



**A Pension for people severely injured in
the Troubles**

Commission Advice Paper

11th September 2013

Contents

| | |
|----------------------------------|----|
| <i>Summary</i> | 3 |
| <i>Recommendations</i> | 4 |
| <i>Background</i> | 4 |
| <i>Discussion</i> | 5 |
| <i>The International Context</i> | 13 |
| <i>Conclusion</i> | 17 |

Summary

1. The Commission recognizes the hurt of those who suffered injury as a consequence of the Troubles and who have to continue to live with those consequences on a daily basis.
2. In recognizing this hurt, the Commission in this paper sets out to identify and examine the issues involved in putting in place a pension for those who were seriously injured as a consequence of the Conflict.
3. The Commission is of the opinion that, fifteen years after the Belfast Good Friday Agreement of 1998, more is required to be done in order to help those who lost the ability to work, who lost the ability to accrue pensions and who lost their health as a consequence of the Troubles.
4. The Commission has been informed on this issue by meeting with the WAVE Injured Group and has received a paper from them on the issue of special pension provision for those injured in the Northern Ireland Troubles. The Commission wishes to thank the group for their work in this area and this is reflected in the information in the paper below.
5. This paper examines the questions that if a pension was to be paid to those who were most severely injured, how many people would this affect, how would eligibility be determined, how could it be administered and how much would it cost? This paper represents the first steps in examining these issues and putting some detail in place in seeking the answers.
6. The paper also examines similar developments in the international field and draws on some of that experience in order to help inform the decisions that need to be made in relation to these issues in Northern Ireland.
7. The Commission intends to investigate this topic further to identify the legislative and legal issues that may arise from the implementation of such a pension and to identify possible or potential solutions. The research will also examine in further detail the international examples of this type of pension being operational elsewhere in Europe. It is expected that this research will report in March 2014.
8. The Commission also recommends that another piece of research is commissioned to examine how victims and survivors suffering from a psychological injury could also benefit from pension provisions.

Recommendations

9. The Commission recommends that those civilians who were seriously injured as a consequence of the conflict should have provision made for them by the state in the form of a pension for the injured.
10. The Commission estimates, at this stage, that the number of individuals who would qualify for such a pension would be in the region of 500.
11. The Commission recommends that the Industrial Injuries Disablement Benefit (IIDB) and the Prescribed Degrees of Disablement be examined further as a mechanism for the assisting in the administration of a pension for those seriously injured.
12. The Commission estimates that using these mechanisms and with approximately 500 individuals qualifying for the pension for those seriously injured that the cost to government would be approximately £2million each year.
13. The Commission recommends that in relation to carers, the carer should inherit the right to receive the pension for those seriously injured for the duration of their lifetime, if the injured person they care for dies first.
14. The Commission recommends that international experience is taken into consideration when considering implementing a pension for those seriously injured. This paper identifies some examples of international initiatives that are similar so that they can be used as comparisons.
15. The Commission recommends that further research is undertaken in order to provide further information on the issues and challenges identified within this paper.

Background

Why consider a pension for those seriously injured?

16. Over the last two years the Injured Group at WAVE has been campaigning for a state funded pension for those seriously injured in the Troubles, both as a means of recognising the suffering caused to those living with an injury, as well as addressing their practical needs.
17. There is strong precedent both in the UK and abroad for this type of support. The Injured Group state that Northern Ireland, particularly given its prolonged

history of conflict, has fallen behind the rest of the world when making provision for those injured in analogous circumstances.

18. The proposal for a pension is aimed at improving the position of those individuals who not only lost the ability to work following their injury(s), but also lost the ability to accrue occupational pension rights as a result of losing their careers to chronic ill health. As people who were injured grow older, the impact of their injuries on day to day life becomes more pronounced.
19. A pension for those seriously injured would also be a step towards allaying fears surrounding the impact of Welfare Reform on victims of the Troubles. The impact of welfare reform on victims and survivors has been outlined in the Commission's Welfare Reform paper.¹
20. Many of the injured rely on benefits such as Incapacity Benefit, Employment and Support Allowance and/or Disability Living Allowance, all of which have seen or will see fundamental change under the Welfare Reform programme. Compounding this is the fact that most of those injured in the Troubles are over the age of forty five and with long term ill health and disability, will be unable to return to work, something that government policy is yet to reflect. As such, a pension for those seriously injured would mitigate against this and would address a growing sense of injustice and apprehension that Welfare Reform has promulgated for those living with Troubles related injury.
21. A pension for the seriously injured would also address issues of vital importance to the Injured, both securing their financial future and recognising the significant suffering they have experienced since sustaining their injuries. The loss of occupational pension rights, disability discrimination and limited life and career opportunities justify such a measure, additionally, the compensation payments that the injured received have been exhausted in many circumstances, leaving the person solely reliant on the Social Security system.

Discussion

Proposed Characteristics of the Pension for the Seriously Injured

22. The WAVE Injured group has identified a number of key characteristics that any pension for the seriously injured should possess. These include:
 - Any pension for those seriously injured should be non-contributory;
 - Any pension for those seriously injured should be non-means tested;

¹ Commission for Victims and Survivors (2013) *Welfare Reform: Commission Policy Paper*, CVSNI March

- Any pension for those seriously injured should be completely disregarded for the purposes of calculating entitlement to means tested benefit;
- The level of pension payments for those seriously injured should be graded to reflect the differing levels of disablement that those injured in the Troubles experience; and
- Any pension for those seriously injured should continue beyond State Retirement Age and for the duration of their lifetime.

