anglo-Irish Agreement[199], which signalled an important turning point, since it for the first time acknowledged the Nationalist and Unionist traditions. Changing legislation was proposed in relation to education and employment. Furthermore, co-operation between the two governments concerning the management of the conflict was institutionalised. The reason for this decision was that the British government realised that it could not secure a lasting political settlement on its own, since the national community would not support it. In return, the Irish government accepted the existence of the state of Northern Ireland and it should remain part of the United Kingdom as long as the majority wished so.[200] Although this Agreement encountered massive resistance by the Unionist community, since they feared an Irish unification, it was an important act for the peace process.[201] Another key element was the realisation by both the IRA[202] and the British Army that the conflict could not be won by military acts. For that reason, the IRA tried to get more influence on a political level, through its political party Sinn Fein.[203]

2. Peace Process

Sinn Fein, seen as the political arm of the IRA, had not been allowed to join political talks until the Joint Declaration was signed by the British and Irish government in 1993. It, the Joint Declaration, states that the party would not be excluded anymore if the IRA declared a ceasefire. Secret talks between the governments and paramilitary groups followed and also

---

[196] For example the Irish National Liberation Army (INLA) (see Darby 2003: http://cain.ulst.ac.uk)
[197] See Darby 2003: http://cain.ulst.ac.uk
[198] See Darby 1995: http://cain.ulst.ac.uk
[199] See Holloway 2005: 19
[200] See Darby 1995: http://cain.ulst.ac.uk
[201] See Holloway 2005: 19
[202] When not explicitly referring to one special subgroup, like PIRA or RIRA, they all are summarized as IRA
[203] See Fitzduff; O'Hagan 2009: http://cain.ulst.ac.uk

the Irish Diaspora in America made an important contribution to accelerate the peace process.[204] Finally, the political endeavour, together with positive changes concerning economic and social inequalities, led to the ceasefire of 1994. The PIRA was the first paramilitary organisation that announced a ceasefire, since as they considered the situation stable enough to negotiate a just settlement.[205]

> *"[...] We believe that an opportunity to secure a just and lasting settlement has been created. We are therefore entering into a new situation in a spirit of determination and confidence, determined that the injustices which created this conflict will be removed and confident in the strength and justice of our struggle to achieve this. [...]"* [206]

In return, the main Loyalist paramilitary organisations followed their example.[207] Political parties worked hard for a just settlement, but the denial of paramilitary organisations to decommission became a serious obstacle. The PIRA broke the ceasefire and in 1996 new bombing campaigns followed. In 1997 the newly elected British Government started new talks with the PIRA and achieved another ceasefire.[208] Further secret talks followed and diverse discussion papers were produced.[209] Finally, on 10 April 1998 the Belfast Agreement was signed by the British and Irish governments and all but one of the major political parties in Northern Ireland.[210]

2.1. Belfast Agreement

10 April 1998 was the Good Friday of Easter, which is the reason why some prefer to call it "The Good Friday Agreement". After the political parties had reached a conclusion on 22 May 1998, a referendum was endorsed by the people of the North and South of Ireland. 71.2% of those voting in the North accepted the Belfast Agreement with 94% per cent

---

[204] See Darby 2003: http://cain.ulst.ac.uk
[205] See Fitzduff; O'Hagan 2009: http://cain.ulst.ac.uk
[206] IRA Ceasefire Statement, 31. August 1994
[207] See Darby 2003: http://cain.ulst.ac.uk
[208] See Holloway 2005: 21-22
[209] See Bell 2000: 61
[210] See Bell 2003: 1097

accepting it in the South.[211] This was a historical turning point as it marked the first time that a consensus had been taken between the populations of GB and Ireland.

The first part of the Belfast Agreement set up constitutional provisions concerning self-determination. It is specified that the constitutional status is dependent upon the will of the citizens. Whether the majority of Northern Irish people wish a United Ireland or to remain part of the United Kingdom, British and Irish governments have to accept it and adapt following changes into their constitutions. At the time the Agreement was signed, the majority of the people in Northern Ireland wished to remain part of the United Kingdom. Therefore both governments acknowledged[212] *"that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people"*.[213] Concerning the issue of identity, the Belfast Agreement determined that it is *"the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose"*.[214]

Apart from constitutional issues, the Agreement can be divided into three strands. The first one defines the establishment of a power-sharing Northern Ireland Assembly, which is only allowed to make decisions with the support of the majority of both Nationalist and Unionist members. The second strand allows for a North-South Ministerial Council to strengthen relationships concerning common issues like tourism and agriculture. Whereas a greater co-operation with the Irish Republic serves the interests of Nationalists, strand three promotes the concerns of Unionists, since it embodies a British-Irish Council to foster relationships.[215] The last sections of the Belfast Agreement deal with rights, safeguards and equality of opportunity; decommissioning; security; policing and justice and prisoners.[216] It is not intended to discuss all of these issues here, but those of seeming interest to this thesis will be mentioned later.

Bell defines the Belfast Agreement as a framework agreement that intentionally does not set up the establishment of mechanisms that would deal with past abuses. Because of the

---

[211] See Bell 2000: 61, 64
[212] See Darby 2003: http://cain.ulst.ac.uk
[213] Agreement between the government of the United Kingdom of Great Britain and Northern Ireland and the government of Ireland, 10 April 1998 [Hereinafter: Belfast Agreement]. Constitutional Issues 1(iii)
[214] Belfast Agreement, Constitutional Issues 1(iv)
[215] See Holloway 2005: 22-23
[216] See Belfast Agreement, 6. Rights, Safeguards and Equality of Opportunity, 7. Decommissioning, 8. Security, 9. Policing and Justice, 10. Prisoners

difficulty to address the past, this "piecemeal approach", as she calls it, was a pragmatic compromise to what was possible at that time.[217] Holloway underlines this, arguing:

> *"The Belfast Agreement is a remarkable achievement but does not provide a final solution; rather it sets out a framework for an ongoing transformation of conflict through a peaceful political process, the outcomes of which are unclear." [218]*

Bell points out that it is not a comprehensive approach that provides mechanisms for dealing with the past; moreover, it gives detailed instructions for teams of experts that they have to follow at the implementation stage. Although the establishment of institutions dealing with accountability or truth-telling is lacking, it does address issues of victims of the conflict and accounts for prisoner release under specific circumstances.[219] Bell argues that a piecemeal approach does not necessarily entail negative consequences for a peace process when it allows achieving a compromise. Furthermore, she notes that avoiding addressing the main causes of the conflict and long-term solutions can allow a continuous examination for finding solutions to the complex problems.[220]

> *"A piecemeal approach to the past can therefore be argued not just to be a pragmatic necessity, but the most appropriate way to continue these difficult deeper negotiations."[221]*

With this argument Bell tries to give a new input into the whole transitional justice discourse that often advocates for a holistic approach to dealing with the past mechanisms. Furthermore, it challenges one of my main assertions seeing as I promoted an inclusive transitional justice approach, but this does not necessarily exclude Bell's insight. I am still adamant that the more inclusive the TJ interventions that are applied to a society that has to deal with past violations, the higher the probability of getting over the atrocities of the past and paving the way for a peaceful future. However, if the application of some interventions is premature and could prevent a peace process, then I also believe in a piecemeal approach in order to achieve a pragmatic compromise. Dealing with mechanisms a society is not ready for could make things even worse. However, I would further argue that it is a question of whether issues are being

---

[217] See Bell 2003: 1097-1106
[218] Holloway 2005: 22
[219] See Bell 2003: 1106-1107
[220] Ibidem, p. 1098
[221] Ibidem

avoided in relation to conducting negotiations or is it that certain injustices are not being addressed intentionally in favour of corrupt people and mechanisms. The next chapter should demonstrate how the experts I interviewed assessed the justice element in the Belfast Agreement and if they think a just solution has been reached in Northern Ireland.

2.2. A Just Solution in Northern Ireland?

In the theoretical introduction of this thesis, I have already discussed the complexity of the issue of justice. The experts I interviewed also agreed on the difficulty to provide satisfactory answers to what is justice and whether the conflict has been solved in a just way. With regard to whether the Belfast Agreement is a just solution, none of them replied with "Yes or No", but rather with "Yes and No". It did stop the violence, one argued, but did not resolve the conflict.

> *"The conflicting goals, aspirations are still there and they are legitimate on both sides, it's just that we don't kill each other but we don't have an overall solution. The problem hasn't gone away, it's just what has changed is how we deal with it and one of the issues we did not deal within the agreement was justice."*[222]

Like Bell, he also talked about the lack of dealing with past mechanisms, which makes it difficult to call the Agreement altogether just. All the experts agreed that a lot of people did not obtain justice.

> *"[...] at an individual level, broadly speaking for many people, the settlement isn't just in the sense that if you lost a relative, as part of that settlement, the person who killed your relative is coming out of jail [...]".*[223]

This interviewee referred to the part of the Agreement that assesses the release of qualified prisoners,[224] which he pointed out, is not seen as just by those harm was inflicted on. So, at an individual level, the Agreement was not just for many people in Northern Ireland. But when looking at it from a political perspective, it was explained to me as being the only way to stop the violence.

---

[222] Interview with Dr. David Bloomfield, Belfast: 5 June 2009
[223] Interview with Dr. Brandon Hamber, Derry: 18 June 2009
[224] For further information and critique see Bell 2003: 1111-1115 or McEvoy 1999: 1530 – 1576

> *"In a broad, broad sense it is probably just in the sense that that's actually given all the people here the aspiration as good as it going to get."*[225]

This would mean that those individuals who feel treated unjustly have to pay the price for a greater good, which is the achievement of a political settlement. One of the experts suggests not putting the Agreement in the context of justice, but rather calling it *"a pragmatic set of compromises"*[226] where justice sometimes comes into it. Important here is not to define it as an end game, but rather as a *"contingent agreement"*[227], where further documents follow. She further pointed out that talking about just solutions in divided societies, where you have minorities and majorities in connection with historic discriminations, seems fairly difficult in general, since it often leads to contemporary discriminations.

> *"So, for example, in the context of employment in Northern Ireland, there was a historic pattern of employment discrimination against Catholics. So in order to redress that historic discrimination, you have to make choices around whether you employ Catholics or Protestants. So you can have two equally qualified people applying for a job today and you have to make that choice that maybe you give that job to a Catholic over a Protestant to redress the historic discrimination. That is maybe just in a historical sense, but in an immediate sense it is probably unjust, because that person might be [equal] [...]."*[228]

From this we can conclude that talking about justice and just solutions in the phase of a peace process in general, and concerning the Belfast Agreement in particular, is really precarious.

According to these experts, the Agreement can be defined as just on a political level, but is not overall just, especially when referring to the individual level. To return to the issue of the prisoner release, this enactment can be considered just by those who feel wrongfully jailed. On the other hand, people who were violated by those prisoners can really feel unjustly treated by this decision. So whether a solution is considered just is really group specific and there is maybe no global answer to this.

---

[225] Interview Hamber
[226] Interview with Prof. Fionnuala Ní Aolàin, Newtownabbey: 1 and 11 June 2009
[227] Ibidem
[228] Ibidem

3. Reconciliation process in Northern Ireland

3.1. Reconciliation according to experts

Before asking the experts about their opinion concerning the reconciliation process in Northern Ireland, I considered enquiring into their general understanding of reconciliation as useful. In the theoretical framework it was assessed that there is no universal perception of the term reconciliation; moreover, it has to be regarded as an approach with multiple meanings. Because of the general disagreement in the reconciliation discourse, I supposed that the assertion of my interviewees would also not be consistent with each other. This assumption was justified, since their answers considerably varied. Nonetheless, on a general level they all agreed that reconciliation is about building relationships and is a process, not a goal.

> *"It's not a goal, it's not an end, it's not a state of being, it's a process. And it will take us probably several decades but certainly some years to work through most of it. But think about it, you can't see peace; it is invisible because it exists between people. So it's a relationship, just like war is a relationship. You can see behaviour based on peace, you can see that there are no soldiers on the streets here, so that's a sign of peace, but that isn't peace. So if peace exists between people than it is a relationship. That's where peace happens, where it exists. So that's why for me, building peace, building reconciliation means building relationships."[229]*

According to this quotation, peace and reconciliation lie close to each other and are both about relationship-building. It is not intended to start a discussion about peace and the differences to reconciliation, but it is important to mention it as another expert clearly separated those notions and is furthermore convinced that, in contrast to peace, reconciliation is not possible in a deeply divided society, like Northern Ireland.

> *"That doesn't mean you can't have peace, but peace is something far more utilitarian than reconciliation. The genealogy of that term suggests you move on, you forget, you put behind, it's not present in interactions, it is not present in societal relationships. You can have peace, but that doesn't mean you have*

---

[229] Interview Bloomfield

reconciliation and I think in societies that have been deeply violent or deeply conflicted, then violence takes generations to end, so you get reconciliation in maybe 300 years. But you don't get reconciliation when somebody signs a peace treaty."[230]

According to her, talking about reconciliation in post-conflict societies is very risky, since it implies expectations that cannot be fulfilled, whereas peace can not be equated with. Achieving reconciliation in a society that has been fighting for decades - *and "it's not just random violence, it's systematic, continuous, perpetual violence and where people have been grained in their psyches violent behaviour"[231]* – is highly unrealistic. She does not deny the possibility to seek reconciliation on an individual level, but is really sceptical about applying it on a societal level. Another reason for her firm denial is its strong connotation with Christianity. In her view, applying religious rules is very problematic in general and for non-Christian societies the concept of reconciliation is not well translated. Furthermore, she criticised that academics usually adopt a westernised version of reconciliation. Except her, none of the interviewees held this opinion that strongly. Another one also described reconciliation as a risk, but did not explicitly consider it absolutely impossible in post-conflict societies. What he remarked was that it always implies the danger to force people, giving them the feeling they have to reconcile for a greater good, although they are maybe not ready for it. Therefore he prefers to talk about recognition, *"recognising what it was for people during the conflict and accepting the different accounts."[232]*

Coming back to the argument that reconciliation is not possible on a societal level, this next quotation will show the view of another expert concerning this assumption.

"My understanding of reconciliation is very clearly not about a victim and a perpetrator coming to any kind of understanding. [...] For me reconciliation is about coming to a common understanding as a community and being reconciled and decreed in building a new future and to moving forward together."[233]

According to her, reconciliation can only be sought when the whole society is embedded. She pointed out that not only the active players have to be included, but also those who were

---

[230] Interview Ní Aolàin
[231] Ibidem
[232] Interview with Dr. Michael Hamilton, Newtownabbey: 29 May 2009
[233] Interview with Patricia MacBride, Belfast: 2 June 2009

inactive and closed their doors while brutal violence was happening outside. She regards the acknowledgement of those actions and inactions as necessary for achieving reconciliation, whereas she underlined not meaning the acceptance of their validity, but the recognition why they hold that opinion.

So we got different opinions whether reconciliation can be achieved either on an individual or a community level, but there was also an expert who stated that, according to him, reconciliation can be sought on three levels at the same time: the individual, the community and the political. Regardless of among whom relationships are built, according to him, all the opponents have to go through five processes for achieving reconciliation. First, a common vision has to be created, not necessarily the same political or constitutional intention, but an idea of where to go, like for example stopping the violence. Then Transitional Justice interventions have to be applied in order to acknowledge the happenings of the past. The third process is to build relationships actively through contact and connections to further establish a basis for addressing attitudes, prejudices or stereotypes, which would be the fourth step. Finally, some sense of equality and equity on a socio-economic and political level has to be established.[234] The application of all these dimensions he regards as essential in a reconciliation process. However, he is aware that they are all contradictory; wanting to build a relationship and at the same time taking something away from this person in favour of being more equal is conflicting within itself. Nonetheless, all of them are necessary for a relationship-building process and the way you manage those contradictions defines its success.

> *"So it's not just about how you deal with those five things it's about the infrastructure, the processes you put in place to actually manage those contradictions. If you want to know how you measure reconciliation, you measure it on the ability of a society or of individuals or of groups to actually manage those complex tensions within the relationship building process. [...]When you start to think about it like that, it's not a fluffy sort of people hugging and kissing sort of idea. It's actually a quite complex and difficult one."[235]*

---

[234] For further information see: Hamber; Kelly 2005
[235] Interview Hamber

We already perceived the complexity of reconciliation in the theoretical framework. The contradictory assertions of the experts I have interviewed underline the inconclusiveness in this field. While one is convinced that reconciliation can just be achieved on an individual level, according to another expert reconciliation can only be made on a community level, whereas a third one speaks of three levels: individual, community and political, where such a process can be brought about. However, they all agreed that reconciliation is a process for building relationships and not a goal. The awareness of having very contradictory opinions about the meaning of reconciliation is important to better understand the diversity of answers concerning my questions about their assessment of the reconciliation process in Northern Ireland, which will be discussed in the next chapter.

