

Foreword

This paper is an expert legal assessment regarding reparations for victims of the Tinker experiment by Máiréad Enright, Professor of Law at Loughborough University.

This work was commissioned by the Scottish Human Rights Commission to inform the SHRC report, "[No man's land" A human rights assessment of the 'Tinker Experiment' and redress for its victims](#)". It is part of the SHRC's spotlight project on [Cultural Recognition of Scotland's Gypsy Travellers](#).

The "[No Man's Land](#)" report presents the SHRC's analysis of the human rights issues raised by the Tinker Experiment. As well as this legal assessment, our analysis drew on independent research commissioned by the SHRC and provided an examination of the relevant international human rights laws and frameworks. That included both legally binding human rights treaties as well as non-legally binding guidance, reports, and general comments from international human rights bodies.

The SHRC has made this legal assessment publicly available to support decision makers in their efforts to implement the recommendations made in our "No Man's Land" Report.

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The ‘Tinker Experiments’: A Rights-Based Approach to Reparations.

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Introduction

This document outlines a rights-based approach¹ to reparations for people affected by ‘the Tinker Experiments’. The discussion is in three main parts. Part I gives an overview of the right to reparations in international human rights law.² Part II introduces the concept of ‘transformative reparations’, arguing for a reparations programme which is targeted to the needs and experiences of affected Gypsies/Travellers in Scotland. Part III outlines, in general terms, reparations measures which may be appropriate to ‘the Tinker Experiments’. Throughout the document, especially in Part III, the discussion draws on examples from reparations programmes in the United Kingdom and elsewhere. The Conclusion is a brief summary of the document’s arguments.

Reparations requested in Section 8 of the Scottish Human Rights Commission’s (SHRC’s) report, *An exploration of the denial of the rights to cultural recognition of Scotland’s Gypsy Travellers and its impact, both past and present* (‘the SHRC Draft’)³ are compatible with a human rights-based approach. The document also evaluates the First Minister’s June 2025 apology, and the recommendations made in *Archival Research Conducted to Explore 20th Century Policies Affecting Gypsy/ Traveller Communities in Scotland* (‘the St. Andrew’s Report’)⁴ and *Lived Experience Testimonies of Policies Affecting Gypsies/ Travellers and Scottish Travellers* (‘the Fell Report’).⁵ It suggests how the apology and recommendations can be brought into line with international standards.

Scope

This document follows the St. Andrews Report in using the term ‘Gypsies/Travellers in Scotland’⁶ to describe those affected by ‘the Tinker Experiments’. Scottish Gypsy Travellers fall within this collective, and are a recognised minority ethnic group for the purposes of the

¹ This research focuses on human rights arguments. However, scholars of reparations have been clear that even if legal arguments appear not to mandate reparations in a particular instance, there may be good political and moral reasons for doing so; Du Plessis, Max. "[Historical Injustice and International Law: An Exploratory Discussion of Reparation for Slavery.](#)" *Human Rights Quarterly*, vol. 25 no. 3, 2003, p. 624-659. *Project MUSE*, 638.

² Note that this document does not focus on reparations under international criminal law.

³ A draft copy was provided to assist in preparing this document.

⁴ [St Andrews for Scottish Government \(2025\), Archival Research Conducted to Explore 20th Century Policies Affecting Gypsy/Traveller Communities in Scotland](#)

⁵ [Scottish Government \(2025\), Policies affecting Gypsies \(Scottish Gypsy Travellers\), Gypsy/Travellers and Scottish Travellers: lived experience testimonies](#)

⁶ St Andrews Report, 18.

Equality Act 2010.⁷ The St. Andrews report also suggests that some groups within this collective are indigenous peoples.⁸ Whether or not the government is persuaded by that argument as a matter of law,⁹ there are clear parallels between human rights violations experienced by Gypsies/Travellers in Scotland and those experienced by indigenous and nomadic peoples elsewhere.¹⁰ This document discusses reparations schemes for human rights violations suffered by indigenous and minoritised peoples in other jurisdictions. However, the reparations entitlements outlined in this document do not depend on any formal recognition of ethnic minority or indigenous status.