23. In addition, the WAVE Injured Group suggest that payments should be made weekly and that the following eligibility criteria apply:

- That the claimant suffered physical injury(s) as a result of a conflict related incident(s); and
- That the injury(s) has resulted in disablement (verified by a medical assessment or use of the Industrial Injuries Disablement Scheme).

Eligibility

24. A difficult issue to be resolved in terms of eligibility will be the definition of physical injury and who would qualify, distinguishing between minor injuries and more serious injuries. This is addressed further in the Administration of any pension for those seriously injured from paragraph 30 below.

Number of potential claimants

25. The WAVE paper “Exploring models for the proposal of special pension provision for those injured in the Northern Ireland “Troubles”² states that, it is difficult to predict with any degree of certainty the number of people who would qualify under the proposed pension for those seriously injured scheme. This is noted in Prof Breen-Smyth’s research³ as being due to the lack of centrally held data on those injured in the Troubles. However, there are a number of statistics relating to ESA/Incapacity Benefit, as well as the number of claimants of support from the Northern Ireland Memorial Fund that are relevant when considering this.

26. As of August 2012, 2,640 claimants were in receipt of ESA by virtue of Accident /Injury as the primary cause of their illness/disability (5.3% of total claimants). Similar to this is the number of claimants in receipt of Incapacity Benefit (3,390) on the basis of “Injury, poisoning and certain other consequences of external causes” (5.5% of total claimants). These figures

² Magee, S. (2013) Exploring models for the proposal of special pension provision for those injured in the Northern Ireland “Troubles”, Wave Trauma Centre, Page 4

³ Smyth, MB (2012) Injured in the Troubles: the needs of individuals and their families, WAVE Trauma Centre, May, 2012.

represent the total claimants across Northern Ireland and we can assume that a per centage of would be Troubles related. The Commission’s NI Omnibus Survey⁴ indicated that around 6% of the population were injured due to the conflict. Applying this assumption to these figures would give us 158 and 203 (361) individuals respectively, who would be potentially eligible for the pension for the seriously injured.

27. Also relevant to the question of quantifying the level of Troubles related injuries are the statistics available from the Northern Ireland Memorial Fund for the year 2012/13. Table 1 below identifies the number of claimants who have been classified as injured.

Table 1: Northern Ireland Memorial Fund Information 2012/13

| Grounds for eligibility | Number of claimants |
|--------------------------------|----------------------------|
| Bereaved and Injured | 27 |
| Bereaved, Injured and Carer | 2 |
| Injured and Carer | 4 |
| Injured | 974 |
| Total | 1,007 |

28. Adding together the relevant categories gives a total of 1,007 claimants who receive assistance from the NIMF, at least partly on the basis of suffering a Troubles related injury.

29. Therefore, the best estimates available at this time would point to 1,007 individuals who are known to be injured due to the conflict and already claiming NIMF assistance. Applying the seriously injured criteria to this group could reduce this figure by up to half to 400 to 500.

30. From April 2013 the Victims and Survivors Service opened a Chronic Pain scheme and a Disability support scheme and also a package of care entitled “Support for the Injured”. Although figures for the uptake of these schemes and packages are unavailable it is expected that between 300 and 500 individuals will apply to be considered under these schemes. The VSS has indicated that actual statistics will be available in late September 2013 and

⁴ Commission for Victims and Survivors and NISRA (2010) Analysis of the Victims and Survivors Module of the September 2010 Northern Ireland Omnibus Survey, December.

this will provide a further indication of the likelihood of the numbers of individuals who would potentially benefit from a pension scheme.

The Administration of a pension for those seriously injured

31. The Injured Pension Industrial Injuries Disablement Benefit (IIDB) offers an example of how the pension for those seriously injured could be administered and potential costs examined. The WAVE paper examines this benefit and the Prescribed Degrees of Disablement and of how these could be of use.
32. The paper states that of particular interest to the question of potential medical assessment criteria for any pension for those seriously injured are the Prescribed Degrees of Disablement used to assess disablement as a result of industrial accident for Industrial Injuries Disablement Benefit. This is used to determine a percentage assessment of disablement, the outcome in percentage terms (1- 100%) determining the level of payment that a claimant would receive.
33. There are a number of rules that must be considered when taking into account how this assessment could be adapted for the purposes of a pension for those seriously injured. It should also be highlighted that use of this scheme would involve the creation of an entirely new benefit in the Social Security system, albeit with the assessment criteria taken from the IIDB scheme.
34. There are a number of definitions of relevance that have been clarified in the development of the case law related to IIDB and these are important in attempting to understand the way in which the Prescribed Degrees of Disablement are applied in practice:

Loss of faculty - this is a loss or reduction in the functioning of an organ or part of the body. This is not in itself a disability. For example the loss of one kidney is a loss of faculty, but where the other kidney is functioning normally, a person may not notice any difference in function. However as this is a potential cause of disability in the future, it has been assessed in the past as giving rise to a percentage assessment of between 5% and 10%.

Disability - This is the inability to perform a bodily or mental process. This could be complete inability to do something (e.g. walking) or partial inability to do something. To be relevant for the purposes of the percentage assessment it must arise as a result of a "loss of faculty".

Disablement - This is the sum total of all of the separate disabilities experienced. For the purposes of a pension for the seriously injured, it

would be the sum total of all of the disabilities caused by the Troubles related incident(s). This is assessed between 1-100% with reference to the prescribed degrees of disablement.