3.2. Reconciliation in Northern Ireland?

All of the experts agreed on the existence of a reconciliation process in Northern Ireland, except the one holding the opinion that reconciliation is never achievable in a divided society. Concerning Northern Ireland, she would rather suggest talking about an accountability process, since in her view the two communities have not come to a common understanding yet. Admitting that there are pockets of forms of relationship building, especially at Elites Universities, she at the same time pointed out that on a community level there is still extreme sectarianism and violence on the ground; not political violence, but ordinary crime. The other experts are also aware of continuing hostilities, but are nonetheless persuaded that an ongoing reconciliation process in Northern Ireland has been occurring since the late 1980s or the beginning of the 1990s. Highlighting that there was no formal starting point, they all stated those years as the commencement of a relationship building process.

> *"In 1980 when I started as a volunteer at a reconciliation centre and after a year I took it over and run it for 5 years. So that's the 1980s, in the middle of this violent conflict, I was running a reconciliation centre. So I must have been doing reconciliation while the violence was going on, which is strange. So when did it start, as soon as somebody started to try and address the issues of differences then it started."[236]*

---

[236] Interview Bloomfield

Although insisting on calling this reconciliation work, he is aware that, according to the current idea of what the topic means on an international understanding, many elements were missing, like all the Transitional Justice interventions. He is of the opinion that these mechanisms can initially be applied when a conflict is over. So he indicated the process that started in the 1980s as reconciliation because of its relationship-building element, but further added to not denote it as a public process, which is only beginning to start now. The other experts also defined the late 1980s and early 90s as the commencement of the reconciliation process in Northern Ireland, but stressed the secret talks of the politicians as the real beginning.

> *"In terms of the former political process I would say [it started] after the Hunger Strikes[237] when people had to jointly deal with all that, although in an antagonistic way [...]. I think you start to see the beginnings of people recognising the need to somehow make contact in the way of trying to move this process forward. I wouldn't call it reconciliation, but the beginning of some process of relationship-building [...]."[238]*

According to this expert, the Hunger Strikes, taking place in 1981, were the trigger of a relationship-building process. The others agreed with the assumption to denote the secret talks as the beginning although not explicitly mention the Hunger Strikes.

> *"I think the process of ending war and building peace started many years ago with the acknowledgement by the British government that they could not defeat the IRA and the commencement of private talks and the acceptance of the IRA that they were warrior that they didn't want to continue to fight this battle and those private talks commenced, which led to further dialogue [...]. I think the actions of getting those political leaders together and forcing them to accept that all men and women are created equal as a starting point in discussion was probably the*

---

[237] Hunger Strike: During the Troubles the British government often tried to solve the conflict on a political level, but without any success, since it always encountered resistance from all sides. In 1976, the Secretary of State decided to change the tactic and not address the problem as a political issue anymore, but as a law and order problem. He abolished the special status in prisons for those people who had caused terrorist acts. Unfortunately, these policies had the opposite effect and led to a total denial by Republican prisoners. In 1981 they started a hunger strike, where ten people died of starvation. (See Holloway 2005: 18) The most famous of all, Bobby Sands, was actually elected as an MEP when he died on hunger strike in the infamous Maze Prison. (for further information see Melaugh: http://cain.ulst.ac.uk)
[238] Interview Hamber

closest to the start of a reconciliation process and I think that the endorsement of that dialogue came about through the endorsement of the Good Friday agreement by referendum."[239]

In her view the process also started with the secret talks in the late 1980s and beginning of the 1990s and interestingly she further referred to the referendum that endorsed the Belfast Agreement as being the official acknowledgement of the political relationship-building process.

As a conclusion we can state that four of my five interviewees are convinced that a reconciliation process has been taking place in Northern Ireland. The one that denied this assertion is convinced that reconciliation is not possible on a community level in general. She admits that there are some kinds of relationship-building processes in Northern Ireland, but strictly denies that this occurs at the community level, since there still exists extreme sectarianism and ordinary crime. The other experts do not neglect the fact of ongoing violence and significant problems concerning sectarianism in Northern Ireland, but nonetheless cite the relationship-building process, which, according to them, has been taking place on different layers and already started in the late 1980s and early 1990s, as being reconciliation. After finding out if and when reconciliation has taken place in Northern Ireland, I will demonstrate in the next chapter how reconciliation has been approached. Curious about the experts' appreciation of the reconciliation process, I asked them how reconciliation has been addressed in Northern Ireland and what they think has been avoided. Surprisingly, I got very different answers, assuming that the reason lies in the very open form of question and the many possibilities to approach and avoid reconciliation.

3.3. The Reconciliation Approach in Northern Ireland

The expert, who denies reconciliation at all in a post-conflict society, explained that in Northern Ireland the term has predominantly been addressed by politicians *"because it has strong political currency and it suggests that you can move on".[240]* In contrast to that, she explained victims groups rather neglect using the term.

---

[239] Interview MacBride
[240] Interview Ní Aolàin

"They want truth, they want to know what happened to their loved ones, they want accountability from the state or from non-state actors. They would like to have better health care, they would like to have remedies, like compensation, they are not talking about reconciliation."[241]

In her view, reconciliation is not possible and not necessary for victims, since it promises something that can maybe not be fulfilled, like for example that the violence will stop. How can they believe in that and does it really help them to engage with their grief or anger? She critically stated that victims will not feel better about the murder of their loved ones just because politicians talk about reconciliation or sign a peace treaty. She regards it as more important "*to create political structures that allow people to move on pragmatically, but that is not the same thing as reconciliation.*"[242] In Northern Ireland, she explained, politicians use the term for promoting a better future, but not in the sense of dealing with the core issues of the past. This is hugely problematic, since it demands from victims to reconcile, but at the same time not does not address their real needs. Another expert also highlighted the lack of addressing the core issues. He uses a famous quotation by Seamus Heaney *"Whatever you say, say nothing"* to explain the situation of the last eleven years after the signing of the Peace Agreement. It was clearly avoided mentioning questions about responsibility, dealing with the past and moving on. However, he assumes it was necessary for achieving the Belfast Agreement. Why people on the streets disliked talking about issues concerning the conflict, he explained as following:

"Once the Agreement appeared most of wider society was just so happy. Peace, soldiers going away, no fear of getting shot on the bus. That was brilliant. I think we just enjoyed being able to talk to anybody about anything but saying nothing. That's kind of understandable after 30 years. It was really exciting to have boring streets. It really was. […] "How on earth not bring that up. It's all over now, just enjoy the moment.""[243]

Not talking about core issues, he supposes, was a possibility to enjoy the end of the conflict, but another reason was to not upset anybody. However, he is of the opinion that the avoidance of talking about grave problems entails enormous difficulties because the later central issues

---

[241] Ibidem
[242] Ibidem
[243] Interview Bloomfield

of the conflict are addressed, the harder it gets to deal with them. Like all the other experts, he mentions the big problem concerning sectarianism, segregation and ordinary crime still existing in Northern Ireland. Now, new generations, although they have not lived through the conflict, nonetheless think in old sectarian mindsets and perpetuate hostilities.

> *"When you think of the incident in Coleraine[244] last weekend, young people involved who were too young to remember anything of the conflict. And that's a particular troubling thing because in some way it's a constraint on the conflict to have lived through it because you don't want to go back and if the perpetuation of that kind of mindset is allowed to go unchallenged it is very dangerous."[245]*

It can be stated that there has been a failure to tackle sectarianism and to find ways of changing the mindsets of this still deeply divided society. Another expert observed a tension of the government in favour of avoiding further crisis *"to give sweets in equal measure to both sides to move over the next hurdle."* [246] While addressing the conflict according to old sectarian lines, the government has avoided dealing with the core issues and has so perpetuated sectarianism. Another expert, too, criticises this approach, which according to her allows maintaining the myth of a conflict between Protestant and Catholic communities instead of acknowledging that the reasons for the conflict could rather regard to national identity. She further assumes that this tactic makes it easy for the British government to abdicate their responsibility. Defining themselves as bystanders, instead of assuming their role as actors in the conflict excuses them from their own accountability.

> *"I think it was fundamental, it was about a question of national identity and that it was easier to be manipulated and to do a sectarian conflict, to be viewed as being a sectarian conflict, because it made it more manageable because it gave the opportunity for the British government to paint itself in the role of intelligent bystander when, in fact, it was an actor in the conflict [...]."[247]*

---

[244] On 24 May 2009 the 49-year-old Catholic community worker Kevin McDaid died after being assaulted by a loyalist mob. Around 40 youths beat him to death after celebrating a football match. Besides him, another man was seriously injured and McDaid's wife was beaten, as well. McDaid always promoted peace and worked hard to make his area a safer place. The reason for this attack was sectarian hatred. For further information see for example Sharrock 2009: www.timesonline.co.uk or McAleese 2009b: http://www.belfasttelegraph.co.uk
[245] Interview Hamilton
[246] Ibidem
[247] Interview MacBride.

She does not only accuse the British government of abdicating their responsibility, but also the Irish government, which according to her did not stand up for the Irish citizens who live in Northern Ireland.[248] Besides the lack of acknowledging the role of the governments as being actors in the conflict, she also criticises the avoidance of holding those ordinary people accountable who just stood by and did nothing. Getting to know their reasons for not intervening instead of just focusing on perpetrators and victims, she is convinced, could increase the ability to deal with the core issues, like whether it has really been a sectarian conflict. Another expert, who did not talk about the role of the governments, observed a tendency in the reconciliation process of Northern Ireland to just focus on one problematic issue instead of applying a holistic approach.

> *"So you have a number of communities who are approaching it only at the relationship-building level. You have, broadly speaking without being too critical, a European Union peace program which had hoped that if we just approached it on the socio-economic equity level that somehow everything else will change. You have legal scholars and lawyers who approach it on the level of saying: "If we just build this human rights legislation we just do all these other things. Somehow that will lead to a different realignment of how people see it and understand themselves and their rights."[249]*

Although noting the many relationship-building processes taking place in Northern Ireland on a political, a community and an individual level, he underlined the avoidance of approaching it on different levels at the same time. This he regards as problematic, because of their interdependency.

In summary, we can state that all experts agreed that some forms of relationship-building processes have been taking place in Northern Ireland. Varying in their assumption of its degree, four of five interviewees are convinced that a lot of work has been done concerning reconciliation. However, they all point out the ongoing violence and enormous sectarianism taking place in Northern Ireland. The reason for that can be seen in the widespread avoidance of dealing with the core issues in a holistic way. What Bell defines as the piecemeal approach was also affirmed by the experts I interviewed. But unlike Bell, who regards it as a chance to

---

[248] According to MacBride, around 40% or more hold Irish passports and classify themselves as Irish on the census form
[249] Interview Hamber

have an ongoing debate about the complex problems, the interviewees blamed these proceedings for the ongoing violence and the perpetuation of segregated communities. From this we can conclude that if a more inclusive approach of dealing with the past mechanisms had been applied, ongoing problems like sectarianisms, segregation and ordinary crime could have been less significant.

3.4. Perpetrators, Victims and Survivors

As I already highlighted in the first part of this thesis, perpetrators and victims play a central role in every reconciliation process. Furthermore, it was explained that TJ interventions are highly focused on these groups. Enormous difficulties evolve when trying to define who is a perpetrator and who a victim, since they could also be both or be defined as survivors of the conflict. Other complications can emerge when politics, law or culture set norms that are not suitable with personal perceptions. In this chapter the problems which have been emerging with these definitions in Northern Ireland will be illustrated.

Concerning the argument that everybody living in a violent conflict is in a way a perpetrator and a victim, Smyth clarifies that, although not totally denying this assertion, she does not regard it as really helpful when trying to deal with the atrocities of the past in Northern Ireland. She admits that many people in Northern Ireland have contributed indirectly to violence when not speaking out resistance or providing secret assistance and that direct violence would not have been possible without this support. However, she refuses to equate them with members of paramilitary organisations which were responsible for 80% of the deaths. Smyth explains, defining everybody in Northern Ireland as a perpetrator would avoid recognising to what degree people were involved in violence. On the other hand, considering everyone a victim because of living through the Troubles would imply that all have undergone the same painful experiences. Considering it from a moral perspective, it is really disputable to equate those who suffer the most with people who were just slightly affected by the conflict. Of course, everybody in some way has been derogated from living through the Troubles, she adds, but that does not necessarily mean they all feel victimised by it. The fact that violence strongly varied from area to area additionally proves that the conflict was not

experienced in the same way. Therefore, defining everybody as a victim of the conflict can not fully acknowledge the suffering of those who were affected the most.[250]

Asking the experts about their definition of a perpetrator and a victim, they all highlighted the difficulty to make clear distinctions between those groups. Furthermore, they referred to the possibility of being both, perpetrator and victim, and advised the difficulties emerging in Northern Ireland. Many of the interviewees mentioned that a very different understanding exists in Northern Ireland of who is perceived as a perpetrator and who not, whereas it is really dependent upon the side a person supports politically. The IRA, for example, can be seen as either freedom fighters or as terrorists, while the police and army can either be supposed oppressors or those who fight against the terrorists.

> *"Is a police officer who always followed the rules, who always obeyed his orders and who never broke the proper behaviour but shot dead an IRA man; is he a perpetrator? He was doing his job; he was doing exactly what he was supposed to. He wasn't breaking any rules, any laws, any protocol, but he killed somebody, so he is a perpetrator of violence. So that one is hard enough, but then the IRA was saying: "I had no choice, I was defending my community, they [soldiers or police] were coming at us with guns. What else was I going to do? To call me a perpetrator is to not understand the moral decisions I made.""[251]*

This quotation shows the disagreement within the society, about who is a perpetrator and who is not. Many people in Northern Ireland still perceive their actions as being justified, even when killing somebody. One of the interviewees suggested not using the term at all in favour of avoiding its pejorative connotation. She just calls them actors in the conflict and recommends putting more emphasis on investigating their actions instead of judging the people. Not only since they have been assumed to be right, but also since they often are victims at the same time.

> *"A lot of the perpetrators would say: "We are victims. If I hadn't grown up in West Belfast, if I had better economic choices, if I had a better education, if the British hadn't been so oppressive to my Catholic community. If I wasn't victimised in all those ways, my life would be very different. When I joined*

[250] See Smyth 1998: 34-42
[251] Interview Bloomfield

whichever paramilitary group I joined and I carried out violence, I am victimised

by my actions. So I am the victim of my own violence."[252]

In Northern Ireland, another expert explained, a contest takes place between who is a victim and whether someone is rightly victimised or not. In addition, there are discussions about hierarchies of victimhood and if some do deserve more being a victim than others. Questions arise like whether the death of a member of the IRA can be equated with the death of a policeman. Many of the Loyalist communities would neglect this with the explanation that a terrorist can not be equated with a policeman who was just doing his job. On the other hand, many of the Nationalist communities would insist on not equating those two deaths as the police oppressed those communities and the paramilitaries had to protect them. Besides this contest about who deserves more to be defined as a victim, one of the experts pointed out that a lot of people regard the lack of a comprehensive approach as the cause for the perpetuation of this competition.

"There is a critique about it's like a patchwork, all these different victims'
commissioners and then there is different kinds of groups and there is different
moneys available. One criticism of that it's not very well organised, not very well
done it's not official."[253]

In contrast to those people who criticise what Bell calls the piecemeal approach, this interviewee is not that sceptical about it, since she believes that *"longer processes [...] leave more room for a more complex conversation."*[254] Building trust between former enemies has been causing a lot of problems in every post-conflict society, she added, and despite these many contestations progress can be noted in Northern Ireland. Much more empathy is felt among the different victims' groups in contrast to their disruptive behaviour at the beginning of the peace process.