This document focuses on reparations claims for those who directly experienced ‘the Tinker Experiments’ and their immediate family members. However, it is difficult to isolate ‘the Tinker Experiments’ effects on direct victims, their ancestors and descendants, from Gypsy/Traveller communities’ ongoing experiences of human rights violations in Scotland and in the wider United Kingdom.¹¹ The discussion of guarantees of non-repetition in Part III is also relevant to those violations.

This document refers to ‘victims’ of human rights abuses, ‘survivors’ of ‘the Tinker Experiments’, ‘affected people’ and ‘beneficiaries’ of reparations programmes. People whose history connects them to ‘the Tinker Experiments’ are entitled to choose the terminology which best reflects their own values and objectives.

Part I: Reparations in International Human Rights Law.

In international human rights law, ‘reparations’ describes the state’s dual responsibility to victims of human rights abuses (1) to provide access to justice within the domestic legal system, and (2) to deliver substantive relief.¹² As well as redress payments, substantive relief can include symbolic measures such as public apologies, and structural changes, such as legal and policy reform. Reparations are often associated with ‘transitional justice’. Originally used to describe transitions from armed conflict or non-democratic government, this phrase can also describe state mechanisms used to address non-recent/historical widespread or systemic abuses of human rights. In the context of transitional justice, reparations may be discussed alongside aspirations for ‘reconciliation’. This language has been used in the Scottish parliament in

⁷ *MacLennan v. Gypsy Traveller Education Project* Unreported, 2008 S/132721/07, decided under the Race Relations Act 1976). See further Fell Report, 21 and Clark, Colin. "Defining ethnicity in a cultural and socio-legal context: the case of Scottish Gypsy/Travellers." *Scottish Affairs* 54.1 (2006): 39-67.

⁸ See further [Conyach | Making the case for Nawken Indigeneity](#)

⁹ A full discussion of the UK’s approach to indigenous rights under international human rights law is beyond the scope of this research. [The Human Rights Committee has stated that recognition of indigenous status is a ‘prerequisite’ for reparations for breaches of indigenous people’s human rights; \[78\]](#). The Expert Council on the Rights of Indigenous People has adopted the same position, particularly because recognition is the gateway to rights under UNDRIP. However, [it also notes that self-identification and self-recognition are essential principles; 5-9](#). The UK has not ratified the Indigenous and Tribal People’s Convention 1989 and is not a signatory to UNDRIP; see [General Assembly Adopts Declaration on Rights of Indigenous Peoples; ‘Major Step Forward’ towards Human Rights for All, Says President | UN Meetings Coverage and Press Releases](#).

¹⁰ St Andrews Report 22

¹¹ See e.g. [Council of Europe, Opinion of the Advisory Committee on the Framework Convention, United Kingdom \(2022\) \[92\] – \[112\]](#)

¹² Failure to provide reparations is itself a wrongful act which then triggers the entitlement to seek reparations in an international forum.

the context of responses to ‘the Tinker Experiments’.¹³ ‘Reconciliation’ describes a desire to ensure relationships of equality and respect between victims of human rights abuse, the state and wider society. It is for those affected by ‘the Tinker Experiments’ to decide whether or not they wish to pursue reconciliation with state agents and non-state perpetrators of abuse or their successors. Even then, reconciliation is not an alternative to reparations. Instead, reparations are essential to the pursuit of reconciliation.¹⁴ If the state denies reparations to victims of ‘the Tinker Experiments’, it will undermine the expectations of trust and good faith essential to building transformed relationships.¹⁵

The right to substantive reparations for breaches of human rights is an established norm under customary international law and is recognised in key human rights treaties. Article 13 of the European Convention on Human Rights (ECHR) protects the right to an ‘effective’¹⁶ remedy¹⁷ for breaches of other ECHR rights.¹⁸ Article 8 of the Universal Declaration of Human Rights establishes the right to an effective remedy for acts violating the fundamental rights granted by law. Rights to redress for violations of human rights are also established under Article 2(3) of the International Convention on Civil and Political Rights (ICCPR), Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (UNCERD),¹⁹ Article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), Article 39 of the Convention on the Rights of the Child (UNCRC), various provisions of the Declaration on the Rights of Indigenous Peoples²⁰ and the Durban Declaration and Programme of Action on Racism.²¹ Reparations have also been recognised as a dimension of rights protection under the UN Convention on Economic, Social and Cultural Rights (CESCR)²² and the UN Convention on the Elimination of All Forms of Discrimination