35. Factors taken into account include of a person of the same age and sex as the claimant whose condition is normal; the severity of the incident that occurred with reference to the claimant's conditions at that time and how the condition affects the individual claimant (e.g. the effect of stress/embarrassment on the individual claimant).
36. Loss of earning power is not taken into account directly as part of the percentage assessment, nor is the fact that the claimant's disabilities may lead to extra expenses. In the case of a variable condition the healthcare professional will work out an average assessment.
37. Where a condition does not fit neatly within the prescribed degrees of disablement, the decision maker assessing the claim will have due regard to the principle that the assessment should fit within the general run of the percentage assessments.
38. Where a condition has arisen after a Troubles related incident, the ability to take this into account when determining overall level of disablement would be dependent on whether that condition is "directly attributable" to the incident in question. Where a condition pre-dated the incident that gave rise to injury, there is the potential for the overall level of disablement to be reduced, but this should only occur where there is evidence that the pre-existing condition would have led to a level of disablement had the incident not occurred.
39. To be paid any level of benefit, disablement must be assessed at or above 14%. Assessments between 14-19% are paid at the 20% rate. For assessments higher than 20% they are rounded to the nearest 10% and paid at that rate (e.g. an assessment of 66% would be paid at the 70% rate). The current weekly rates of pay are as follows:

Table 2: Current Weekly Rates of Pay

| Percentage | Amount |
|------------|---------|
| 20% | £31.62 |
| 30% | £47.43 |
| 40% | £63.24 |
| 50% | £79.05 |
| 60% | £94.86 |
| 70% | £110.67 |
| 80% | £126.48 |
| 90% | £142.29 |

| | |
|------|---------|
| 100% | £158.10 |
|------|---------|

40. The Prescribed Degrees of Disablement scheme provides an example of how any pension for those seriously injured scheme could operate. It offers a grading system based on the various levels of disablement experienced by those injured in the Troubles. It also has the potential to reflect the common categories of injury experienced most commonly by those severely physically injured in the Troubles e.g. bomb related injury or gunshot trauma.
41. The principles behind this assessment have been long in development. There are numerous Social Security Commissioner's Decisions on the Prescribed Degrees of Disablement and as such there is less scope for disagreement on the interpretation of the legislation than there would be for an entirely new benefit.
42. Furthermore, there is a precedent for the use of the Prescribed Degrees of Disablement for a benefit other than the Industrial Injuries Disablement Benefit. Prior to 2005 the schedule was used to determine the level of benefit payable under the War Pensions scheme - a benefit payable to those injured during service in the UK's Armed Forces. This lends support to the proposition that the schedule could be used to assess Troubles related injuries.
43. The Prescribed Degrees of Disablement are thorough and rigorous in terms of assessment of disablement. Thus, as potential criteria for any pension for those seriously injured the test represents a system that will reflect a claimant's degree of disablement. Rather it is a fair way of assessing both the extent of the injury(s) that a claimant suffered as well as the causative link between that injury and the non- medical criteria.
44. The rigour of the assessment as described in the Prescribed Degrees of Disablement is demonstrated by the level of payments made under the War Pensions Scheme using the prescribed schedule to assess claimants medically. As of March 2012, 86% of ongoing War Disablement pensions are assessed at the 50% rate or less. The largest group was is at the 20% rate (40% of War Disablement pensions). Only 3% of War Disablement Pensions are paid at 100%. This would most likely differ to the breakdown of rates of pensions should the prescribed schedule be used for a pension for those seriously injured, due to the unique circumstances of those injured in Northern Ireland. However, these statistics do demonstrate that the prescribed schedule is a workable means of medically assessing eligibility for a pension for the seriously injured.

The War Pensions Scheme

45. The War Pensions scheme was replaced in 2005 by the Armed Forces Compensation Scheme, prior to this it was the scheme for pension provision for those injured, suffering ill health or bereavement as a result of service in the Armed Forces before 6th April 2005. The scheme had been in place since the inception of the Welfare State after the Second World War. The scheme also used the Prescribed Degrees of Disablement to assess the overall level of disablement caused by injury in service with the rates of payment being the same as under the Industrial Injuries Disablement scheme and as such lends further weight to the proposition that such a scheme as that should be extended to those individuals injured in the Troubles. It is worth noting that under the War Pensions Scheme, the average weekly payment received is £78.57 which equates to a percentage assessment of 50%. This is a higher average than for Industrial Injuries Disablement Benefit.
46. The WAVE paper recommends that if the Prescribed Degrees of Disablement were used to medically assess those who were injured in the Troubles, it is advisable that the pension for those seriously injured and entitlement to it should be brought within the ambit of the Social Security provisions on appeals. This would give the opportunity for those claimants who felt that a decision about their entitlement to the pension for those seriously injured was wrong or that the level of payment they received was not reflective of their level of disablement they could seek redress through an Independent Appeals Tribunal. This is important in ensuring access to justice and provides a layer of scrutiny and accountability to the decision making process.

Carers

47. The WAVE paper recommends in respect of carers of the injured that they should be compensated for the suffering and sacrifices they have made by caring for their loved ones since they sustained injury(s). This is an important recommendation of the research by Professor Breen-Smyth, as the suffering and lost opportunities caused by Troubles related violence was not limited to those injured, but extended to those who sacrificed careers to provide vital support and care.
48. One of the great fears for the carers of the injured is that if the person they care for predeceases them, their carer's related benefits cease after 8 weeks. One way of mitigating this reality of the Social Security system would be to allow the injured person's carer to inherit the right to receive any pension for those seriously injured. The loss of the injured person's income on their death represents a drastic and sudden loss and adds distress at a time of bereavement, particularly acute after years of caring for a loved one.

49. Additional criteria could be fixed to this, such as a minimum period of time the person has cared for the injured person. This would assuage the vulnerable position that many carers of the injured feel themselves to be in and also represents a cost effective way of joining the proposed pension for those seriously injured to a scheme for carers. There is a precedent for this in the way that some married women are able to claim a Category B State Retirement Pension on the basis of their husband's National Insurance contributions.