To foster such relationships and look after the victims' and survivors' needs, in 2008 the government established the Commission for Victims and Survivors (CVSNI). Before highlighting their duties, it has to be pointed out that all of the interviewees agreed that it is rightly left to the person to either call him/herself as a victim or a survivor. The Victims and

---

[252] Ibidem
[253] Interview Ní Aolàin
[254] Ibidem

Survivors Order 2006 of Northern Ireland[255] states one definition for both, victims and survivors, and this one is also used by CVSNI concerning their work. The one Commissioner I interviewed summarised this piece of legislation as follows:

> *"It is [a victim or a survivor] anyone who has lost a loved one as a result of the conflict or who has been injured, whether that's physically or psychologically injured or someone who provides care for a person that has been injured [...]"[256]*

The Commission aims to promote victims' and survivors' needs. In a process of listening to the many different destinies, they want to give those people a voice who have not been acknowledged yet. Additionally, they aspire to make the society aware of victims' and survivors' stories and needs.

> *"Our mission is to be a strong and credible voice in society, promoting and safeguarding the interests of victims and survivors, understanding their needs and dedicated to improving the quality of their day-to-day lives."[257]*

For achieving their aim they also advise the government concerning victims' and survivors' needs.

In view of the situation of Northern Ireland we can conclude that considering everybody a perpetrator or a victim would not be helpful when trying to deal with the legacies of the past. Convicting paramilitaries, who were responsible for 80% of the deaths in Northern Ireland, to the same degree as the bystanders would degrade the guilt of those who resort to direct violence. On the other hand, when perceiving all as victims, the harm of those who suffered the most is denied. Finding answers to who is a perpetrator and who a victim is quite difficult in the case of Northern Ireland also because of the widespread disagreement within the society. Dependent upon the political attitude paramilitaries are either perceived as freedom fighters or as terrorists and the army or police as those who defended the law or as oppressors. When asked about their self-perception, many of them feel victimised. This again shows that clear lines can not be drawn between perpetrators and victims. Furthermore, many perceive themselves as survivors of the conflict. Enormous problems exist concerning hierarchies of victims and a very slow and fragmented conversation has been taking place between the

---

[255] For further information see The Victims and Survivors (Northern Ireland) Order, 2006
[256] Interview MacBride
[257] The Commission for Victims and Survivors 2009: 6

different victims' groups. However, one of the interviewees noticed greater interface and much more empathy among different victims' group than ten years ago. The establishment of the CVSNI in 2008 was another step to foster a more comprehensive relationship-building process in Northern Ireland.

4. Dealing with the past in Northern Ireland

In the last chapter it was highlighted that an ongoing relationship-building process has taken place in Northern Ireland since the end of the 1980s and beginning of the 1990s. Being aware that one of the experts totally denied calling this reconciliation, I share the opinion of the others who admit its existence. Since the Belfast Agreement was signed, ambitious efforts have been undertaken in building relationships. Acknowledging these attempts as important steps to a peaceful acquaintance within the society, the communities are still deeply divided. It has already been stated that the Belfast Agreement avoided assessing a holistic approach of dealing with the past mechanisms and that until now no other Agreement has settled their establishment.

Although some Transitional Justice interventions, like inquiries, prisoner releases or forms of reparation, have been made, the legacies of the past were not addressed in a comprehensive way. For the purpose of reaching an agreement on this issue, in 2007 an independent group, the so-called "Consultative Group on the Past" (CGP), was created. Co-chaired by Lord Robin Eames, the former archbishop of Armagh, and Mr Denis Bradley, the former vice-chairman of the Policing Board, the CGP was instructed to consult the communities about how Northern Ireland should deal with the legacies of the conflict. According to the desires and proposals of the society, the CGP was further mandated to develop recommendations for dealing with the conflict in Northern Ireland and to compile a report. In 2009 the "Report of the Consultative Group on the Past"[258] was released, devising one key principle:

> *"The past should be dealt with in a manner which enables society to become more defined by its desire for true and lasting reconciliation, rather than by division and mistrust, seeking to promote a shared and reconciled future for all."[259]*

---

[258] It will further be called: The Report
[259] Report of the CGP 2009: 23, 49

In around 200 pages the CGP reflects the key issues of the conflict, highlights opinions of different individuals and groups about dealing with the past mechanisms and formulates proposals for further initiatives. In order to implement their recommendations it suggests the establishment of a Legacy Commission[260], *"which would deal with the past by combining processes of reconciliation, justice and information recovery"*[261] and a Reconciliation Forum, which should tackle certain society issues relating to the conflict. The reaction from the society to the recommendations was highly controversial and until now neither the Legacy Commission nor the Reconciliation Forum has been established by the government.

In this chapter I will illustrate to what extent dealing with the past mechanisms have already been applied in Northern Ireland and further discuss what the CGP, experts and civilians in Northern Ireland think about those interventions and what they suggest should be used in the future. Additionally, I will implement some quotations by people, especially members of diverse NGOs, who spoke at a conference called "Reflecting on the report of the Consultative Group on the Past", which I attended during my research stay in Belfast.

4.1. Transitional Justice Interventions

4.1.1. Trials

According to international law each state is obliged to prosecute those responsible for the most serious crimes. In contrast to many other countries, criminal justice has more or less worked during the conflict and the peace process in Northern Ireland and the state was always signed to human rights standards. Despite applying emergency law, Bell highlights that to some extent non-state as well as state actors have been prosecuted for their actions and blanket impunity has never taken place.[262] Nonetheless, their efficiency is contested and there is still a lack of accountability on both sides. Concerning non-state actors, it is not known to what extent they were held accountable. Amnesty mechanisms were not established in Northern Ireland, but an early release for qualified prisoners was set up in the Belfast Agreement. Additionally, there really exists a clear gap of accountability referring to state

---

[260] The mandate of the Legacy Commission would consist of four strands of work: helping society towards a shared and reconciled future, through a process of engagement with community issues arising from the conflict; reviewing and investigating historical cases; conducting a process of information recovery; examining linked or thematic cases emerging from the conflict. (See Report of the CGP 2009: 16)
[261] Ibidem, p. 36
[262] See Bell 2003: 1098

actors. For killings in which the state was involved directly or indirectly, often nobody was accused.[263] Officially, legally only two people were murdered by the British army.[264]

> *"There have been very few prosecutions of State actors, that is, police officers and members of the British Army, despite the fact that they have been responsible for ten percent of the death in the conflict."*[265]

Certain allegations of collusion between the state and paramilitary organisations have been made. The CGP explained in its Report the different opinions within the society on whether collusion has taken place and to what extent. Some suppose that collusion was an agreed policy in Northern Ireland sanctioned by those in power, whereas many others are convinced that it was a strategy applied by just a few. Those who believe in the latter criticise the accusation of all who in fact upheld law and order in difficult periods and insist on just taking those few responsible to court. Actually, some cases have already been uncovered where collusive actions led to deaths which could have been prevented.[266] However, insufficiently since a lot of circumstances have not been ascertained and the question of whether collusion was a widespread policy or just conducted by a few is still unanswered. For that reason the Report suggests that the Legacy Commission should conduct further examinations on these allegations.[267]

Concerning the question of whether further prosecutions should be initiated in Northern Ireland, the opinions are also divided. The Report states that many families want to see the murders of their loved ones prosecuted, but the amount of time complicates finding new evidence and discovering potential witnesses.[268] On the other hand, there are also many people in Northern Ireland that are not interested in further prosecutions.

---

[263] Ibidem, p. 1139
[264] Paul O'Connor (Pat Finucane Centre) during the Panel "Perspectives of Victims & Survivors", 14. May 2009; in the course of the conference "Reflecting on the report of the Consultative Group on the Past", Belfast, 14. - 15. May 2009
[265] Hegarty 2003: 1150
[266] There have been some high profile investigations into alleged collusion, like Stalker, Sampson, Lord Stevens, Judge Cory and the Police Ombudsman. (See Report of the CGP 2009: 177-179)
[267] See Report of the CGP 2009: 69, 70
[268] Ibidem, p. 127

> *"[M]any expressed the wish that the legacy of the past should be kept out of the courts and that society should be allowed a breathing space from the constant disclosures that result from court and inquiry proceedings."[269]*

So the wish for retribution through punitive justice is not comprehensive in Northern Ireland, but dependent upon personal views. Nonetheless, the CGP could appreciate a tendency in one community to demand prosecution of perpetrators from the other community, while supporting amnesty for perpetrators of their own community.[270] As the idea about prosecution is still ambitious in Northern Ireland and according to the wish of politicians and victims, it is suggested in the Report to leave the possibility for further prosecutions open. However, it is advised that prosecution does not necessarily serve reconciliation.[271]

> *"It has concluded that the possibility of bringing prosecutions should remain open and there should be no amnesty. But it recognises that the very demand for justice can militate against the main goal of reconciliation, in ways and degrees that range from postponement to virtual rejection. A long and determined pursuit of penal justice could be viewed as a means of continuing the conflict rather than enabling healing."[272]*

The experts I have interviewed are also convinced that prosecution could hinder the reconciliation process in Northern Ireland. They highlighted the necessity of prosecution and at the same time are very sceptical about its impact on reconciliation. One of them explained that, although prosecution tends to move a society away from reconciliation, it is important to punish those who inflict harm on somebody; otherwise the rule of law is meaningless. Additionally, he could appreciate the wish of many victims in Northern Ireland to see the perpetrators punished as a form of acknowledgment of their suffering. Impunity would therefore turn to greater anger and would not serve a relationship-building process, either. The inescapable conclusion is that neither prosecution nor impunity serves reconciliation well. Therefore, he advocates for a broader definition of justice, which would promote victims' interests and at the same time foster the relationship-building process. The other experts also

---

[269] Ibidem, p.58
[270] At the same time the Report underlines that this is not the wish of the whole community, since some of them are against further prosecutions at all, but do not feel comfortable sharing their opinion when their community still presses for prosecution. (See Report of the CGP 2009: 58)
[271] See Report of the CGP 2009: 58
[272] Ibidem

highly recommended supplementing alternative mechanisms in order to hold those responsible for past violations accountable; considering a strong emphasis on prosecution a risk of further alienating the two communities. One of the interviewees argued that after ten years' peace process it would be very strange if people are now being punished with long sentences, while in the last ten years a lot of prisoners have been released previously. Another expert pointed out that victims often expect heavier penalties and are disappointed if they are not handed down.

> *"I think that people would be unlikely to be satisfied with the level of punishment and therefore it would only seek to further alienate them if the punishment was not what they named to be sufficient."[273]*

As a conclusion we can determine that, although a lot of people have already been punished, many state as well as non-state actors have not been held accountable for their actions. Questions around collusion of state actors with paramilitary organisations are still unanswered and therefore the Report suggests that the Legacy Commission should conduct further examinations on these allegations. Concerning prosecution, the opinions are broadly divided in Northern Ireland. While a lot of people want to see the perpetrators punished, many others just want to draw a line and move forward. However, the experts agreed that further prosecutions would not serve the reconciliation process in Northern Ireland, but rather alienate the two communities. For that reason a broader definition of justice is needed that allows other forms of accountability.

4.1.2. Truth-Recovery Interventions

In addition to punitive justice, in the concept of Transitional Justice the necessity of applying truth-recovery interventions is highlighted. In cases like Northern Ireland, characterised by a clear gap of state accountability, such interventions could disclose important information about those who are responsible for human rights abuses and further make recommendations on how to hold them accountable. In Northern Ireland a Truth Commission has not been establishedm but a lot of other truth-recovery initiatives have been undertaken, like *"legal inquiries, cases before local and international courts, policing initiatives, different types of community- and victim-led processes, and a range of other activities."[274]* It is not intended to

---

[273] Interview MacBride
[274] McEvoy 2006: 41

discuss all those initiatives[275], but look more closely at inquiry commissions, an intervention mainly applied in societies in transition.

4.1.2.1. Public Inquiries

In contrast to a Truth Commission, which is more a political model, Hegarty explains that a public inquiry is a highly legal model, investigating one special occurrence. Concerning allegations of human rights abuses, several public inquiries have been established in Northern Ireland,[276] most notably the Bloody Sunday Inquiry, which, interestingly, has been the second inquiry, investigating the violations which took place in Derry in 1972.[277]

The Widgery Inquiry, which already examined those issues in 1972, has been criticised for not seriously investigating the facts of the case, but acting in a way that validates the state's behaviour. The community most affected by those events has not simply accepted the state's version of the truth and has been insisting on a new investigation concerning this issue. In order to build confidence in the rule of law, in 1998, the government decided to set up the Bloody Sunday Inquiry.[278] Between 2000 and 2005 this public inquiry received around 2,500 statements, whereas 922 of these were given orally.[279] It has been the largest and most complex public inquiry in the United Kingdom[280] and the total cost currently stands at £ 184.9 millions.[281] Although several announcements have been made about the publication of a final report, it has not been released until now.

Besides the Bloody Sunday Inquiry, several other public inquiries have been established since the Belfast Agreement was signed. In 1999 a public inquiry was set up to investigate allegations of collusion concerning the Dublin and Monaghan Bombings of 1974, where a series of car bombs killed 33 people and injured 250. In 2003, the final report was published, which stated that there had been no evidence concerning collusion of the state on these certain attacks. A public protest followed and a sub-committee was founded to make a report on the report, which was published in 2005. A lack of co-operation by British authorities was noted and the sub-committee suggested bringing the British government before the European Court

---

[275] For further information see Report of the CPG 2009: 106-119
[276] See Hegarty 2003: 1151
[277] See Chapter III, 1
[278] See Hegarty 2003: 1172
[279] See http://www.bloody-sunday-inquiry.org
[280] See McEvoy 2006: 43
[281] See http://www.bloody-sunday-inquiry.org

of Human Rights (ECHR) if further co-operation will not be ensured. The Irish government conducted another Commission,[282] which published its report in 2007. As there are still questions from families and victims concerning these bombings, the CGP suggests *"the release of relevant files that would help their search for truth".*[283]

Allegations of state collusion with paramilitary organisations have also been made in the cases of certain killings. As a result of campaigns by human rights NGO's and relatives, in 2002 Justice Peter Cori was assigned by the British and Irish governments to examine allegations of collusion in seven cases. Actually, he found material about possible collusion and recommended the Irish government conduct public inquiries in the cases of Chief Superintendent Breen and Superintendent Buchanan. The British government was advised to undertake public inquiries in the cases of Pat Finucane, Rosemary Nelson, Robert Hamill and Billy Wright. While the Irish government immediately published Cori's report and established the recommended inquiries, the British government took half a year just to make the report public. Under political pressure the British government followed the recommendations of Justice Cori and established public inquiries into the cases of Nelson, Hamill and Wright. Concerning the killing of Pat Finucane, it was stated that ongoing criminal prosecutions have to be concluded before starting with a public inquiry. Shortly after the report was published, the British government replaced the Inquiries (Evidence) Act of 1921, under which the Bloody Sunday Inquiry was conducted with the Inquiries Act 2005, diverging fundamentally from the recommendations of Cori's report.[284]

> *"For tribunals established under the Inquiries Act 2005, Ministers control appointment and dismissal of an inquiry panel; set the temporal and substantive terms of inquiry; control inquiry funding; and control access to evidence and dissemination of inquiry findings (or omission of evidence from a final report)."*[285]

Despite lots of critics about permitting the executive to take control over all aspects of a public inquiry from national as well as international organisations, the British government converted the Billy Wright and the Robert Hamill Inquiry under Inquiries Act 2005. The

---

[282] See McEvoy 2006: 46-47
[283] Report of the CGP 2009: 158
[284] See McEvoy 2006: 44-45
[285] Ibidem, p. 45

family of Pat Finucane has opposed a public inquiry under this new legislation[286] and until now it is still contested if it should be established. The CGP states that *[t]he question whether to proceed with the promised Finucane Inquiry is a matter for the British Government but the issues raised by this case could be dealt with by the new [Legacy] Commission."*[287]

4.1.2.2. Criticism of Public Inquiries

Whether the public inquiries established in Northern Ireland have uncovered the truth about allegations of collusion in Northern Ireland is strongly contested. The Widgery Inquiry, which was the first inquiry that examined the events of Bloody Sunday, has been heavily criticised, especially in the Nationalist community. Judge Widgery was accused of refusing to hear evidence from many civilian eyewitnesses and privileged soldiers, since they were allowed to give evidence anonymously and veiled. Much controversy was also about the location where proceedings were conducted. Despite the fact that victims were predominantly Nationalists, the judge decided to conduct the hearings in a Unionist area, forty miles far from Derry. The lack of an objective investigation of evidence provoked much irritation within the Nationalist community. Although none of those who had been shot were proved to be armed, the suspicion that some had been firing bombs sufficed Widgery to acknowledge these military actions of the soldiers as justified. No soldier was prosecuted or disciplined. The judge supported the state's version of the events, which were considered as the truth. The justification of human rights abuses through a public inquiry led to great mistrust in the British state and the rule of law.[288]