¹³ For discussion of ‘reconciliation’ in the context of the First Minister’s June 2025 apology see [Meeting of the Scottish Parliament, Historical Policies Affecting Gypsy Traveller Communities](#)

¹⁴ [United Nations General Assembly \(2019\), Report of the Expert Mechanism on the Rights of Indigenous Peoples](#)

¹⁵ Gallen, James, and Luke Moffett. “The palliative role of reparations in reconciling societies with the past: redressing victims or consolidating the state?.” *Journal of Intervention and Statebuilding* 16.4 (2022): 498-518, 501-507

¹⁶ A remedy must be effective in practice as well as in law and its exercise ‘must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent state’. See e.g. *Aksoy v Turkey* (1997) 23 E.H.R.R. 553 [95]

¹⁷ A remedy is a measure prescribed by a competent ‘national authority’. Any individual with an ‘arguable claim to be a victim of a rights violation under the Convention must be able to bring a complaint before a national authority who can determine what happened and who is responsible. The national authority need not always be a judicial body (though in some circumstances a victim of historical human rights abuses will also have a right to access a court under Article 6 ECHR). The national authority must be empowered to make binding orders designed either to prevent a human rights violation or its continuation, or to provide adequate redress for a violation which has already occurred. See e.g. *Surmeli v Germany* (2007) 44 E.H.R.R. 22 [98]; *Kudla v Poland* (2002) 35 E.H.R.R. 11 [158]. Violations of Articles 2 and 3 ECHR may also impose an obligation to investigate the abuse; *Velikova v. Bulgaria* [2000] ECHR 198

¹⁸ The right to a remedy under Article 13 is not an absolute right, but any restrictions on its exercise must be provided for by law, and must be a proportionate means of pursuing a legitimate aim; *Klass v. Germany* [1978] ECHR 4.

¹⁹ See further [United Nations Economic and Social Council \(2009\), General comment No. 20: Non-discrimination in economic, social and cultural rights \(art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights\)](#) [40]

²⁰ Articles 8, 11, 20, 28 and 32.

²¹ [165] and [166].

²² [United Nations Economic and Social Council \(1998\), General Comment No. 9: The domestic application of the Covenant](#) [2]-[3]; [General Comment No. 20](#) [40]. On reparations specifically for breaches of cultural rights see

Against Women (CEDAW).²³ The Van Boven-Bassiouni²⁴ and Joinet-Orentlicher Principles²⁵ detail how the individual right to reparations should be implemented.

All human rights violations trigger a right to reparations.²⁶ The reparations offered must be proportionate to the gravity of the violations suffered.²⁷ The state must provide reparations for its own rights-violating acts and for its omissions to protect victims of ‘the Tinker Experiments’ from the actions of others such as churches and charities.²⁸ Reparations should be available for all breaches of human rights associated with the ‘Tinker Experiments’.²⁹ Scotland should provide reparations for ‘the Tinker Experiments’ without requiring affected people to pursue litigation or petition international treaty bodies.

International human rights law recognises five modes of reparation³⁰ – restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. A comprehensive reparations programme for ‘the Tinker Experiments’ should involve all five. Insofar as possible, reparations should place affected people in the situation they would have been in if their

General Comment No. 21 [72]

²³ CEDAW, General Recommendation No. 28 [32]

²⁴ United Nations (2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. These Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law were developed by Theo van Boven and Cherif Bassiouni. They were adopted by the UN General Assembly in Resolution 60/147.

²⁵ Report of the independent expert to update the Set of Principles to combat impunity. These principles were devised by Louis Joinet, former Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. An updated set of Principles was expended upon by Diane Orentlicher.

²⁶ Van Boven-Bassiouni, Principle 26. The Principles refer to ‘gross’ breaches. The ‘Tinker Experiments’ certainly involved ‘gross’ breaches, including long-term and systemic discrimination on the basis of ethnicity. See United Nations, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms [11]

²⁷ Van Boven-Bassiouni, Principle 15

²⁸ The state is always responsible for human rights violations committed by its own organs, or by non-state actors under its control or authorization or with its acquiescence, complicity or acknowledgment. The St Andrews report documents extensive engagement between state, religious and charitable actors across the scope of the ‘Tinker Experiments’. The state also has a duty of due diligence to protect against human rights abuses by private actors. See generally UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant[8]. Of course, non-state actors are responsible for their own actions. However, Van Boven-Bassiouni Principle 16 encourages states to provide reparations for non-state actors’ abuses in the event that they are unable or unwilling to provide redress themselves.