Estimated cost of the Pension for the Seriously Injured

50. Using the Industrial Injuries Disablement Benefit and the Prescribed Degrees of Disablement, one could make the assumption, based on 500 individuals being eligible for the pension for those seriously injured. Assuming the 50% amount would be the average, then potential cost of administering a pension for the seriously injured would be in the range of £2million each year.

51. This calculation is based on the 50% weekly amount of £79.05 being paid to one person for 52 weeks of the year. Therefore, the cost for one person for one year is £4,110.60. If 500 individuals qualify for the pension for those seriously injured at this level, then the cost to government per annum would be (500 x £4,110.60) £2,055,300.

52. It must be stressed that the initial cost of setting up the scheme outlined will be the peak outlay, with the cost of scheme falling over time. The cohort of claimants in receipt of the pension for those seriously injured would get ever smaller due to the passage of time, and as such, eventually there would be no remaining recipients of the scheme. The scheme would introduce an element of finality for the Injured as it institutes a long term solution to dealing with a significant part of the legacy of the Troubles.

53. The Commission recommends that this pension is treated as capital and not income and therefore not affecting the beneficiaries current benefits up to a ceiling of £6,000.

The International Context

54. Internationally, many countries provide dedicated pension entitlements to individuals injured in acts of terrorism or internal conflict. These countries include Afghanistan, France, Greece, Italy, Israel and Spain. Further analysis of these examples could help inform developments in Northern Ireland. Therefore, the Commission proposes to carry out further research into the particular examples of Spain and Italy.

55. The general promotion of the right of victims of crime to compensation has been on the international political agenda since the late '70s. The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the 1983 European Convention on the Compensation of Victims of Violent Crime and the 1987 Recommendation No. R (87) 21 on the Assistance to Victims and the Prevention of Victimisation were the most influential international documents. However, they refer to the situation from a general prospective at most, focusing on all kinds of serious crime.
56. Assistance to victims of terrorism has become a particular priority since the attacks in New York in 2001, in Beslan and Madrid in 2004 and in London in 2005. At their Conferences in 2003 and 2005, the European Ministers of Justice invited the Committee of Ministers to adopt new rules concerning the improvement of the support towards victims of terrorist attacks and their families. In March 2005 the Committee of Ministers adopted new guidelines on the protection of victims of terroristic acts. It considered that victims directly or indirectly suffering from harm caused by such acts should receive national and international solidarity and support.
57. Under article VII (1), the guidelines provide that "Victims of terrorist acts should receive fair, appropriate and timely compensation for the damages which they suffered. When compensation is not available from other sources, in particular through the confiscation of the property of the perpetrators, organizers and sponsors of terrorist acts, the state on the territory of which the terrorist act happened must contribute to the compensation of victims for direct physical or psychological harm, irrespective of their nationality".⁵
58. The guidelines underline the states' obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist violence, in particular the right to life and thus refers also to the European Convention on Human Rights as well as to decisions of the European Court of Human Rights holding that states are under a strict duty to implement policies devised to provide for effective protection of human life. States should ensure that persons who have suffered physical or psychological harm as a result of terrorist violence, including under certain circumstances close relatives, can benefit from the services and measures prescribed by these guidelines.

The Case of Spain

59. There are two pensions of note under the Spanish Social Security system:

⁵ Guidelines on the Protection of Victims of Terrorists Acts, adopted by the Committee of Ministers on 2 March 2005 at the 917th meeting of the Ministers' Deputies

- For those individuals injured in terrorist acts there is an extraordinary pension which is paid at a minimum of €1,597.53 per month. There are overlapping benefit rules for this pension and other pensions in the Spanish system;
- For individuals injured during the Spanish civil war there is a percentage assessment of disablement - the minimum level of assessment required being 26%. The amount payable depends on the level of injury and is separated into four bands, paid at monthly rates of €123.55, €247.11, €370.67 and €494.22. Of interest is the provision in the scheme that grants pension rights to relatives of the injured if the injured party is assessed at a sufficient level of functional disability.⁶

60. Further information in relation to the situation in Spain is contained in Annex 1 in relation to Criminal Injuries Compensation in Spain. This information is from the report prepared by Sir Kenneth Bloomfield on The Review of Criminal Injuries Compensation in Northern Ireland in July 1999.

The Case of Italy

61. Maria Alvanou has written the following in relation the current situation in Italy⁷. “Italy has had special provisions for the compensation of victims of terrorism for several decades. In 1990, a special compensation programme for victims of terrorism and organized crime was established by Act no. 302 (“Norme a favore della vittime del terrorismo e della criminalita organizzata”) through which earlier decrees and laws issued in the ‘70s and ‘80s were amended and partly replaced. In 1998 and 2000, further provisions were introduced and compensation covered personal injuries leading to disability that reduces the capacity to work by at least 25% and support for dependents, in case the violent act has resulted in the death of the victim.

62. In 2004, state compensation practice was significantly extended with special regard given to victims of terrorism and related assassinating acts by Act no. 206 (“Nuove norme in fevore della vittime del terrorismo e delle stragi di tale matrice”). Nowadays, any degree of disability whatsoever is sufficient for the award of a disability pension.