> *"The case can be made that the aim of the Widgery Inquiry was not to find out the truth, nor to provide accountability for the deaths, but to allow the state to validate its behaviour."*[289]

After the Peace Agreement was signed, the British state acknowledged the necessity of conducting a new inquiry into these issues, as, thirty years later, the affected community still has not built up confidence in the rule of law. Hegarty points out that the reopening of the case showed "*that despite the appropriation of law and legal processes, concerns about human rights abuses will not simply disappear after they have been declared irrelevant or*

---

[286] Ibidem, p. 46
[287] Report of the CGP 2009: 126
[288] See Hegarty 2003: 1166-1168
[289] Ibidem, p. 1168

baseless by the State."[290] Because of the experiences people underwent with the Widgery Inquiry, they were quite sceptical if the Bloody Sunday Inquiry, as well as the other inquiries, really strive to uncover the truth and deal with victims' concerns or if they are again used to justify state's actions. In the case of the Bloody Sunday Inquiry, the approach to civilian witnesses was quite disputable. While soldiers had the possibility to make their assertions anonymously behind screens, civilian witnesses were subjected to cross-examinations, which often led to re-traumatisation. Additionally, many complained that they were asked to name IRA members, although this information was not relevant for the case itself, and a lot of witnesses never had any connection to this paramilitary organisation. The fact that state agencies could give their evidence anonymously and that a lot of information has not been uncovered in order to ensure "national security", the question arises whether the way public inquiries have been conducted serves the truth-finding process in Northern Ireland. Hegarty doubts that the negative experience of giving evidence has strengthened peoples' confidence in the rule of law and suspects the reason for not disclosing information in the state's involvement.[291]

> *"The case can be made that, because the truth about the events of Bloody Sunday goes to the heart of the State's involvement in the conflict in Northern Ireland, the State is unwilling to fully co-operate with the inquiry it set up to uncover the truth."[292]*

Harsh criticism has not only been expressed against the Bloody Sunday Inquiry, but also concerning the other public inquiries. The CGP notices in all public inquiries a tension between the protection of data of state agencies and the families' desire for disclosing the truth.[293]

In course of a discussion with the Project Coordinator for the Inquiries Observation Project, I became aware of issues regarding ongoing inquiries in Northern Ireland. Relatives are often very disappointed that a lot of closed sessions are held in which they are not allowed to take part. In most cases, there is no public record of what has been said in these sessions; at times the family members involved in the public inquiry may get information via their legal

---

[290] Ibidem, pp. 1170-1171
[291] Ibidem, pp. 1176-1186
[292] Ibidem, p. 1178
[293] See Report of the CGP 2009: 114

representative, which is often incomplete (as redactions have been made) and they may not be allowed to divulge the information to anyone outside of the inquiry.[294] These situations can be frustrating for the people concerned and the question arises why establish a public inquiry at all when important pieces of evidence may be kept secret. One can ask if it is really intended to find out the truth or again an instrument of the state to validate its behaviour. Problems also exist with the publication of the end reports, for example the report of the Bloody Sunday Inquiry has still not been published although often announced. The official website states:

> *"The members of the Tribunal have retired to write their report. It is extremely difficult to predict how long the outstanding work will take, but they now expect to deliver the completed report to the Secretary of State in the week begin[n]ing 22nd March 2010."[295]*

All these circumstances make it difficult for the society to build trust in the sincerity and efficiency of the process. Hopes have been rising, but not been fulfilled, in some cases new even traumas have been experienced. Additionally, when regarding the costs of the public inquiries, many ask if it has really been worth it. To date the Bloody Sunday Inquiry has cost £ 184 million; the Hamill, Nelson and Wright Inquiry £75 million.[296]

4.1.2.3. What is "The Truth", who wants to know what?

One of the central aims of inquiry commissions is to disclose the truth about past atrocities occurred in violent conflicts; in Northern Ireland public inquiries have been established to investigate allegations about collusion. We could already detect the difficulties these inquiries entail in order to achieve an objective approach of the truth. Apart from that, the question arises whether "the truth" in the singular even exists or if there rather are multiple truths. In a Panel of the conference "Reflecting on the Report of the CGP", in which politicians discussed the recommendations of how to deal with the past of Northern Ireland, a participant of the audience observed a tendency of the speakers to insist on finding "the truth" and not acknowledging other "truths".

> *"And finally, what struck me when I listened to this panel was that all except one talked about truth in the singular; like there's one great truth out there, like*

---

[294] Oral conversation with Colleen Smith, Belfast: 11 May 2009
[295] http://www.bloody-sunday-inquiry.org
[296] See Report of the CGP 2009: 113

Moses going to the top of the mountain and getting the tablets. In fact, what seems to me to have come out of this conference is that there are many truths. Even if politicians don't wish to relinquish their own truth, to recognise other "truths" might create a space for a broader public conversation."[297]

One of the politicians answered: *"There's no two versions of truth, there's only one version of truth [...]."[298]* In contrast to this assertion of the politician, all of the experts I have interviewed agreed that there are multiple truths, since people have different perceptions of what is true. One referred to the example that, in Northern Ireland, terrorists are either defined as freedom fighters or as terrorists and police officers as offenders or as those who fight against the terrorists. According to him, both views are true even if completely contradictory. This is because *"we always have our own truth and our own truth shifts with memory and time."[299]* Also Hamber is convinced *"that the past is made up of multiple and contradictory truths"[300]* and that *"[o]ne unified narrative, or version of the past, can never be uncovered."[301]*

If an absolute truth does not exist, what kind of truth is supposed to be found out in a truth-recovery process? Hegarty argued that when people say they want to know the truth, they, in fact, are aspiring to get their truth acknowledged.

"What people frequently want from a truth process is an acknowledgment of the violation of their rights, an admission that what was done was wrong."[302]

Also Marc Thompson, who works for an NGO in Northern Ireland explained at this conference that what people really want is recognition, acknowledgement and answers. He further referred to those families whose relatives were killed in the 1970s.

---

[297] Professor Fionnuala Ni Aoláin (Transitional Justice Institute, University of Ulster) during the Panel "The Political Perspective", 14. May 2009; in the course of the conference "Reflecting on the report of the CGP", Belfast, 14. - 15. May 2009
[298] Francie Molloy (Sinn Féin) during the Panel "The Political Perspective", 14. May 2009; in the course of the conference "Reflecting on the report of the CGP", Belfast, 14. - 15. May 2009
[299] Interview Bloomfield
[300] Hamber 1998a: 4
[301] Ibidem
[302] Hegarty 2003: 1174

"They're quite old, they don't have a huge amount of time left around us, and they're dying, and they're dying without any sense of official recognition or acknowledged truth."[303]

Besides the demand for having their truth recognised, Fowler observed the desire of many victims that perpetrators acknowledge their actions as being wrong. Getting this confession from the governments, as well as from the paramilitaries and ex-prisoners, is quite difficult in Northern Ireland. Many organisations still perceive their paramilitary actions as necessary[304] in order to protect their community from either the corrupt state or other paramilitary organisations. Concerning the British government, Fowler believes it may not acknowledge its actions as being wrong in order not to lose its moral authority on an international level and to be relieved from the obligations to prosecute state members.[305] However, many politicians point out the importance of "finding out the truth". Their intention is often not really to disclose the truth and take responsibility for their wrongdoings, since this could weaken their party, Hamber observed, but to demand the truth recovery of the opponents.[306]

The public is really sceptical that the governments as well as the paramilitaries and ex-prisoners will fully deal with truth-recovery interventions.[307] The interviewees explained that many fear they have to deny their truth when telling their stories and for that reason they do not want to know the official truth. The negative experiences with the inquiries and other truth recovery processes have strengthened their mistrust in the government. Further disappointments could be extremely painful. Nonetheless, the interviewees agreed that truth-recovery interventions are indispensable in a transitional process and the strategy of simply forgetting what happened in favour of moving on can not even be an option in Northern Ireland; in fact, nowhere. Despite the fact that it is not possible to force anybody to empower his/her mind to simply forget, one expert argued, in most of the cases it will come up someday. She referred to experiences in Spain, where this strategy has been applied in order not to deal with the atrocities committed in the civil war. After some decades the grandchildren have been insisting on getting information about their relatives' deaths.

---

[303] Marc Thompson (Relatives for Justice) during the Panel "Perspectives of Victims & Survivors", 14. May 2009; in the course of the conference "Reflecting on the report of the CGP", Belfast, 14. - 15. May 2009
[304] See Fowler 2008: 36-39
[305] Ibidem, p. 37
[306] See Hamber 1998b: 80-81
[307] See Fowler 2008: 45

Additionally, this expert observed in many families in Northern Ireland, when parents conceal their painful experience, they often inflict their trauma on their children.

> *"[T]he more that I do all this kind of work, the more I realise the trauma that people are inflicting on their children by trying to forget, because, you know, when an angry parent lashes the child and then they refused to explain it because they are suffering from an illness that has never been dealt with, they have never spoken of and they carry that silence that's even a greater burden than their grief and the children don't know why."[308]*

The conclusion we may draw is that forgetting the past is not very helpful as a mechanism of dealing with the past on an individual level as well as on a societal level. In order not to burden future generations with severe traumata and to promote a relationship-building process, the painful experiences should be dealt with. A pre-condition for that is a full disclosure of the truth. But what do the people really want to know? This question can not be answered on a general level, but depends upon the individual way of dealing with traumatic experiences. While some are not interested in the names of the perpetrators who killed their loved ones, others want to face them directly and ask them why they decided to chose his/her relative. One of the experts explained that in Northern Ireland a lot of people already know how their loved ones were killed, but for dealing with it many need to know the reasons for this murder.

> *"I think in many cases [...] they know the forensic truth and the forensic truth is as I would define it. They know that their loved one was shot dead on a certain day in a certain place, possibly they know by whom. But they don't know the subjective truth about why they were targeted, did they die incidentally, did they suffer. That's the sort of information that families want. They want a "Why", they know the "Who", the "What" and the "Where", but they need to know the "Why"."[309]*

Again, whether someone wants to find out the truth and which information is helpful for dealing with traumatic experiences depends on the person. Besides inquiries and other official truth-recovery interventions, many initiatives have been undertaken in Northern Ireland,

---

[308] Interview MacBride
[309] Ibidem

where people have got the possibility to share their stories with others affected by the conflict. One of the experts notes that storytelling can have a therapeutic effect; it gives people a voice to talk about their experiences. Additionally, an understanding of other destinies and truths can be gained.

> *"You know one of those eye-opening moments in personal reconciliation processes in storytelling and dialogue is exactly: "Oh, we did bad things to you, too. And I am sitting here crying for a dead son and you are sitting there crying for a dead daughter. Jesus, what's the difference. We have both suffered, isn't this all awful.""*[310]

Insights like those have been making an invaluable contribution to the reconciliation process in Northern Ireland; just like the experts the CGP praised the work which has already been done on this issue and highlighted the many different methods that have been developed in Northern Ireland. Beside conversations many organisations offer artistic depictions of stories and feelings. Truth paintings, sculptures and other forms of art allow participants to visualise their stories. Additionally, many stories have been archived and are available online, on DVD or CD. Despite the tremendous progress these initiatives have already been achieved, many people still have difficulties with listening to each other. Some groups are criticised for predominantly exchanging experiences within their community, but not trying to get in contact with the other community and listen to their version of truth.[311]

> *"The lack of readiness among many to listen to others, or to tell them their part of the common story, may present difficulties. But this process is already being practised by many organisations and is at the heart of what the Group [CGP] proposes. It is at its most powerful and transforming when it happens across 'peace lines' and amongst victims groups from different communities."*[312]

As a conclusion we can state that the truth-recovery process in Northern Ireland is highly contested. Inquiries are strongly criticised as the state is blamed for using them for validating its wrong behaviour. Many relatives are disappointed that important information is often not disclosed in order to protect state members, who are possibly responsible for the death of their

---

[310] Interview Bloomfield
[311] See Report of the CGP 2009: 97 – 100
[312] Ibidem, p. 57

loved ones. Costs, many delays of the sessions and the reports as well as the dubious change of the Inquiries Act challenges the efficiency of the inquiries. Additionally, the question arises of what kind of truth public inquires aim to find out. While the quoted politician believes in "the truth", the interviewed experts explained that everybody has their own truth and, even if they are contradictory, they can all be true.

The negative experiences with public inquiries make it difficult for the society to trust in official truth-recovery processes anymore and maybe this is the reason why many oppose the establishment of further interventions. However, the past has to be dealt with in order not to inflict trauma on future generations. Furthermore, it would not work to empower the mind to simply forget the violence of the conflict. Actually, it is an individual decision how to engage with painful experiences. A successful initiative is storytelling, which has been applied in different forms in Northern Ireland. Sharing stories can foster the healing process and create a better understanding of other versions of truth, but it also runs the risk of just sharing the experiences within the own community.

4.1.3. Reparation

Repairing the impact of the wrongs and harms is essential for a transitional society in order to deal with the past of a violent conflict. In Northern Ireland many different interventions for acknowledging the suffering have been conducting. Official apologies by diverse paramilitary organisations, the establishment of various memorials as well as approaches to trauma have made an important contribution to repair victims and communities of wrongdoings. Nonetheless, the CGP proclaimed that many more initiatives would be necessary in order to acknowledge and compensate the violence of the Troubles. Their proposals were not just perceived positively by the public, but have provoked much controversy; particularly the "recognition payment". The purpose of this chapter is to provide an insight into three different reparation initiatives, namely monetary compensation, apologies and remembering.

4.1.3.1. Monetary Compensation – "The Recognition Payment"

In general, monetary compensation can serve as a symbolic act, since it acknowledges harm to the victims and further provides a substantial grant for poor people that maybe lost a breadwinner. However, deciding the monetary value of human lives can also be problematic and in many cases create new conflict potential. One of the interviewees explained:

"I can't put a price on your daughter. How much is a dead daughter worth; a horrible question and the answer is always horrible; whether it's 10,000 euros or 2 million euros. It's still not a daughter, is it? But done right, it can be a very important part of this symbolic process; but you have known this about the 12,000 Euro argument. You know, done wrongly, it can be so insulting or it can allow people to decide to be so insulted that they refuse to participate and that's exactly what happened here in February."[313]

What this expert is referring to is the most controversial recommendation of the CGP; the "recognition payment". In the Report it is stated:

"The suffering of families from Northern Ireland and Great Britain should be recognised. The nearest relative of someone who died as a result of the conflict in and about Northern Ireland, from January 1966, should receive a one-off ex-gratia recognition payment of £12,000."[314]

Family members of civilians, security forces as well as paramilitary organisations who lost a loved one as a result of the conflict would all be qualified for this compensation. The idea of regarding all victims as equal provoked a public outrage. At the time the Report was launched, clashes between different victims' groups erupted.[315]

A lack of fair compensation forms in the past was the reason why the CGP proposed a compensation which would acknowledge all victims equally. Since 1968 different forms of compensation have been offered in Northern Ireland, but solely for those who had never participated in a proscribed organisation or been involved in an unlawful act. Additionally, they were often criticised to be based on loss of earnings instead of recognising the loss felt by the families. For those reasons the CGP decided to propose a compensation for all victims, regardless of whether their relative was a child, a security force or a member of a paramilitary organisation.[316] Critique came from both sides of the community, arguing not to mix innocent and guilty victims.[317] Alan McBride, employed by an organisation working on peace and reconciliation, lost his wife in 1993 when an IRA bomb exploded in her father's fish shop.

---

[313] Interview Bloomfield
[314] Report of the CGP 2009:16
[315] See Prince 2009: http://www.telegraph.co.uk
[316] See Report of the CGP 2009: 90-94
[317] See Prince 2009: http://www.telegraph.co.uk

Besides his wife, nine other people died; one of them was a bomber, Thomas Begley, who died as the bomb went off prematurely. To grant Begley's relatives the same amount of compensation as McBride, although Begley was responsible for his wife's death, he finds unbearable.[318] He was also a speaker at the conference and explained his anger about mixing innocent and guilty victims.

