

*Submission on Memorialisation and Reparations by Research Team on Colonialism and Transitional Justice (the Queens University Belfast, and Ulster University Northern Ireland)*

The adoption of Transitional Justice (TJ) measures reflecting the long-term structural and individual effects of colonialism has been limited. Specifically, a lack of formal recognition of the ways in which colonial law, practice, institutions and patterns in the exercise of power have sustained and embedded present-day harms means there is a missing ‘hook’ for TJ measures to adhere to. TJ tends to take a short-term view and therefore lacks a grounded approach to redress colonial harms in the distant past. This lack of engagement is found in two broad outworkings: First, where the Independent state has sought to distance itself from its colonial rulers and maintain a generalised silence over the permanence of colonial legacies. Such is the case of Colombia, where colonialism was given a cursory mention in the [Havana Peace Accord \(2016\)](#). Second, complex scenarios where there is denial/disagreement over the status of colonial rule and consequently colonialism is a disputed frame for claim making. Such is the case of Ireland, and President Higgins has recently referred to “[feigned amnesia](#)” over British imperialism.

### *Memorialisation*

Memorialisation has gained traction recently as a TJ mechanism, expressed in terms of monuments, sites of remembrance or national days. In Australia, apology days and books have caught the public imagination and made citizens aware of the expropriation, near genocide and ongoing inequality of indigenous peoples who are, in turn, ambivalent about this phenomenon. On the one hand, there is a sense of vindication in the recognition of long-suppressed truths, while on the other there is the feeling that symbolic memorialization of does nothing to redress past harms nor ameliorate present inequalities.

In the Irish context, there is much which could warrant an apology regarding [eight centuries of colonial rule](#) – e.g. land expropriation, famine and repression. To date, there have been few apologies. A notable exception is when, in 2011, British PM Tony Blair [apologized for the famine](#). However, most of the [public acknowledgement](#) of the famine has come not from the former colonizer but from the formerly colonized.

Were more apologies to be forthcoming it would be possible to have a public debate about their value. In the meantime, it is worth noting the numerous instances of memorialization and symbolic acknowledgement which emanate from grassroots sources – such as [murals and memorial sites](#).

### *Reparations*

The practice of reparations requires, in general, the acceptance of an individual or communal harm. Individual harms are challenging to connect to long colonial pasts. The linearity demanded by TJ practice and legal claim-making leaves individuals unable to legally realize claims of harm. Moreover, the dominant model of particularized individual harm (cf. Lubanga Reparations [judgment](#)) frequently excludes collective harm, particularly those experienced by marginalized or vulnerable groups which have been long-standing and are systemic in character. Our research stresses the need to acknowledge and affirm the relationship of

colonialism to present-day harms, and to underscore the relationship between experienced structural harms and institutional exclusions with colonial practices. There is some emerging good practice on the [acknowledgement](#) of [collective harms](#), some positive [judicial practice](#),<sup>1</sup> emerging [normative standards](#), and some shifting domestic [political debates](#). We have yet to see meaningful and comprehensive implementation of restitution, compensation, satisfaction, and /or rehabilitation being advanced where colonial era harms are fully acknowledged, mapped onto and defined as responsible for or contributing to present day continuous harms, inequities, exclusions and structural disadvantage.

### *Recommendations*

We make three concrete recommendations to improve and strengthen TJ measures in this context:

- 1) The first, imperative step is to acknowledge the need to deal with the colonial past through mechanisms of TJ. Both the colonising and colonised State must reckon with the past and acknowledge responsibility for ongoing harms caused by colonial structures.
- 2) To understand the impact of ongoing colonial harms, stakeholders must engage with those communities most affected by them. Overwhelmingly, these are ethnic minorities (particularly Indigenous and Afro-descendant peoples) whose experience of inequality can be traced back to colonial rule and its contemporary manifestations.
- 3) Following acknowledgment, it is essential to develop innovative methodologies to promote truth, justice, reparation and guarantees of non-recurrence. Specifically, it is necessary to find a way to quantify the type of harms brought about by colonial rule.
- 4) Popular bottom-up memorialization efforts acknowledging colonialism and its legacies should be recognized, cherished and supported by states. Not only do they act as acknowledgement for the descendants of the victims of colonialism, but they help build inclusive societies based on remembering rather than forgetting.

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<sup>1</sup> See also Case of the “Mapiripán Massacre” v. Colombia, Judgment, Inter-Am. Ct. H. R. (Sept. 15, 2005).