63. Based on the principal according to which an annual pension of €2,000 is granted per 1% of disability, victims can receive a maximum pension of €200,000 per year, if the victim is disabled by 80% or more; if the victim dies, the pension is transferred to the relatives without any reduction. The relatives

⁶ <http://www.clasespasivas.sgpg.pap.meh.es/sitios/clasespasivas/en-Gb/PensionsPrestaciones>

⁷ Alvanou, Maria (2007) *The Right to Compensation for victims of terrorist attacks in Italian Legislation*, ItsTime, Universita Cattolica, January.

of the victim receive an additional personal subsidy of €1,033 per month each. Should the victim die, the spouse and any descendent who has been living in the victim's household get their additional subsidies for another 2 years. It has to be noted in this context that, according to the general principles, an additional 13th regular instalment is being remitted per year. Furthermore, the pension is income tax-free for the victim, plus the pensions of the relatives are "tax-neutral", i.e. not counted in the calculation of the individual tax rate according to the progressive income tax table.

64. According to the same underlying principle, victims of terrorism and their relatives are exempt from all major types of further taxes and fees. This includes all taxes for administrative acts (such as stamp duty and transaction tax) and fees for civil, administrative and criminal trials in the connection with matters resulting from the original injury. Moreover, medical care (including psychotherapy), medicine and other medical aid and instruments are free of charge.

65. The decision whether or not to provide compensation is prepared by a medical and a compensation committee and the final decision is made by the Ministry of the Interior. The decision has to be issued no later than 4 months after the application was made. Advance payments can be granted by the Compensation Committee and must not be paid back even if the compensation is ultimately not awarded.

66. Foreign nationals are also eligible for compensation in the case that the crime occurred inside Italian territory. Italian nationals may be compensated too for terrorist or organized crime acts that occurred outside the Italian territory. The extended provisions for victims of terrorism introduced by the 2004 Act, however, retrospectively apply only for those terrorist events abroad that took place after 1 January 2003 (which, incidentally, renders improvements non-applicable to victims of the 9/11 attacks of 2001). Terrorist events inside Italy are retrospectively included in the extended state compensation from 1961 onwards. Accordingly, earlier determined cases coming under this retrospective scope of application are subject to adjustment according to the new rules.

67. Italy provides for particular protection in cases of organized crime and measures amount to full blown witness protection programs. Though general victim support organizations do not exist on a national level, however, a range of local regional organizations provide for support and help for victims. A special association named "Associazione vittime del terrorismo" caters especially to caring for the interests of victims of terrorism. Apart from their role as political interest groups, such NGOs may join criminal proceedings in specific cases as civil parties or as simple participants.

68. Italy (among other countries like France, Greece, Spain, Turkey and Russia) is one of the states that have enacted specific victim of terrorism legislation and specific programs. Such specific legislation is modelled on the precursor of compensating military and civil victims of violence and continuously refers to a structure of compensation, deriving from a statute that organizes support for losses caused by war.

69. Large scale terrorist violence and its consequences for victims in the last decades make for some lessons about the particulars that must be considered when discussing about how compensation of victims of terrorism should be regulated.”

Other International Examples

70. Priscilla Hayner in her book “Unspeakable Truths” examines the work of forty Truth Commissions from around the world.⁸ In Chapter 12 she examines Truth and Reparations and highlights the amount of reparations paid out to victims and survivors by the various Truth Commissions. Annex 2 provides details on each of the countries examined.

71. It is interesting to note that in some countries significant reparations have been paid to victims and survivors. For example, in Argentina over \$3 billion has been paid by the government to over 16,000 victims’ families of those killed or disappeared. In Chile, \$16 million is made available every year to 4,886 family members. In South Africa, \$103 million was made available to 21,000 victims following the Truth and Reconciliation Commission in 2003.

72. These examples from other countries provide a base line for Northern Ireland when considering if anything similar could be put in place for victims and survivors in the Northern Ireland context.

Conclusion

73. The provision of a pension for those seriously injured in the Troubles is recommended by the Commission. To implement such a scheme will require detailed planning and commitment of funding. This paper has sought to explore some of the context in enabling such a scheme to be put in place. However, it is very much considered as the first step in exploring the issues involved with putting such a pension for those seriously injured in place.

⁸ Hayner, P (2011) *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, Routledge, second edition

74. Further research is required in order for the Commission to be more definitive in terms of how this pension scheme could potentially operate. The legal and legislative challenges, the eligibility criteria, the definition of seriously injured and the international context need to be examined further in this research.

75. The Commission proposes to undertake this research during the remainder of 2013 and to report on these issues again by March 2014.

11TH SEPTEMBER 2013

Criminal injuries compensation in Spain

Introduction

6.75 The history of state compensation for criminal injuries in Spain has been relatively short. As a result of an increase in terrorist activity during the 1980s, a special scheme of state compensation for victims of terrorism was introduced in 1984. The creation of a general scheme of compensation for the victims of ordinary crimes of violence was not enacted until 1995. It remains of relatively low importance in the general scheme of things, the major focus both in the political and public frame being on the need to deal generously with victims of terrorism.

6.76 Another interesting point is that civil and criminal proceedings in Spain must be pursued jointly. It is a major principle that any person who commits a crime is also liable in civil law. In theory this means that the interest of the victim is paramount and that compensation should be paid proportionate to the crime. However, the reality is somewhat different. Most offenders convicted of violent crimes do not have the resources available to meet the orders of the court to pay compensation to the victim. Thus such court orders are often unenforceable.

State compensation for victims of terrorism

6.77 ETA began its terrorist campaign in 1968. In 1984 legislation was enacted which contained a number of general measures to provide some form of economic protection to victims of terrorism. This was in response to an increase in the number of violent incidents arising from the campaign for Basque separatism. In the beginning only personal injury and death were covered, providing compensation to a very small circle of relatives of the deceased. Subsequently material damage was added, first of all in respect of the person's main residence, and eventually to cover cars and business properties.