> *"To put my wife and Begley on the same page in terms of their guilt or innocence is just plain wrong - it's offensive to me, it's offensive to my family and the other families that were bereaved that day. On one hand, you have a guy that deliberately goes out to cause murder and mayhem and on the other, nine innocent civilians going about their daily business. I have often heard it said, "You know what, they were in the wrong place at the wrong time." My wife happened to work in the shop where the bomb was placed, so she was in the right place at the right time doing what she did; it was the bomber who was in the wrong place at the wrong time. So we're not in the same place in terms of our guilt or our innocence."[319]*

The proposal of the Report did not only provoke bitter clashes between the communities, but the strong focus on the recognition payment eclipsed the other proposed recommendations. As the heads of the CGP feared destabilisation of the reconciliation process, they tried to calm the angry communities. In a radio programme, Lord Eames, one of the authors of the Report, tried to justify the proposal:

> *"There is no difference in a mother's tears. This is an attempt to give recognition to the families of the lost. There is no hierarchy of victims in terms of what we have gone through in Northern Ireland. We're not here to judge."[320]*

The Committee on Administration of Justice (CAJ), an independent human rights organisation in Northern Ireland, highlighted that the reaction to the Report clearly shows how deeply the society is still divided. The proposal was risky, CAJ further argued, but necessary to step forward and overcome a hierarchy of victims.[321] Reatha Hassan, employed

---

[318] See Summers 2009: http://news.bbc.co.uk/
[319] Alan McBride (WAVE Trauma Centre) during the Panel "Perspectives of Victims & Survivors", 14. May 2009; in the course of the conference "Reflecting on the report of the CGP", Belfast, 14. - 15. May 2009
[320] Prince 2009: http://www.telegraph.co.uk
[321] See Committee on the Administration of Justice 2009: 8

by an organisation working with victims, explained at the conference that, although she really understands the anger of the communities, such compensation could be essential for many victims in Northern Ireland who do not even have enough money to survive. Additionally, she regards the idea of acknowledging the hurt of all victims as a chance to deal with the divisiveness of the society.[322]

All of the experts I interviewed were in favour of a monetary compensation recognising the necessity of repairing the harm that many people have been suffering from the Troubles. In order to deal with the past, it is indispensable for many victims to get their sorrows acknowledged, they argued. One of the interviewees perceives this official recommendation as the last chance in which compensation is going to be looked at in Northern Ireland. However, they also referred to the many risks and open questions this suggestion of a recognition payment entails. One of the experts wonders who would assume responsibility for this compensation and where the money would be taken from. The British government can not be held accountable for everything, she pointed out, and neither can the Irish government. Another expert highlighted that this proposal has been very hurtful for many victims, not just because of the suggestion to treat all equally, but also as it does not refer to those who have been injured.

As a conclusion we can state that the proposal of the recognition payment by the CGP has created much controversy in Northern Ireland. Although it could be important for people who lost a breadwinner and acknowledges the harm of those who have been suffering from the legacies of the Troubles, many in the society did not consider this suggestion fair. The central critique was not to differentiate between innocent and guilty victims, but grant everybody the same amount of money. This reaction clearly showed the ever-existent divisiveness of the society. Despite the many risks this proposal includes, the experts are in favour of a monetary compensation as a sign of repairing the impacts of the wrongdoings.

4.1.3.2. Apologies

Sincere apologies for violent actions can have a very positive impact on victims. By means of this symbolic act, states, governments or paramilitary organisations can show their acknowledgement of being responsible for wrongdoings. However, if not conveyed

---

[322] Reatha Hassan (SAVER/NAVER) during the Panel "Perspectives of Victims & Survivors", 14. May 2009; in the course of the conference "Reflecting on the report of the CGP", Belfast, 14. - 15. May 2009

profoundly or given at the wrong time, it can also lead to great mistrust and create further anger in post-conflict societies. Hamber underlines the lack of sincere apologies in Northern Ireland.

> *"Although some apologies have been made, genuine acknowledgement from governments, paramilitaries and wider institutions that had a role in the past such as churches, the judiciary, the media, the educational establishment, and those allocating services such as housing, has not been forthcoming."[323]*

In Northern Ireland governments as well as paramilitary organisations from both sides have issued apologies; interestingly, both sides differentiated between legitimate and illegitimate targets in their apologies. Bell noticed that paramilitaries avoided addressing all victims in their apologies, but just referring to those who were perceived as innocent. While Loyalist paramilitaries publicly apologised to all innocent victims, the IRA offered sincere apologies to the families of non-combatants, whereas their definition of non-combatants is not necessarily consistent with humanitarian law.[324] Apologising for only those actions which caused harm to "innocent victims" would at the same time mean that the violators have perceived some of their acts as justified. This has provoked much anger in the society of Northern Ireland.

Not only can the content of an apology create much controversy, but also the different conflict experiences enormously contribute to how an apology by governments or paramilitaries is accepted by the society. To show the complexity of responses to apologies, a study which examined the reaction to an IRA apology given in July 2002[325] will be shortly illustrated. For this survey a variety of newspapers from Catholic Nationalist leaning press, Protestant Unionist press, English print media and U.S print media was investigated. It was highlighted that much criticism was centred on the exclusion of many victims in this apology and also that it was offered very late. Some called the statement meaningless if further actions did not follow, primarily decommissioning.[326]

---

[323] Hamber 2008: 7-8
[324] See Bell 2003: 1124-1125
[325] For further information see IRA statement of apology, 16 July 2002
[326] See Fergus; Binks; Roe 2007: 99-104

"The Northern Irish, English and U.S. media also felt that the apology should be "followed up" with positive actions, such as decommissioning and disbandment, otherwise it was just empty words."[327]

Other cynical press wrote that the IRA acted under political pressure, because at that time Tony Blair threatened to expel the political party Sinn Fein. Interestingly, most critics came from Protestant and English press, whereas the Catholic and U.S. media tended to endorse the more positive arguments concerning the IRA apology. Latter pointed it out as a significant step in the right direction and may therefore not be underestimated. It was further argued that the IRA was accepting their blame and showing remorse. This study did not only observe that the interpretation of this apology varied from one community to another, but furthermore found out that victims who have been directly affected by IRA violence were the greatest denier of it; fearing their hurt to be played down and that the wrongs of the IRA could be seen as justified.[328] It shows how reactions to apologies can differ, and for those reasons, one may ask how an apology should be conveyed that so victims accept it.

Alan McBride, who lost his wife in a bomb explosion[329], explained to the BBC how an apology by a former IRA helped him to deal with the death of his wife. Several years ago, he was in Edinburgh to film a television programme. One night he, a former UVF man and a former IRA man went out for a drink. They talked about his dead wife and the IRA man said something that totally changed his mind. In the BBC News he was quoted as followed:

"The republican [former IRA man] touched me and said, 'What happened that day was wrong'. He didn't try to justify it [...]. This IRA man told me about growing up in the New Lodge [a Catholic district in west Belfast]. The British army wrecked his house and his friends were killed. I had relatives who served in the UDA. I began to realise that all of us had some share of responsibility for what had happened, [...]. What happened to Sharon [his wife] was evil and wrong, but it was symptomatic of the society that we all lived in at the time and I

---

[327] Ibidem, p. 102
[328] Ibidem, pp. 99-107
[329] See Chapter III, 4.1.3.1

don't think we can just wash our hands of that. Sectarianism was endemic in our society."[330]

This sincere apology allowed Alan McBride to understand that not only those who bombed the fish shop were responsible for the violence that was inflicted on his wife and several other people, but in a way the whole society gave rise to actions like that. For the first time he realised that the other community had comparable experiences with violence and were similarly affected by their education, which has also being based on sectarian mindsets.

> *"The two people who killed my wife were 19 and grew up in the [Catholic] Ardoyne. I grew up in the [Protestant] Westland knowing only that Catholics were people you threw stones at."*[331]

Besides allowing that epiphany, the former IRA man acknowledged Alan's hurt with this profound apology. One of my interviewees underlined that in many cases recognising loss has a healing effect on victims and survivors. Unfortunately, she further explained, not all of those who caused violence during the Troubles perceive their actions as wrong. Quite the contrary, many still regard their behaviour as justified; whether the reason was to protect his/her community or fight against terrorism. Denying their persuasion could lead to existential crises, one explained, and should therefore not be the intention of apologies.

> *"Part of the thing about saying sorry is that for those who were involved in the conflict it can make a nonsense of their involvement. If an apology is done in a wrong way, it's expecting people to deny their life."*[332]

In order not to deny their attitudes, another expert suggests a "qualified apology", which acknowledges the hurt, but at the same time does not judge the conviction of the perpetrator.

> *"Yes, it [apology] is [important] and even a qualified apology is important. And what I mean is, even for someone to say:" I am sorry that my actions hurt you", instead of saying:" I am sorry for my actions". The difference is that they are not in the former; they are not saying that their actions are wrong. Even a qualified*

---

[330] Summers 2009: http://news.bbc.co.uk
[331] Ibidem
[332] Interview Hamilton

91

apology, yes it is, because it acknowledges hurt and that's what most people, most victims and survivors, want; is acknowledgment of their hurt."[333]

All the experts I interviewed highlighted the necessity of acknowledging hurt and the damage caused to each other. However, they warned that people, especially politicians, tend to rush to apologies or not take them seriously and that can lead to greater mistrust in the conflict parties. The CGP referred shortly to apologies. It mentioned their importance for promoting reconciliation and suggested that the Legacy Commission should have a duty to recommend that the various actors issue apologies.[334]

As a conclusion we can say that apologies offered with genuine motions can have a very positive impact on victims. In Northern Ireland some apologies have been made by governments as well as by paramilitaries. However, the reactions were quite controversial, since many criticised the exclusion of victims who were perceived as not "innocent". Additionally, the response to the IRA apology of July 2002 shows that the acceptance by the society depends upon the different conflict experiences. Those who have been affected most by violence are the greatest denier of apologies, fearing the wrongs could be perceived as justified and their hurt would be played down. One the other hand, convincing perpetrators to regret what they had been fighting for could lead them to existential crises. For that reason "qualified apologies" could be an alternative, since they acknowledge hurt and at the same time perpetrators do not have to perceive their actions as being wrong.

4.1.3.3. Remembering

Finding appropriate ways of commemorating dead relatives or other traumatic experiences is essential in the process of dealing with the legacies of a violent past. On the one hand, it acknowledges people's suffering, and on the other, it can have a deterrent effect for future generations. However, it is a very sensitive issue and often causes further violence or leads to contestations about hierarchies of victims.

In Northern Ireland, Dawson argues, for a long time psychological damage caused by violence was neither publicly acknowledged nor discussed. Despite some achievements in overcoming this "culture of silence" in the late 80s, a significant change has primarily been

---

[333] Interview MacBride
[334] See Report of the CGP 2009: 152

caused by the paramilitary ceasefires in 1994. Fears of talking about traumata and suffering in public diminished, and space was created to reflect and remember harm caused during the Troubles. Many initiatives, like exhibitions, storytelling or publications of victims' experiences were launched, in which damage caused by violence has been recognised.[335] Interestingly, McDowell noticed that after the ceasefires not only the Troubles have been remembered, but also many other aspects of history, like the Irish Famine, which took place in the middle of the 19th century. Walking through Northern Ireland, one can find many different physical forms that serve to commemorate diverse historical events[336]; *"from monuments to street murals, from memorial plaques to gardens of remembrance, and from statues to street names."*[337] Worth mentioning is also the online archive of CAIN (Conflict Archive on the Internet), called "'Remembering': Victims, Survivors and Commemoration in Post-Conflict Northern Ireland". On this website, details of people who died as a result of the conflict between 1969 and 2001 are published. Information about victims, the causes of deaths and even 1,434 photos are offered. In addition, pictures and details of physical memorials are available and linked to the people mentioned on the particular monument.[338] Much work has been done in order to remember the violent past in Northern Ireland, which has been a very painful process for many.

Dawson criticised that in Northern Ireland memories were often used to serve particular interests and to remember only the traumata of one's own community. In doing so, the memory of the other community has often been denied.[339]

> *"Public commemoration itself has turned into a battlefield where selective, discrepant and antagonistic narratives of the past clash and compete. [...] The commemoration of one traumatic event has been precisely the amnesia of the other. [...]"*[340]

Choosing the placement of physical memorials strategically, commemoration has often been used to mark the territory. This provoked deep anger and many monuments have been vandalised or attacked. In addition, in many cases, commemorations have been used to

---

[335] See Dawson 2007: 68-69
[336] See McDowell 2007: http://cain.ulst.ac.uk
[337] Ibidem
[338] See http://cain.ulst.ac.uk/
[339] See Dawson 2007: 76
[340] Ibidem

proclaim the status of being a victim, which provoked much contestation of victimhood in Northern Ireland.[341] A lot of people have merely remembered what happened to them and denied their own responsibility in inflicting hurt on others, as well. This becomes clear when looking at the street murals, which in both communities just depict "the own story", or considering the many contestations taking place about which names should be placed on physical memorials.[342] Regarding these incidents, initiatives for remembering seem very risky. For that reason one may ask, whether it is good to remember at all or if the past is better buried? One of the interviewees stated:

> *"There is a phrase in English: "To bury the past." Dig a hole, put the past in it and bury it. That's just forget it, just bury the past. Actually somebody pointed that out. That's not a clever idea. When you bury something, you do it to remember. When you bury your parents, you don't forget about them. That whole funeral, that whole burial process, is about memorialising and remembering and then you have a celebration of them. And you remember and maybe every year you go back to the side of the burial. It's actually about remembering and not forgetting. And that I thought was a lovely idea. Yes, you have to put it somewhere. So it's not interfering with your daily life, but the last thing you do is forgetting."[343]*

Previously in this thesis it was already noted that forgetting the past is not even an option in the case of Northern Ireland. Dawson mentions two further reasons why burying the past would be very problematic:

> *"It concludes with, and reproduces, the historical British denial of responsibility for the traumas of colonialism in Ireland; and it leaves intact deep sources of grief, grievance and antagonism that are rooted in the recent history of the Troubles."[344]*

According to Smyth, asking whether one should remember the atrocities inflicted during the Troubles is out of the question. Traumas do not simply disappear and many who lost a loved

---

[341] See McDowell 2007: http://cain.ulst.ac.uk
[342] Alan McBride (WAVE Trauma Centre) during the Panel "Perspectives of Victims & Survivors", 14 May 2009; in the course of the conference "Reflecting on the report of the CGP", Belfast, 14 - 15 May 2009
[343] Interview Bloomfield
[344] Dawson 2007: 77

one suffer from terrible nightmares or are remembered every time when they pass a particular place where the tragic event took place.[345]

> "*Remembering is not an option – it is a daily torture, a voice inside the head that has no "on/off" switch and volume control.*"[346]

She further criticises the ignorance of those who were not affected and therefore have the choice to ignore the impacts of the Troubles. According to her they should assume responsibility as a society to gain an understanding of their role in the conflict. Acknowledging the experiences of others would be indispensable for achieving reconciliation.[347]

Some kind of public recognition of personal suffering has already been received in many local communities through storytelling initiatives,[348] as well as the establishment of monuments. Physical memorials have been built to remember the war dead and acknowledge suffering.[349] In Northern Ireland they have further eased the fear of many people that their loved ones could be forgotten.[350] The interviewees, too, agreed on the importance of commemoration in Northern Ireland and mentioned its significant contribution to the acknowledgement process. Furthermore, they appreciate the healing and reconciling effect it has had on victims. Except one, they all were in favour of commemorations on a societal level in order to deal with mutual antagonism. One of the experts was very sceptical about joint initiatives, since, according to her, remembering is a very personal issue and therefore advised putting a greater focus on individual destinies.

> "*I am less inclined to favour a societal commemoration, because we didn't have the same perspective, we didn't share the same experiences, therefore we can't commemorate in the same way.*"[351]

---

345 See Smyth 1998: 32
346 Ibidem
347 Ibidem
348 Alan McBride (WAVE Trauma Centre) during the Panel "Perspectives of Victims & Survivors", 14 May 2009; in the course of the conference "Reflecting on the report of the CGP", Belfast, 14 - 15 May 2009
349 See Dawson 2007: 74
350 Alan McBride (WAVE Trauma Centre) during the Panel "Perspectives of Victims & Survivors", 14 May 2009; in the course of the conference "Reflecting on the report of the CGP", Belfast, 14 - 15 May 2009
351 Interview MacBride

The CGP defines public remembrance initiatives as a contentious issue in Northern Ireland, regarding it as an individual decision of how somebody can best deal with his/her past. The reactions to the applied interventions have considerably varied; it is explained in the Report. While a lot of individuals and groups have appreciated the healing effect remembrance initiatives have promoted, others complain about the pain and re-traumatisation they have lived through. For those reasons the CGP does not favour one special idea, but focuses on three processes which were specifically highlighted by those who participated in the consultation: storytelling, a day of reflection and reconciliation as well as memorials.[352] As the positive and the negative experiences with storytelling have already been discussed,[353] only the last two topics will be explained here. In order to promote a shared and reconciled future, the CGP suggests launching a Day of Reflection and Reconciliation. Originally, this idea stems from Healing through Remembering (HTR)[354], a cross-community project, which already initiated the Day of Private Reflection on 21 June 2007. The idea was to reflect privately, alone or in groups, on the conflict; aiming to acknowledge the hurt caused by the conflict and among other things to reflect on one's own attitudes. The response was quite diverse; while many people viewed it as a positive contribution to the healing process, others considered it counterproductive to focus on the negative events of the conflict. However, the CGP regard a Day of Reflection and Reconciliation as a good initiative to build relationships and to reflect on one's personal responsibility in the conflict. The CGP further suggests that, in the beginning, this event should take place privately, desiring that over the years more and more public events occur, including churches and politicians. Besides the Day of Reflection and Reconciliation, the CGP also highlights the healing effect of memorials. In the Report, they are described as an alternative to graves, where people are able to direct their suffering or reflect upon their past. Despite many supporters, widespread criticism has been centred on the exposure with the monuments, which is often illustrated as divisive. The CGP agrees on this criticism and regards it as hindering for the reconciliation process. For that reason it recommends the establishment of a shared memorial, but at the same time disbelieves that the society would agree at this time.

In brief, commemoration is a very sensitive issue and can be extremely painful and traumatising to victims. In Northern Ireland a lot of remembrance initiatives have been

---

[352] See Report of the CGP 2009: 96-97
[353] See Chapter III, 4.1.2.3
[354] For further information see: http://www.healingthroughremembering.info/

undertaken with positive as well as negative impacts. While many people have appreciated healing effects, it is strongly criticised that the communities tend to remember just "their own trauma" and try to proclaim the status of a victim. Despite many negative experiences with remembrance initiatives, the past can not be forgotten, especially by those who have lost a loved one or have been through other traumatic experiences during the Troubles. For this reason appropriate initiatives should further be undertaken. In order to promote reconciliation the CGP desires shared remembrance interventions, like a Day of Reflection and Reconciliation. As they do not regard the society as ready for a joint public commemoration event at this time, they suggest starting small and maybe getting bigger over the years. Besides this joint commemoration day, the healing effects of storytelling and memorials were highlighted and the CGP strongly recommends enforcing remembrance initiatives.

4.1.4. Institutional Reforms

In order to stabilise democratic and good governance after violent conflicts, institutional reforms have to be conducted. On the one hand, the security sector has to be reformed, which includes the establishment of new institutions as well as the lustration of corrupt and criminal state members. On the other hand, demobilisation, disarmament and reintegration of former combatants is required to prevent the return to violence.

4.1.4.1. Security Sector Reforms and other Institutional Changes

In contrast to many war-torn countries, Northern Ireland has always had a liberal-democratic status. Reforming legal institutions would have meant questioning the legitimacy of the British state during the conflict and accordingly state failings must have been acknowledged. As a huge number of people in Northern Ireland regards the actions of the security forces as justified in order to fight against the terrorism, they do not view institutional reforms as necessary. However, many others blame the state for enormous institutional failings concerning human rights abuses and have strongly demanded changes of the system. The British state has not taken responsibility for human rights abuses and still rejects the accusation of having been an actor in the conflict. Moreover, it holds the opinion that it fulfilled its duties in order to protect the citizens from terrorists and, with that argument, it also justifies the application of emergency laws during the conflict. The denial of the status of an actor in the conflict and the liberal-democratic character of the state have made an

application of international humanitarian law impossible.[355] However, the Belfast Agreement provided a lot of reforms *"including a Bill of Rights, a Criminal Justice Review, a Policing Commission, and a scheme to release prisoners [...]"*[356] Without addressing the core issues of the conflict, the Agreement determined the establishment of an independent commission to recommend institutional reforms. The Pattern Commission was instructed to move around the communities and undertake public hearings on policing. One year later a Report was published, suggesting, among other things, not to employing people with serious criminal background in the police, excepting those who were young and had just committed minor crimes. The Commission did not recommend any lustration mechanism for state members who committed rights abuses and for that reason security forces have not been weeded out in Northern Ireland; cynically, in the same year the RUC[357] received a special medal, honouring their conspicuous gallantry. Bell defines the measures concerning institutional reforms as piecemeal and argues that they do not address the accusations of state abuses. However, some initiatives have been undertaken. In 2000, the Police Ombudsman was established to investigate complaints against the police.[358] The CGP supports the work of the Police Ombudsman, but recognises their limited financial means and human resources. For those reasons it is suggested in their Report that the new Legacy Commission undertake some work of the Police Ombudsman.[359] The CGP also referred to the Criminal Cases Review Commission (CCRC), which aims to examine possible miscarriages of justice in the criminal courts of England, Northern Ireland and Wales; it is also provided with limited resources. They receive around 900 to 1000 applications a year and have a staff of less than 90 people.[360]

The interviewees all agreed that institutional reforms have been necessary in order to disclose abuses of rights and impose sanctions on those who have been responsible, but not sufficiently. Besides reforming the security sector, the experts highlighted that there is a real need in Northern Ireland to review the service sector, especially the education system. The majority of children still visit single religious schools, dependent on church control. One underlined the necessity of accepting that all are citizens of the European Union and there are a lot of people from many more different cultures living in Northern Ireland at the time, not

---

[355] See Bell; Campbell; Ni Aoláin 2004: 5-8
[356] Campbell; Ní Aoláin 2003: 890
[357] Royal Ulster Constabulary (RUC) was the name of the police force in Northern Ireland from 1922-2001.
[358] See Bell 2003: 1117-1118, 1139-1140
[359] See Report of the CGP 2009: 109-110
[360] Ibidem, pp. 117-118

only Protestants and Catholics. Another expert aspires that people seek to reform institutions in favour of engaging the negative peace. According to him, despite an absence of violence, there are still considerable tensions among the communities.

> *"[...] I think that all services have to be integrated and until people achieve that they will not achieve a proper level of peace in the society. [...] You might get a negative peace where there is peace but there is an underling tension and maybe people will be happy enough to live with that for the rest of their lives, but I think they are missing an opportunity. They are missing the ability to change the society and transform the society. Maybe that's people's choice at the end of the day, but they want something which is more than a negative peace. You have to do that. You can't be in modern Europe and people are still meeting only someone from another religion for the first time when they are 18. That's just ridiculous in my view."[361]*

Altogether, it can be concluded that reforms of the security and service sector have not been undertaken sufficiently in Northern Ireland. Reviewing legal institutions would have meant acknowledging state failings. The British government has still not accepted its role in the conflict, but has defended its actions as a necessary duty to fight against terrorists. This argument strongly differs from the view of many in the society who accuse the state of human rights abuses. Although lustration mechanisms have not been conducted and the police has even been awarded for its braveness, some initiatives have been undertaken to investigate complaints concerning the security forces. Worth mentioning are the Police Ombudsman and the CCRC, which both examine high-profile cases. However, their resources are scarce, which negatively affects achievements. Besides a lack of security sector reforms, the experts underlined the need to review the service sector, especially the education system. One defined the current situation in Northern Ireland as negative peace, where the communities live side by side; indeed not using violence, but insisting on segregating their areas of life.

4.1.4.2. Prisoner Releases and Reintegration

Early releases of prisoners have been playing a central part in the peace process of Northern Ireland. Without the assurance of such provisions, McEvoy stated, neither Loyalist nor

---

[361] Interview Hamber

Republican paramilitary organisations would have been moving away from political violence.[362] Intensive negotiations on this issue made the ceasefires of 1994 possible and were crucial for reaching the Belfast Agreement, which provided early releases and reintegration programmes for "qualifying prisoners".[363] Not only the British state established such provisions, but also the Irish government recognised the political importance of this issue and released qualifying prisoners. In the beginning of the twentieth century the British government had freed 240 paramilitary prisoners[364] and the Irish Republic 121[365]. The reaction of victims to early releases has been mixed. While a lot protested against such provisions and demanded to have a veto[366], *"some high profile victims have declared themselves in favour of early releases as part of a broader process of healing reconciliation and forgiveness"[367]*. It is a very sensitive issue for those who lost a loved one and they often demand other initiatives, like reparations, which would acknowledge their psychological consequences.

In order to reintegrate qualifying prisoners into daily life, the Belfast Agreement stated the necessity of establishing appropriate facilities:

> *"The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or reskilling, and further education."[368]*

Ex-prisoners who were freed because of fulfilling the conditions of qualifying prisoners have received various funding from the National Lottery, the Irish Government and, among others the Peace and Reconciliation funding.[369] McEvoy noted that many of them did not feel a need to reintegrate. They are not perceived as criminals by their communities, because their actions

---

[362] See McEvoy 1999: 1541
[363] Qualifying prisoners according to the Northern Ireland (Sentences) Act are defined as prisoners convicted of a scheduled or "terrorist offence" before April 10, 1998. Further qualifications are that the prisoner must not be a supporter of an organisation not on ceasefire; must not be likely to become a supporter of such an organisation, must not be a danger to the public. (See McEvoy 1999: 1559-1560)
[364] See McEvoy 1999: 1560-1561
[365] See Bell 2003: 1114
[366] See McEvoy 1999: 1570
[367] Ibidem, p. 1570
[368] Belfast Agreement, 10. Prisoners
[369] See Bell 2003: 1114

are regarded as political and not as ordinary crimes.[370] Even though well accepted in some cases, the CGP observed that many ex-prisoners are still strongly discriminated when trying to find jobs or get loans. They are not able to leave their past behind and live a normal life as they are constantly confronted with it. For those reasons the CGP recommended providing adequate provisions to integrate ex-prisoners into the society, aiming to achieve greater equality of access to jobs, goods and services, keeping in mind that many of those have played an important role in conflict transformation.[371]

All in all, we can state that the early release of qualifying prisoners has been an extremely difficult issue in Northern Ireland. On the one hand, an appropriate provision was crucial in order to achieve ceasefires of paramilitary organisations as well as to reach the Belfast Agreement. On the other hand, the psychological consequences for many victims have been severe and the question arises whether such provisions would really serve the reconciliation process. Those victims would probably disagree, but indeed, some have been in favour of prisoner releases, accepting it as a part of their healing process. It is also important to state that many ex-prisoners claim that they often do not get the chance to fully reintegrate and live a normal life. Moreover, they are continuously discriminated and confronted with their past.

4.2. Alternative Mechanisms according to Galtung

To achieve reconciliation Galtung suggests twelve approaches[372], which strongly overlap with TJ interventions. Two of them, joint sorrow and joint reconstruction, are not included in the concept of Transitional Justice as such, but seem to provide a useful tool for the reconciliation process in Northern Ireland. Instead of glorifying wars or old battles, the approach of joint sorrow allows people to jointly commemorate the loss of war and acknowledge their own responsibility for it. Commonly, the survivors should recognise that their loved ones did not die for a good cause, but because of incompetent politicians. The key word of this concept is togetherness, the same as of joint reconstruction, an approach where perpetrators with perpetrators and victims with victims would meet and build something up that was damaged. During this process the former enemies should come to a common understanding of their situations.[373] This chapter will firstly demonstrate extent and legacies of holding parades; an

---

[370] See McEvoy 2003: 1572
[371] See Report of the CGP 2009: 81-82
[372] See Chapter II, 2.2
[373] See Galtung 1998: 81-84

ancient tradition of Northern Ireland, where old battles are celebrated. Afterwards, the opinions of the interviewed experts concerning these two approaches will be pointed out.

4.2.1. Joint Sorrow and Joint Reconstruction

During my stay in Northern Ireland I attended a summer school organised by the TJI. In one of the panel discussions, called "Regulation of Parades in NI", various speakers held a conversation about the ancient tradition of holding parades in Northern Ireland. Most of us did not know how meaningful such a parade would be for many people in Northern Ireland. For hundreds of years parades have been taking place, where historical battles are celebrated and mythical heroes glorified. Predominantly men walk around with uniforms and emblems, playing traditional music. One has to imagine that tremendous bonfires are built where pictures and flags of "former" enemies are burnt. Almost 3000 parades are held per year in Northern Ireland, a place with around 1.6 million inhabitants. As most of these events are celebrated by Protestants, many Catholics make holidays during the "parades season", which is in July. Around 300 parades are very contentious, since their routes cross hostile communities. When walking through these places, while commemorating battles, playing traditional music and waving with paramilitary flags, street disorders are easily set off.[374]

One of my colleagues asked this panel why still celebrate battles which were fought many hundreds of years ago. Brownlee, a member of the Apprentice Boys of Derry[375], answered that many thousands of Protestants have sacrificed their lives and it is his duty as a Protestant to commemorate his history.[376] Emphasising "his" history shows that a common history is not accepted by him and probably neither by his organization. According to Galtung, the perpetuation of a divisive past would not be servable for building a common future. To counteract such glorifications he suggests joint sorrow approaches.[377] A Day of Reflection and Reconciliation, recommended by the CGP, could be such an alternative, since it aims to acknowledge hurt caused by the conflict and would allow reflecting everyone's personal responsibility for the Troubles.[378]

---

[374] Panel discussion on „Regulation of Parades in NI", 19 June 2009, in the course of the Summer School "Negotiating Peace: Negotiating Justice", Derry 14 -19 June 2009
[375] For further information see http://www2.apprenticeboys.co.uk/
[376] Jim Brownlee (Apprentice Boys of Derry) during the Panel „Regulation of Parades in NI", 19. June 2009, in the course of the Summer School called "Negotiating Peace, Negotiating Justice", Derry 14. -19. June 2009
[377] See Galtung 1998: 81
[378] See Report of the CGP 2009: 100-102

One of the interviewees highlighted the significant contribution of joint sorrow approaches to reconciliation work. By means of storytelling and dialogue work, he further explained understanding and respect of each other has been won in Northern Ireland. Another expert also pointed out the necessity of joint initiatives, but questions whether one has to feel sorry for the other. According to him, acknowledgement, empathy and sympathy would be more helpful for achieving reconciliation than sorrow. The experts were also in favour of joint reconstruction approaches, but one argued that walls and barriers that separate many communities in Northern Ireland have to be broken through before rebuilding something new. The people are physically and emotionally divided, another one argued, and it is quite difficult to convince them to work together but, indeed, some projects have been undertaken in Northern Ireland. They cannot be forced to co-operate and therefore sometimes manipulative tactics are used to persuade them to common projects. Money supply is often a reason why they agree to approaches of joint reconstruction. According to this expert, applying this method is in many cases the only way to bring people together. Then, when working side by side, he told, they quickly relate. It often starts with conversations on a trivial level, like discussions about football and after some time they really talk about the core issues of the conflict. Such encounters are crucial for the reconciliation process in Northern Ireland, he pointed out, since not only physical things are reconstructed, but also relationships can be built.

Altogether, we can say that joint sorrow as well as joint reconstruction would have been crucial for the reconciliation process in Northern Ireland. However, the glorification of mythical heroes and the celebration of historical battles through contentious parades make applications of joint initiatives very difficult. Instead of finding shared initiatives to commemorate the loss of the Troubles and acknowledging their own responsibility for the conflict, many people in Northern Ireland prefer to remember their "own" history; often referring to events that took place hundreds of years ago. Nonetheless, many joint initiatives have taken place, like storytelling or dialogue work, and some reconstruction work, too. A Day of Reflection and Reconciliation, recommended by the CGP, should be considered an effective alternative in order to jointly commemorate sorrow and build relationships across the divided communities.