Eligibility

6.78 Compensation is payable in respect of any loss arising from physical or psychological injuries or property damage resulting from a crime committed by an armed gang or terrorist organisation. It is not payable in respect of an injury sustained by a person who was himself responsible for the injury, for example anyone injured or killed whilst carrying out a terrorist attack.

Assessment of compensation

- 6.79 Compensation for injuries is paid equally to all victims - and amounts may be increased by up to 30% depending on the number of children in the family and also according to the family's other economic circumstances. It is normally paid in one lump sum. It is additional to any other compensation the victim may be entitled to claim, for example pensions or private insurance payments are not deducted from the compensation awarded under the scheme. It is payable on an impersonal and objective basis, irrespective of the individual's financial circumstances or those of the family.
- 6.80 The amount of compensation payable for pecuniary loss is determined by the extent of the impact of the injury. The maximum amount payable in respect of total invalidity is 130 times the average monthly wage.
- 6.81 Where a person has died as a result of a terrorist crime compensation is payable to the surviving members of the deceased's family on the basis of financial dependency. The amount of the award is 120 times the minimum monthly wage at the date of the death. This amount is normally increased by the 30% factor detailed earlier.
- 6.82 Extraordinary pensions are also payable to victims of terrorism in respect of both disability and death. These are usually paid at twice the normal amount of pension payable.

How the system works

- 6.83 In 1996 the Interior Ministry established a special unit whose main objective was to take care of terrorist victims in a wholly integrated and holistic manner. As well as the payment for personal injury and material damage, special importance was placed on assistance for scholarships to the children of families of terrorist victims, and psychological help and assistance for children in respect of the trauma of the death or injury of their parents.
- 6.84 Immediately after a terrorist attack a representative from the Office of Assistance to Victims of Terrorism visits the family to establish contact and offer assistance. Extraordinary assistance is made available when the standard amount does not cover all the basic needs. Help with employment is also available through an employment scheme for the families of terrorist victims. Between 1997 and 1999, £814,000 was spent on various training and employment measures. In total, in 1998 some £3m was paid in respect of assistance to victims of terrorism.

Recent Government initiatives in compensating victims of terrorism

6.85 On 10 April 1999, the full text of a draft Bill entitled the Solidarity with the Victims of Terrorism Bill, was published by the Spanish Government. The Bill is designed to provide the victims of ETA terrorism with the money owed to them as a result of compensation orders made by the courts against the perpetrators over the past 30 years. It will cover all victims of injury or death as a result of terrorist acts perpetrated between 1 January 1968 and the day on which the Act comes into force. The Government proposes paying out 21 million pesetas (approximately £84,000) to each family which has suffered a fatality as a consequence of terrorism. The proposed amounts for the different types of non-fatal injury are as follows:

- serious invalidity: 65 million pesetas (£260,000)
- permanent and complete disability: 14 million pesetas (£56,000)
- permanent total disability: 7 million pesetas (£28,000)
- permanent partial disability: 3.5 million pesetas (£14,000)

The total bill is calculated at some 42,000 million pesetas (about £168m). About half of that would be set aside for the almost 1,000 fatalities of the terrorist campaign. The other half is for the surviving injured.

Arrangements for victims of terrorist crime in the Basque country

6.86 There are also local arrangements in place under the jurisdiction of the Basque Government to supplement the compensation arrangements from central Government. The Basque Government's Aid to Terrorist Victims Office co-ordinates the service available to terrorist victims in the role of a 'one stop shop'. They deal with compensation for property damage, along with special assistance in the field of education, psychology, health care, housing and other one-off services. At a lunch with a group of victims which we attended in Vitoria, the administrative capital of the Basque country, they explained that the setting up of the Aid to Terrorist Victims Office had been a milestone in the care and support of victims. The concept of a one stop shop was most important as traumatised victims could not cope with the bureaucracy of multiple Government agencies which needed to be dealt with in order to access help and compensation. They needed one access point, one person to deal with all their diverse needs and to ensure that all systems collaborated in their best interests. Before the Office had been established, victims considered that they had been further traumatised and victimised through the lack of understanding displayed by those from whom they sought help, advice and support.

6.87 The group also emphasised that, although the amounts paid in compensation were now adequate, they valued the pension arrangements more. Payment by this method allowed for adjustments to be made for medical or psychological changes.

6.88 Much to the forefront within the group was the feeling that they had a distinctive role to play in the developing Basque peace process, at the very least to display courage and set good examples of reconciliation to their families and communities. However, their foremost demand was for some form of recognition, but not to the extent that the caring and support role of the major victims' groups was extinguished by political activity or was abused by politicians for party political purposes.

Compensation for victims of ordinary crime

6.89 An Act for the Provision and Assistance to the Victims of Violent Crimes and Sexual Offences was passed by the Spanish Parliament in December 1995. The Government made clear at the time that considerations of a financial nature prevented the creation of a scheme comparable to that in existence for victims of terrorist crime. Compensation is payable in respect of pecuniary loss on much the same basis as to victims of terrorist crime; however, damages which may have been awarded to the victim for personal injury and other losses caused by the offence will be deducted from the compensation award as will payments in respect of the same injury from private insurance sources.

Conclusion

6.90 This short summary provides only a glimpse of the arrangements in Spain, and particularly only a flavour of the focus on the victims of terrorist crime and the holistic nature of the official approach to the needs of these individuals. We are extremely grateful to the wealth of information provided by the Spanish Government officials, the Mayor of Vitoria, other members of the Basque Parliament, the Director of the Basque Government's Aid to Terrorist Victims Office and the victims who courageously told us of their painful experiences. Although there are unquestionably major differences in the problems experienced by both countries, we also found many striking similarities in the experiences of victims and the needs which they expressed.