IV. Reconciliation through Transitional Justice Interventions? The experience of Northern Ireland.

According to my research question, to what extent TJ interventions serve or hinder reconciliation referring to the experience of Northern Ireland, this chapter will conclude the key issues of this thesis. I will discuss whether reconciliation has been achieved in Northern Ireland and to what extent the TJ interventions have been beneficial or detrimental. Additionally, the assumptions should be discussed on a general level.

The first question which should be clarified is whether reconciliation has been achieved in Northern Ireland. When I visited Northern Ireland, coming from a country where I have never been confronted with political violence, this part of Ireland did not seem to me as being reconciled. High fences and walls, also known as peace walls, physically divide communities. When I drove around Belfast with a guy I got to know there, he said, "Look! This is a Catholic street and that one is a Protestant." He further explained, "In Catholic areas there are Catholic schools and hospitals and in Protestant areas there are Protestant facilities." Although I read a lot about the current situation in Northern Ireland, I was really surprised about this deep segregation. People are physically and emotionally divided and massive amounts of sectarianism still exist. Brutal violence in schools, at football matches and dissident attacks continue in Northern Ireland. A considerable number of people who live in those areas where the most violence was committed during the conflict still suffer social and economic deprivation. Serious problems with unemployment, teenage pregnancies, drug addictions and suicide characterise these territories. Violence has not disappeared, especially in those areas that are marked by distributive injustices.[379] One of the experts explained to me that after the peace agreement was signed violence has just shifted from political to ordinary and domestic violence.

Relating to these circumstances and especially when comparing the current situation with many other European countries, one would not regard Northern Ireland as reconciled. However, if focussing on what has changed in the last decades, one will be aware that a relationship-building process has already started. Although most of the children still visit single-religious schools, the demand for mixed schools is increasing. Huge amounts of money

---

[379] Oral conversation with Stephen Geraphty, Belfast, 28. May 2009

have been spent on projects which aim to foster relationship-building processes within and between the communities. Many NGOs were established, helping victims, ex-prisoners, survivors or widows. A lot of people I met told me that the city itself has totally changed, since soldiers are not on the streets anymore and people can walk around without fearing bombs exploding. Regarding all these facts, big changes can be recognised within this society.

What I intend to demonstrate is that whether we consider the current situation in Northern Ireland as reconciling or not is a question of how we define the term itself. When regarding reconciliation as a goal, Northern Ireland is definitely not reconciled. However, if assessing reconciliation as a process, referring to a steady practice of building relationships, I would call the current process that is taking place in Northern Ireland reconciliation. Nonetheless, one has to be aware that building relationships with former enemies takes a lot of time and therefore the work that has already been done must be kept on. Once, a taxi driver said to me, "Although we have gone through a peace process, we will need much more time. Just signing this peace agreement does not mean that suddenly everybody likes everyone and all are hugging and kissing. We will need generations and a good education."

Concerning my research question to what extent TJ interventions have served or hindered reconciliation, I refer to the assumption to call it a process. First of all, it has to be said that, although much endeavour has been undertaken to perpetuate peace and avoid political violence, the core issues of the conflict have not been dealt with in a holistic way in Northern Ireland. The Belfast Agreement is not a just solution, since it does not address mechanisms which would deal with the past. It can rather be defined as a pragmatic set of compromises in order to stop political violence and attain peace. This so-called piecemeal approach was therefore maybe just on a political level, but has not been an overall just solution for many individuals.

From this the question arises of how a conflict could be solved in a just way? Referring to the particular TJ interventions, it is very difficult to decide which mechanism should be applied, at what time and to what extent. We could assert that retributive as well as restorative mechanisms are demanded by victims. However, which intervention helps best to overcome the legacies of the violent conflict and positively influences the relationship-building process is highly dependent upon personal views and the individual way of dealing with suffering. This again reminds of the quotation by Galtung, who says:

"Reconciliation is a theme with deep psychological, sociological, theological, philosophical and profoundly human roots – – and nobody really knows how to do it!"[380]

If reconciliation is highly dependent upon the individual way of dealing with loss, how can TJ interventions best be applied in order to foster a relationship-building process? For me it has clearly emerged that TJ interventions should be concerned as inclusively as possible in order to help as many people as possible to deal with their past and build a reconciled future. It could be observed that all interventions have positive and negative consequences and what is needed in a post-conflict society is difficult to decide. In Northern Ireland the opinions concerning TJ interventions are highly contentious. While a lot still demand further prosecutions of state and non-state members, many others do not insist on retributive mechanisms. It was often argued in this thesis that such mechanisms would not necessarily lead to reconciliation, since they do not really refer to the victims' needs. For that reason many demand restorative initiatives, finding out the truth about certain events and receiving reparation for their suffering. Questions around collusion of state actors with paramilitary organisations are still unanswered and many want to know the truth about these allegations. On the other hand, the negative experiences with inquiries are the reason why a lot of people deny further investigations.

On a community level many initiatives have been undertaken in order to disclose information, the best known is storytelling. The process of sharing stories and listening to others does not only reveal the truth about certain circumstances, but also serves as a form of remembering. However, it is often criticised that in many cases stories are only shared within one's own community and not among each other. The same criticism is made concerning commemoration, since the communities just tend to remember their own history through, for instance parades. Memorials are often placed in certain areas inhabited by one community. Remembering the loss is a very sensitive issue, since it can be an extremely painful process and lasts for a very long time. However, forgetting the past can not be an option; firstly, it is even not possible to force somebody's mind to do so and secondly, it can inflict trauma on future generations.

---

[380] Galtung 1998: 64

The two other forms of reparation I presented, apology and the recognition payment, were also perceived in very contentious ways. In particular, the latter was seen as extremely unjust. "Granting "guilty" victims the same amount as "innocent" victims is unbearable", was the argument of many. On the other hand, some perceived it as a chance to engage the strong divisiveness of the society. These attitudes showed that "hierarchies of victims" are still very present in Northern Ireland. This has also become apparent when regarding apologies of paramilitaries who only apologised for violence which had been inflicted on "innocent" victims. While these official apologies set off much controversy, I could find an example of a face-to-face apology that was really helpful to a person to deal with his past.

Concerning institutional changes, a lack of lustration mechanisms was highlighted. Many people are very disappointed, accusing the state of not accepting its role in the conflict. Others are convinced that the government always acted fairly, because they had the duty to fight against terrorists. They would not want the security sector be vetted out. Additionally, the early prisoner releases were mentioned; also a very contentious topic in Northern Ireland. While many victims were really disappointed about this decision and further had to suffer psychological consequences, others regarded it as part of the reconciliation process.

Again, every mechanism can set off positive as well as negative consequences for victims after violent conflict. What does this mean for my research question? I would argue that the more inclusive TJ interventions, retributive as well as restorative initiatives, are applied, the better they can serve reconciliation. At the same time it has to be considered that if the society is not ready for a comprehensive application of TJ interventions, a piecemeal approach could be acceptable in order to overcome violence. Whether each TJ intervention serves or hinders reconciliation depends upon the individual way of dealing with the past, how the conflict situation has been perceived and the right timing of each application.

V. References

1. Attended Events

AFK-Tagung: Nach Krieg, Gewalt und Repression: Der schwierige Umgang mit der Vergangenheit, 03.-05. April 2009, Nürnberg, sponsored by Berghof Foundation, Bundeszentrale für politische Bildung, Evangelischer Entwicklunsdienst, Unesco.

Conference on "Reflecting on the report of the Consultative Group on the Past", 14.-15. March 2009, Belfast. Co-sponsored by British Irish Rights Watch (BIRW), Committee on the Administration of Justice (CAJ), Transitional Justice Institute (TJI), School of Law - Queens University Belfast.

Summer School on "Transitional Justice: Negotiating Peace, Negotiating Justice", 15.-19. June 2009, Magee Campus, Northern Ireland. Organised by Transitional Justice Institute (TJI), University of Ulster.

2. Interviews and Oral Conversations

Bloomfield, **David:** Chief Executive of Glencree Centre for Peace and Reconciliation. Interview: 5 June 2009, Belfast.

Geraphty, Stephen: LLM student at the Transitional Justice Institute, University of Ulster. Oral conversation: 28 May 2009, Belfast.

Hamber, **Brandon:** Director of International Conflict Research Institute (INCORE). Interview: 18 June 2009, Derry.

Hamilton, **Michael:** Co-Director of Transitional Justice Institute (TJI), University of Ulster. Interview: 29 May 2009, Newtownabbey.

MacBride, **Patricia:** Commissioner of The Commission for Victims and Survivors, Northern Ireland (CVSNI). Interview: 2 June 2009, Belfast.

Ní Aolàin, Fionnuala: Co-Director of Transitional Justice Institute (TJI), University of Ulster and Dorsey and Whitney Chair in Law, University of Minnesota. Interview: 1 and 11 June 2009, Newtownabbey.

Smith, Colleen: Project Coordinator for the Inquiries Observation Projects at the Transitional Justice Institute, University of Ulster. Oral conversation: 11 May 2009, Belfast

3. Literature

Agreement between the government of the United Kingdom of Great Britain and Northern Ireland and the government of Ireland (10 April 1998). Available at: http://www.nio.gov.uk/agreement.pdf [Accessed on: 16.11.2009]

Ambos, Kai (2007): The legal framework of Transitional Justice. Conference Paper, International Conference: Building a Future on Peace and Justice, Georg-August-University Goettingen, 25. - 27. June 2007.

Assefa, Hizkias (1999): The meaning of Reconciliation. In: European Centre for Conflict Prevention (ed.): People Building Peace. 35 Inspiring Stories from Around the World. The Hague: European Centre for Conflict Prevention, 37-45. Available at: http://www.peoplebuildingpeace.org/thestories/article.php?typ=refl&id=166. [Accessed on: 04. 04.2010]

Assefa, Hizkias (2004 [1993]): Peace and Reconciliation as a Paradigm. A philosophy of peace and its implications on conflict, governance, and economic growth in Africa. Nairobi, Kenya: ACIS.

Bell, Christine (2003): Dealing with the past in Northern Ireland. In: Fordham International Law Journal, Vol. 26, No. 4, 1095-1147.

Bell, Christine (2000): Peace Agreements and Human Rights. Oxford: Oxford University Press.

Bloomfield, David (2003): Reconciliation: An Introduction. In: Bloomfield, David; Barnes, Teresa; Huyse, Luc (ed.): Reconciliation After Violent Conflict. A Handbook. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance, 10-18.

Bloomfield, David (2003): The Context of Reconciliation. In: Bloomfield, David; Barnes, Teresa; Huyse, Luc (ed.): Reconciliation After Violent Conflict. A Handbook. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance, 40-48.

Breen-Smyth, Marie (2007): Truth Recovery and Justice after Conflict: Managing Violent Pasts. Abingdon: Routledge.

Buckley-Zistel Susanne (2008): Transitional Justice als Weg zu Frieden und Sicherheit. Möglichkeiten und Grenzen. SFB-Governance Working Paper Series, Nr. 15, DFG-Sonderforschungsbereich 700, Berlin, Juli 2008. Available at: http://www.sfb-governance.de/publikationen/sfbgov_wp/wp15/SFB-Governance_Working_Paper_Nr15.pdf [Accessed on: 14.02.2010]

Buckley-Zistel Susanne (2007): Handreichung. Transitional Justice. Plattform Zivile Konfliktbearbeitung, July 2007. Available at: http://www.konfliktbearbeitung.net/?info=docs&pres=detail&uid=889 [Accessed on: 14.02.2010]

Campbell, Colm; Ní Aolaín, Fionnuala (2003): Local meets global: Transitional Justice in Northern Ireland. In: Fordham International Law Journal, Vol. 26, No. 4, 871-892.

Committee on the Administration of Justice (2009): Submission from CAJ to the government consultation on: "Dealing with the Past in Northern Ireland: The recommendations of the Consultative Group on the Past", September 2009.

Darby, John (2003): Northern Ireland: The background to the Peace Process. Available at: http://cain.ulst.ac.uk/events/peace/darby03.htm [Accessed on: 25.10.2009]

Darby, John (1995): Conflict in Northern Ireland: A Background Essay. In: Dunn, Seamus (ed.): Facets of the Conflict in Northern Ireland. London: Macmillan Press Ltd. Available at: http://cain.ulst.ac.uk/othelem/facets.htm [Accessed on: 20.10.2009]

Dawson, Graham (2007): Making peace with the past? Memory, trauma and the Irish Troubles. Manchester, New York: Manchester University Press.

Ferguson, Neil (a.o.) (2007): The IRA Apology of 2002 and Forgiveness in Northern Ireland's Troubles. A Cross-National Study of Printed Media. Peace and Conflict: Journal of Peace Psychology, Vol. 13, Issue 1, 93-113.

Fitzduff, Mari; O'Hagan, Liam (2009): The Northern Ireland Troubles: INCORE background paper. Available at: http://cain.ulst.ac.uk/othelem/incorepaper09.htm [Accessed on 20.10.2009]

Flick, Uwe (2008): Design und Prozess qualitativer Forschung. In: Flick, Uwe; Kardorff, Ernst; Steinke, Ines (ed.): Qualitative Forschung, Hamburg: Rowohlt, 252-264.

Fontana, Andrea; Frey, James H. (2000): The Interview: From Structured Questions to Negotiated Text. In: Denzin, Norman K.; Lincoln, Yvonna s. (ed.): Handbook of qualitative research. London, New Delhi: Sage Publ., 645-673.

Fowler, Laura Kathryn (2008): Is now the time for a truth commission in Northern Ireland? The potential benefits and limits of establishing a truth commission in Northern Ireland. Thesis, University of Ulster.

Galtung, Johan (1994): Human Rights in another key. Cambridge: Polity Press.

Galtung, Johan (1997): Gewalt, Krieg und deren Nachwirkungen. In: Graf, Wilfried und Kinkelbur, Dieter (ed.): Der Preis der Modernisierung. Struktur und Kultur im Weltsystem. Wien: Promedia, 170-211.

Galtung, Johan (1998): After Violence: 3R, Reconstruction, Reconciliation, Resolution. Coping With Visible and Invisible Effects of War and Violence. Princeton, NJ: Transcend.

Gläser, Jochen; Laudel, Grit (2009): Experteninterviews und qualitative Inhaltsanalyse als Instrumente rekonstruierender Untersuchungen. Wiesbaden: Verlag für Sozialwissenschaften.

Graf, Mona (2004): Truth, the road to Reconciliation? Die ethische Debatte über die Versöhnungspolitik Südafrikas nach der Apartheid. Diplomarbeit, Universität Wien.

Graf, Wilfried; Kramer, Gudrun (2006): Galtungs Theorie in der Praxis. In: Zeitschrift für Friedenspolitik, Nr. 3/06, 18-19.

Graf, Wilfried; Kramer Gudrun; Nicolescou, Augustin (2008): The Art of Conflict Transformation through Dialogue. IICP Working Papers, 2008/4.

Graham, Dawson (2007): Making peace the past? Memory, trauma and the Irish Troubles. Manchester: University Press.

Hänggi, Heiner (2005): Sicherheitssektorreform (SSR) – Konzept und Kontexte. In: Sicherheit und Frieden, 3/2005, 119-125.

Hamber, Brandon (1998a): The Past Imperfect: Exploring Northern Ireland, South Africa and Guatemala. In Hamber, Brandon: Past Imperfect: Dealing with the Past in Northern Ireland and Societies in Transition. Derry/Londonderry, Northern Ireland: Incore/University of Ulster, 1-12.

Hamber, Brandon (1998b): Conclusion: A Truth Commission for Northern Ireland? In Hamber, Brandon: Past Imperfect: Dealing with the Past in Northern Ireland and Societies in Transition. Derry/Londonderry, Northern Ireland: Incore/University of Ulster, 79-86.

Hamber, Brandon; Kelly, Gráinne (2005): A place for reconciliation? Conflict and Locality in Northern Ireland, Report Nr. 18. Belfast, Northern Ireland: Democratic Dialogue.

Hamber, Brandon (2008): Submission to the Consultative Group on the Past. Belfast, Northern Ireland: Incore/University of Ulster, January 2008.

Hegarty, Angela (2003): The Government of Memory: Public inquiries and the limits of justice in Northern Ireland. In: Fordham International Law Journal, Vol. 26, No. 4, 1148-1192.

Hegarty, Angela (2004): Truth, Law and Official Denial: The Case of Bloody Sunday. In: Schabas, William A.; Darcy, Shane (ed.): Truth Commissions and Courts. The Tension Between Criminal Justice and the Search for the Truth. Springer: Netherlands, 199-246.

Holloway, David (2005): Understanding The Northern Ireland Conflict: A Summary And Overview Of The Conflict And Its Origins. The Community Dialogue Critical Issues Series, Volume Three, June 2005. Available at: http://www.communitydialogue.org/PDFs/ UnderstandNI-HistJune05.pdf [Accessed on: 03.03.2010]

Hopf, Christel (2008): Qualitative Interviews. Ein Überblick. In: Flick, Uwe; Kardorff, Ernst von, Steinke, Ines (ed.): Qualitative Forschung, Hamburg: Rowohlt, 349 - 360.

Huyse, Luc (2003): The Process of Reconciliation. In: Bloomfield, David; Barnes, Teresa; Huyse, Luc (ed.): Reconciliation After Violent Conflict. A Handbook. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance, 19-32.

Huyse, Luc (2003): Victims. In: Bloomfield, David; Barnes, Teresa; Huyse, Luc (ed.): Reconciliation After Violent Conflict. A Handbook. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance, 54 – 65.

Huyse, Luc (2003): Offenders. In: Bloomfield, David; Barnes, Teresa; Huyse, Luc (ed.): Reconciliation After Violent Conflict. A Handbook. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance, 67 - 75.

Huyse, Luc (2008): Introduction: tradition-based approaches in peacemaking, transitional justice and reconciliation policies. In: Huyse, Luc; Salter, Mark (ed.): Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance, 1-22.

International Center for Transitional Justice (ICTJ) (2009a): What is Transitional Justice? ICTJ Fact Sheets. Available at: http://www.ictj.org/static/2009/english/ ictj_2008_factsheets.pdf [Accessed on: 24.09.2009]

International Center for Transitional Justice (ICTJ) (2009b): What Next for International Justice? ICTJ Fact Sheets. Available at: http://www.ictj.org/static/2009/english/ ictj_2008_factsheets.pdf [Accessed on: 24.09.2009]

Irish Republican Army (IRA) Ceasefire Statement, 31 August 1994. Available at: http://cain.ulst.ac.uk/events/peace/docs/ira31894.htm. [Accessed on: 04.04.2010]

Irish Republican Army (IRA) Statement of Apology, 16 July 2002. In: An Phoblacht (Republican News). Available at: http://cain.ulst.ac.uk/events/peace/docs/ira160702.htm. [Accessed on: 04.04.2010]

Kayser-Whande, Undine; Schell-Faucon, Stephanie (2008): Transitional Justice and Civilan Conflict Transformation. Current Research, Future Questions. In: Transitional Justice und Zivile Konfliktbearbeitung. Projektbericht und Studien. Marburg: Zentrum für Konfliktforschung/Philipps Universität Marburg, Juli 2008, 6-77.

Mani, Rama (2002): Beyond Retribution. Seeking Justice in the Shadows of War. UK; USA: Polity Press.

Mayring, Philipp (2002): Einführung in die Qualitative Sozialforschung. Eine Anleitung zu qualitativem Denken. Weinheim, Basel: Beltz Verlag.

Mayring, Philipp (2008): Qualitative Inhaltsanalyse: Grundlagen und Techniken. Germany: Beltz Verlag.

McAleese, Deborah (2009a): Continuity IRA claiming responsibility for killing PSNI officer. In: Belfast Telegraph: 10.03.2009. Available at: http://www.belfasttelegraph.co.uk/ news/local-national/continuity-ira-claiming-responsibility-for-killing-psni-officer-14220267.html. [Accessed on: 23.04.2010]

McAleese, Deborah (2009b): Dad killed on his own doorstep. In: Belfast Telegraph, 25.05.2009. Available at: http://www.belfasttelegraph.co.uk/news/local-national/dad-killed-on-his-own-doorstep-14313248.html [Accessed on: 23.04.2010]

McDowell, Sara (2007): Introduction to Commemoration, and to Commemoration in Northern Ireland. 31. 05. 2007. Available at: http://cain.ulst.ac.uk/victims/memorials/ smcd07commemoration.html [Accessed on: 20.03.2010]

McEvoy, Kieran (1999): Prisoners, the Agreement, and the political character of the Northern Ireland Conflict. In: Fordham International Law Journal, Vol. 22, No. 4, 1530 – 1576.

McEvoy, Kieran (2006): Making peace with the past. Options for truth recovery regarding the conflict in and about Northern Ireland. Belfast: Healing through Remembering, October 2006. Available at: http://healingthroughremembering.info/images/pdf/Making% 20Peace%20with%20the%20Past.pdf [Accessed on 23.03.2010]

Mediation Support Project (MSP) (2009): Dealing with the Past in Peace Mediation. Peace Mediation Essentials. Mediation Support Project, September 2009. Available at: http://www.swisspeace.ch/typo3/fileadmin/user_upload/pdf/msp/DwP_and_Mediation.pdf [Accessed on: 22.12.2009]

Melaugh, Martin (n.y.): Summary. Available at: http://cain.ulst.ac.uk/events/ hstrike/summary.htm [Accessed on: 01. 04. 2010]

Minow, Martha (1998): Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence. Boston: Beacon Press.

Mobekk, Eirin (2005): Transitional Justice in Post-Conflict Societies. Approaches to Reconciliation. In: Ebnöther Anja H., Philipp H. Fluri (ed.): After Intervention: Public Security Management in Post-Conflict Societies. From Intervention to Sustainable Local Ownership. Geneva, Switzerland: Geneva Centre for the Democratic Control of Armed Forces (DCAF), 261-292.

Novak, Manfred (2003): Introduction to the International Human Rights Regime. Leiden, Boston: Martinus Nijhoff Publishers.

Ordentlicher, Diane F. (2007): „Settling Accounts" Revisited: Reconciliation Global Norms with Local Ageny. In: The International Journal of Transitional Justice, Vol. 1, 10-22.

Prince, Rosa (2009): IRA terrorists' families should get same compensation as victims. In: Belfast Telegraph, 28.01.2009. Available at: http://www.telegraph.co.uk/news/ uknews/northernireland/4372721/IRA-terrorists-families-should-get-same-compensation-as-victims.html [Accessed on 23.04.2010]

Reiger, Caitlin (2009): Where to From Here for International Tribunals? Considering Legacy and Residual Issues. Fighting Impunity in Peacebuilding Contexts. The Hague: International Center for Transitional Justice, September 2009.

Report of the Consultative Group on the Past (2009). Available at: http://www.cgpni.org/ fs/doc/Consultative%20Group%20on%20the%20Past%20Full%20Report.pdf [Accessed on: 23.03.2010]

Rome Statute of the International Criminal Court, 17 July 1998. Available at: http://untreaty.un.org/cod/icc/index.html [Accessed on: 03.03.2010]

Safferling, Christoph J.M (2004): Can Criminal Prosecution be the Answer to massive Human Rights Violations. In: German Law Journal, Vol. 05, No. 12, 1469-1488.

Sarkin, Jeremy; Daly, Erin (2004): Too many questions, too few answers: Reconciliation in Transitional Societies. In: Columbia Human Rights Law Review 35, 661-728.

Servaes, Sylvia; Birtsch, Nicole (2008): Engaging with Victims and Perpetrators in Transitional Justice and Peace Building Processes. Workshop Report. Bonn, Germany, 12.-13. February 2008. Available at: http://www.frient.de/materialien/ dokumentation.asp?kategorie=Dokumentation. [Accessed on: 12.12.2009]

Sharrock, David (2009): Catholic man Kevin McDaid beaten to death outside his home by 'football mob'. In: The Times, 26. May 2009. Available at: http://www.timesonline.co.uk/ tol/news/uk/crime/article6360783.ece [Accessed on: 04.04.2010]

Smyth, Marie (1998): Remembering in Northern Ireland: Victims, Perpetrators and Hierarchies of Pain and Responsibility. In: Hamber, Brandon: Past Imperfect: Dealing with the Past in Northern Ireland and Societies in Transition. Derry/Londonderry, Northern Ireland: Incore/University of Ulster, 31-49.

Stowasser, Joseph M; Petschenig, M., Skutsch, F. (1994 [1979]): Stowasser. Lateinisch-deutsches Schulwörterbuch. Wien: Hölder-Pichler-Tempsky.

Summers, Chris (2009): For a long time I was just so angry. In: BBC News, 28. January 2009. Available at: http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/7851363.stm [Accessed on 24.03.2010]

Strauss, Anselm (1994): Grundlagen qualitativer Sozialforschung. München: Fink, 25-71.

Teitel, Ruti (2000): Transitional Justice. Oxford University Press: New York.

The Commission for Victims & Survivors (2009): Draft for consultation. Corporate Plan for 2009-2011, Belfast. Available at: http://www.cvsni.org/Portals/3dd3c6ee-6448-41a8-8290-2643d6541d57/FINAL%20DRAFT%20CORPORATE%20PLAN%20_8_.pdf [Accessed on: 06. 03. 2010]

The Victims and Survivors (Northern Ireland) Order 2006, The Statutory Instrument 2006 No. 2953 (N.I.17), Available at: http://www.opsi.gov.uk/si/si2006/20062953.htm [Accessed on 24.03.2010]

United Nations General Assembly (1948): Universal Declaration of Human Rights. New York: United Nations.

Wierda, Marieke (2009): The Potential of Complementarity. Fighting Impunity in Peacebuilding Contexts. The Hague: International Center for Transitional Justice. September 2009.

Zupan, Natascha; Servaes, Sylvia (2007): Transitional Justice. Fri-Ent Leitfaden 05/ 2007. Available at: http://www.frient.de/materialien/leitfaden.asp?kategorie=Leitfäden [Accessed on: 12.12.2009].

4. Online Sources

Apprentice Boys

http://www2.apprenticeboys.co.uk/ [Accessed on: 03.03.2010]

Billy Wright Inquiry

http://www.billywrightinquiry.org/ [Accessed on: 24.03.2010]

Bloody Sunday Inquiry

http://www.bloody-sunday-inquiry.org.uk/ [Accessed on: 24.03.2010]

Brandon Hamber

http://www.brandonhamber.com/ [Accessed on: 10.11.2009]

Conflict Archive on the Internet

http://cain.ulst.ac.uk/ [Accessed on: 10.10.2009]

Committee on the Administration of Justice

http://www.caj.org.uk [Accessed on: 03.03.2010]

Glencree Centre for Peace and Reconciliation

http://www.glencree.ie/ [Accessed on 03.03.2010]

Healing through Remembering

http://www.healingthroughremembering.info/ [Accessed on: 03.03.2010]

International Centre for Transitional Justice

www.ictj.org. [Accessed on: 24.09.2009]

Incore

http://www.incore.ulst.ac.uk/ [Accessed on: 03.03.2010]

Robert Hamill Inquiry

http://www.roberthamillinquiry.org/ [Accessed on: 24.03.2010]

Rosemary Nelson Inquiry

http://www.rosemarynelsoninquiry.org/ [Accessed on: 24.03.2010]

The Commission for Victims & Survivors

http://www.cvsni.org/ [Accessed on: 10.11.2009]

Transitional Justice Institute, University of Ulster

http://www.transitionaljustice.ulster.ac.uk [Accessed on: 04.04.2010]

University of Minnesota

http://www.law.umn.edu/index.html [Accessed on: 03.03.2010]

VI. Appendix

Questionnaire

Name:

Profession:

Date of birth:

1. According to experts reconciliation is only possible in the case a just solution has been reached. Do you think that this is the case in Northern Ireland? What is your understanding of reconciliation?

2. How would you define perpetrators, victims and survivors? How do they define themselves in Northern Ireland? Have there been evolving any problems with these definitions concerning the reconciliation process?

3. Would you think that there is a reconciliation process in Northern Ireland? If yes, when do you think did it start?

4. How has reconciliation been approached in Northern Ireland? What was avoided?

5. What do you think should be used in future?

   - Punishment
   - Truth
   - Simply to forget and focus on the future
   - Storytelling, Commemoration
   - Trauma Counselling
   - Reparation
   - Apology
   - Forgiveness
   - Re-writing history
   - Changing institutions
   - Joint sorrow
   - Joint reconstruction

6. In what way has your experiences with the conflict influenced your decision to work/teach on this topic?

Abstract

The concept of Transitional Justice (TJ) encompasses the interventions and efforts which are necessary for the transition to a peaceful and democratic society after violent conflicts and gross human rights violations. Besides prosecutions of those responsible for massive violations through international, hybrid or national tribunals, disclosure of the truth, institutional reforms as well as reparation of victims suffering is needed. Reconciliation plays a key role in this concept, since building relationships with former enemies is indispensable in order to achieve peace. For that reason this thesis deals with the research question, to what extent Transitional Justice interventions serve or hinder reconciliation, referring to the experience of Northern Ireland. It is demonstrated that TJ interventions do not necessarily serve reconciliation, but can also have negative consequences for post-conflict societies. Therefore it is important to chose those initiatives which are best applicable to each individual conflict situation. This work suggests that the more inclusive TJ interventions are applied to a society that has to deal with past violations, the higher the probability of getting over the atrocities of the past and paving the way for a peaceful future.

Keywords: Transitional Justice – Northern Ireland – Reconciliation – Post conflict societies – Dealing with the Past

Zusammenfassung

Transitional Justice steht für Interventionen und Prozesse, die nach gewaltsamen Konflikten notwendig sind, um die Vergangenheit zu überwinden und den Übergang zu Frieden zu fördern. Neben der Verurteilung jener, die für die größten Gewaltverbrechen verantwortlich sind, durch nationale, hybride und internationale Gerichte, ist es unverzichtbar, die Wahrheit über die tragischen Geschehnisse ans Licht zu bringen, institutionelle Reformen durchzuführen und die Opfer für ihr Leid zu entschädigen. Versöhnung spielt in diesem oft lange andauernden Prozess eine entscheidende Rolle, da die Überwindung von alten erbitterten Feindschaften als Grundvoraussetzung für einen dauerhaften Frieden gesehen wird. In dieser Arbeit wird der Frage nachgegangen, inwieweit die Instrumente von Transitional Justice einem Versöhnungsprozess dienen und welche Probleme sie mit sich bringen, wobei Nordirland als Fallbeispiel dient. Es wird aufgezeigt, dass Transitional-Justice-Interventionen einen Versöhnungsprozess nicht zwingend unterstützen, sondern durchaus negative Reaktionen in Nachkriegsgesellschaften auslösen können. Aus diesem Grund ist es wichtig, die Interventionen so zu wählen, dass sie bestmöglich auf die jeweilige Konfliktsituation passen. Dabei wurde die Hypothese aufgestellt, dass mit den Auswirkungen eines gewaltsamen Konfliktes umso besser umgegangen werden und ein Versöhnungsprozess umso positiver verlaufen kann, je umfassender diese Interventionen angewendet werden.

Curriculum Vitae

Name: Valerie Kainz

Date of Birth: 6 June 1985

Nationality: Austrian

Education

University of Vienna   **2004 - 2010**

International Development

University of Ulster/   **June 2009**

Transitional Justice Institute

Summer school on Transitional Justice

Certificate

University of Carinthia/   **March-November 2008**

Institute for Integrative Conflict Transformation

and Peacebuilding (IICP)

Course for Integrative Conflict Transformation

Certificate

University of Vienna   **July/August 2006**

Summer school for European Studies

Certificate

University of Vienna   **since 2006**

Law

Technical Institute for Economics and Media   **2004**

School leaving examination (A-levels)

Specialized Skills and Extracurricular Activities

Languages:

- German: Mother tongue
- English: fluent, language of education
- Italian: good working knowledge
- Latin: basic knowledge

Computer skills:

Microsoft Office: Word, PowerPoint, Excel, Access, Outlook (European Computer Driving Licence)

Adobe: Acrobat, Photoshop, Macromedia Dreamweaver MX

Experiences and duties

ORF – Austrian Television   **since January 2010**
Legal adviser
Archive

Austrian Development Agency (ADA)   **August 2009**
Voluntary service assignment
NRO Cooperation & Humanitarian Aid

University of Ulster/Transitional Justice Institute   **May-June 2009**
Internship and Research Work

University of Carinthia/IICP   **March-November 2008**
Coordinator of the Integrative Conflict Transformation Course

University of ViennaSeptember   **2005**
Educational stay in Kerala, India