Particular points of interest in the Israeli experience

- 6.91 The Chairman of the Review team travelled to Israel for a series of discussions there involving academics, Government servants and representatives of victims of terrorism.
- 6.92 There is no comprehensive scheme of support in Israel for the victims of what might be termed 'ordinary criminal violence', although of course citizens of the State suffering from criminal action can have recourse to other benefits provided for sick or disabled people, through the National Insurance or National Health systems. In practice there is a hierarchy of provision by the State, with the lowest levels set for dealing with 'general disability', the median level with 'work accidents' and the highest with the military and civilian casualties of 'hostile acts'.
- 6.93 The priority given to the victims of hostile acts clearly reflects and flows from the wider geo-political situation of the State of Israel. It is a State in which virtually everyone has been, is, or will be a member of the Defence Forces, or is currently a parent or other close relative of a young man or woman serving in that capacity. It is thus very much a 'citizen army', and casualties arising out of its activities have from the earliest times of independence drawn a generous political and communal response. As it became clear, however, that the civilian population were also exposed to danger, public pressure led to the concession of near-parity for civilian victims alongside injured or dead soldiers.
- 6.94 Although much detailed information was provided during the visit to Israel, it may be sufficient here to point to some particularly interesting characteristics of this scheme for the support of a distinct category of victims of crimes of violence. These are:-
- (a) the scheme is generous, encompassing not only cash benefits but a wide range of concessions and benefits in kind;
 - (b) the duty of administering the scheme rests with the National Insurance Institute, but the cost is met out of a separate and distinct budget and not out of National Insurance funds;
 - (c) changes in the system over time are driven largely by changes in provision for the Army, and the indirect policy driver, even for the civilian population, is thus the Ministry of Defence;
 - (d) benefits are available to an Israeli citizen or resident, whether injured in Israel itself or abroad; to anyone who entered Israel legally; or even to a foreign resident

- working abroad for an authorised Israeli employer who was injured in hostile action abroad during and as a result of his or her work;
- (e) the scheme does not apply to injury suffered by a person belonging to 'enemy forces', aiding them or acting as their agent or on their behalf or in order to further their interest;
 - (f) the scheme is essentially administrative in character, with recourse to the courts only on points of law (medical assessment, for example, being reviewable by a medical appeals panel);
 - (g) at the heart of the system there is a tariff assessing percentage degrees of disability (with consequences for the level of entitlement);
 - (h) however, the amount payable in relation to a specific level changes from time to time in line with a prescribed Civil Service salary level;
 - (i) in contrast with the 'once for all' judgements which have to be made under the present Northern Ireland system, the medical circumstances of a victim can be regularly reassessed and the support level revised. It follows that a claimant can expect more support in cash terms as the compensation level for his degree of disability rises, with further enhancement if a medical reassessment accepts that his or her degree of disability has increased;
 - (j) great emphasis is placed upon the embodiment of financial support in cash or benefits in kind within a wider framework of regular contact, counselling and support.

6.95 We have every reason to be grateful to those who responded to our approaches in Israel, and above all to Professor Uri Yanay who has made a deep study of 'victimology' both in Israel itself and internationally, and who is remarkably well informed, through periodic visits and personal contacts, about developments in Northern Ireland itself.

Annex 2 – Reparations Following Truth Commissions

| Country; year of report | Recommendation by truth commission (TC) | Reparations awarded by TC (“urgent interim reparations”) | Reparations implemented within 3 years after TC report | New reparations implemented 4-6 years after TC report | New reparations implemented 7 or more years after TC report | Was reparations program a result of TC? | Total reparations provided and number of victims reached | Other comments |
|-------------------------|--|--|--|---|--|--|--|---|
| Argentina 1984 | Very general recommendations for economic assistance, study grants, social security and employment for relatives of the disappeared. | None | - | - | <p>1991: awarded \$74 for each day in prison for all former political prisoners; later extended to those forced into exile.</p> <p>1994: awarded \$220,000 to each family of nearly 9,000 disappeared.</p> <p>2004: awarded \$25,000 to \$75,000 for persons victimised as minors, such as those born in prison and given to another family.</p> | <p>Families of all disappeared listed by TC are eligible, and its archives are a primary reference for program.</p> <p>Additional victims later added.</p> | <p>Over \$3 billion paid by government, reaching over 16,000 former political prisoners or families of those killed or disappeared.</p> <p>Additionally, approximately \$66 million for minors who were victims.</p> | Reparations program was prompted by case in the Inter-American Court as well as large sums awarded in national court cases. |

Annex 2 – Reparations Following Truth Commissions

| Country; year of report | Recommendation by truth commission (TC) | Reparations awarded by TC (“urgent interim reparations”) | Reparations implemented within 3 years after TC report | New reparations implemented 4-6 years after TC report | New reparations implemented 7 or more years after TC report | Was reparations program a result of TC? | Total reparations provided and number of victims reached | Other comments |
|-------------------------|--|--|---|---|---|--|--|--|
| Chile 1991 | Specific and detailed recommendation for pensions; education, health and housing benefits; waiver of military service. | None | 1992: Lifetime monthly pension of \$345-\$482 per family, for the 4,886 total family members of the 2,723 persons disappeared or killed. Also educational and health benefits and waiver of military service. | - | 2004: A second truth commission was created to address survivors of torture, resulting in new reparations program. See below. | Yes. Direct role in establishing victims list. | \$16 million per year for 4,886 family members. | Commission excluded survivors of torture in final tally of victims. |
| South Africa 1998 2003 | Recommended \$3,500 per year for six years to 21,000 victims; also health, education, and other benefits. | Yes: TC administered in urgent interim reparations program providing \$300 to \$1,000 to many victims who had given a statement to TC. | - | 2004: Single, final payment of \$3,000 to each of 21,000 victims named by TC. No additional services of benefits. | - | Yes. Reparations program only reached those on TRC list. Program was clear response to TRC, though amount much lower than recommended. | \$103 million for 21,000 victims, including urgent interim payments. | The slow implementation and low amount of reparations was one of the most contentious and strongly – criticised issues following TC. |

Annex 2 – Reparations Following Truth Commissions

| Country; year of report | Recommendation by truth commission (TC) | Reparations awarded by TC (“urgent interim reparations”) | Reparations implemented within 3 years after TC report | New reparations implemented 4-6 years after TC report | New reparations implemented 7 or more years after TC report | Was reparations program a result of TC? | Total reparations provided and number of victims reached | Other comments |
|-------------------------|--|--|---|---|---|---|---|--|
| Peru 2003 | Extensive recommendations for individual and collective reparations. | None | 2005: Community-based reparations targeting dozens of the most affected villages. | 2007-2009: Selected 1,400 affected communities to receive \$33,000 for infrastructure ; 300 completed. 2008: Began developing consolidated victims registry towards an individual reparations program. By 2009, 60,000 registered (of 280,000 estimated total victims, including 100,000 displaced). | N/A ² | Yes. But extensive reconsideration of TC recommendations. | \$40 million from 2006 to 2009, for collective reparations only. \$5 million of this from funds recovered from corrupt former officials. | Victims who were members of armed opposition groups are excluded for receiving reparations. Government to prioritise the elderly and those in extreme need. |

Annex 2 – Reparations Following Truth Commissions

| Country; year of report | Recommendation by truth commission (TC) | Reparations awarded by TC (“urgent interim reparations”) | Reparations implemented within 3 years after TC report | New reparations implemented 4-6 years after TC report | New reparations implemented 7 or more years after TC report | Was reparations program a result of TC? | Total reparations provided and number of victims reached | Other comments |
|-------------------------|--|--|---|---|---|---|---|--|
| Chile 2004 | Specific recommendations for individual pension benefits (as implemented). In addition, recommended that children of victims receive university scholarships, and family members of victims who have since died also receive benefits. | None | 2005: Lifetime monthly pension of \$190 for each of 20,000 torture survivors identified by commission. Also health, education, and housing benefits | - | N/A | Yes. Immediate implementation of reparations program based on list of victims provided by commission. | Approx. \$45 million per year for pension benefits for 20,000 survivors of torture. | |
| Sierra Leone 2004 | Broad recommendations for healthcare, pensions, free education through secondary school, skills training, and micro-credit projects targeting victims. | None | - | 2008: UN Peace building fund provided \$3 million for one year reparations program: \$100 provided to approx. 22,000 victims. | N/A | Yes. UN grant made explicit reference to TC recommendations. | \$3 million (25% of this for administration costs). | Future funding for program is not clear. |

Annex 2 – Reparations Following Truth Commissions

| Country; year of report | Recommendation by truth commission (TC) | Reparations awarded by TC (“urgent interim reparations”) | Reparations implemented within 3 years after TC report | New reparations implemented 4-6 years after TC report | New reparations implemented 7 or more years after TC report | Was reparations program a result of TC? | Total reparations provided and number of victims reached | Other comments |
|-------------------------|---|---|--|---|---|--|---|--|
| Ghana 2004 | Financial reparations ranging from \$120 to \$3,500, depending on harm done; health and education benefits; pensions; the restitution of confiscated property; and symbolic measures such as apologies and memorials. | None | 2006: \$1.5 million to compensate 2,500 victims, each receiving between \$200 and \$3,300. | - | N/A | Yes. Direct response to commission report. | \$1.5 million, reaching 2,500 victims. | Government was criticised for failing to implement the non-financial aspects of the recommended reparations, and for lack of clarity in who would receive reparations. |
| Timor-Leste 2005 | Recommended collective, material, and symbolic reparations. | TC provided \$200 to those who suffered severe injury due to rights violation; reaching 10% of those who gave statements to commission. Also supported non-profit groups to provide direct services to survivors. | Efforts to establish the “most vulnerable” victims. | - | N/A | - | Interim reparations of \$200 to 700 survivors: total approx. \$140,000. | Interim reparations program was funded by World Bank. |

Annex 2 – Reparations Following Truth Commissions

| Country; year of report | Recommendation by truth commission (TC) | Reparations awarded by TC (“urgent interim reparations”) | Reparations implemented within 3 years after TC report | New reparations implemented 4-6 years after TC report | New reparations implemented 7 or more years after TC report | Was reparations program a result of TC? | Total reparations provided and number of victims reached | Other comments |
|-------------------------|--|--|---|---|---|--|---|--|
| Morocco 2005 | Detailed recommendations and lists of qualifying recipients. | None | 2006-2007: Individual reparations payments to 9,000 victims. 2007: Began free medical and psychological care for all victims. 2008: Communal reparation program instituted. | - | N/A | Yes. Reparations were a central component of TC mission, with presumption that reparations would result. | \$85 million provided to 9,000 victims. Over \$4 million for communal projects, ranging from \$6,000 to \$62,000 each. | Largely funded by government. \$4 million provided by the European Union for communal reparations. In addition, a prior panel had awarded \$100 million to over 5,000 victims, but was criticised for inequalities. |

Notes

1. This chart presents those commissions that have had the greatest impact on the creation of a reparations program. Other truth commissions have made recommendations for reparations, but have seen little result.
2. N/A (not applicable) indicates a period of time in the future, at time of writing.