²⁹ Joinet-Orentlicher Principle 34 Impunity: report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher : addendum

³⁰ It is sometimes assumed that the ECHR only requires financial compensation. This is not the case. Under Article 46 ECHR, when the ECtHR finds a violation of the Convention, the respondent State is under a duty to choose the general or individual measures to be taken to end the violation and make the maximum feasible reparation for its consequences. The respondent state makes that choice under the supervision of the Committee of Ministers of the Council of Europe. Typically, the Court will not indicate the measures the state should adopt. However, on occasion, the Court has advised reparations other than financial compensation, including general measures to prevent repetition of the violation complained of in the future; see e.g. *Aliyev v. Azerbaijan* [2018] ECHR 729; *Stoyanova v. Bulgaria* [2022] ECHR 468; *Elmazova v. North Macedonia* [2022] ECHR 1066; *Szolcsan v. Hungary* [2023] ECHR 281. As a last resort, the Court may also make its own orders for ‘just satisfaction’ under Article 41 ECHR. These are typically limited orders for financial redress; however, ‘just satisfaction’ can encompass other measures. In practice, the UK’s responses to judgments of the ECtHR have included law reform measures, institutional reforms, practice changes and so on. See Annual Reports to the Joint Committee on Human Rights

rights had never been violated. Restitution is the ideal mode of reparation; it requires the state to reinstate enjoyment of the violated right to the victims. Often, however, total restitution (*restitutio in integrum*) will be materially impossible; particularly in cases of family separation, severe harm to health or destruction of cultural heritage. For this reason, it is likely that those affected by ‘the Tinker Experiments’ will require compensation; to address both material losses (e.g. loss of income sources) and moral or emotional harms. International human rights law recognises that victims may also need assistance to arrive at a position where they can enjoy the rights formerly denied to them. This assistance is often called ‘rehabilitation’. It may encompass provision for healthcare and healing, social integration, and cultural revitalisation. Reparations are also likely to include measures of ‘satisfaction’ such as apologies, memorialisation, tributes to the victims, statements of truth and cessation of any continuing human rights violations.³¹ Finally, guarantees of non-repetition are understood both as an aspect of satisfaction and as a mode of reparation in their own right. Guarantees of non-repetition may require changes in the laws and practices that enabled violations to occur in the first place, and construction of new laws and practices to ensure more effective rights protection in future. Part III discusses how each of these modes of reparation could be pursued in the course of responses to ‘the Tinker Experiments’. First, however, Part II discusses an overall ethos for reparations for ‘the Tinker Experiments’.

Part II: Transformative Reparations

Reparations should recognise those who experienced ‘the Tinker Experiments’, not only as people who have suffered a great deal, and been resilient in the face of that suffering, but as citizens who are entitled to make rights-based claims. Reparations should not be offered out of mere political expediency, or as only as an expression of charity or empathy.³² Reparations should also reflect the state’s rejection of impunity for ‘the Experiments’.³³ In this sense, reparations embody the majority population’s ‘duty to remember’ past oppression. As such, any reparations scheme must be designed to resist anti-Gypsy or anti-Traveller arguments which might attempt to justify denial of reparations for ‘the Tinker Experiments’, in whole or in part.³⁴

Scotland is asked to address the legacy of ‘the Tinker Experiments’ at a time of growing international recognition of the need to make reparations for ‘historical’ injustice against nomadic and indigenous peoples.³⁵ For example:

- In 2025, Switzerland’s Federal Council formally recognised that historical policies of

³¹ See, for example, [United Nations \(2015\) Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#) at 55/58

³² [United Nations \(2012\) Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence](#) [61], [64] and [67]

³³ Joinet-Orentlicher Principle 32

³⁴ Joinet-Orentlicher Principle 2; [United Nations \(2020\) Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence](#) [96]-[97]. See also for example [United Nations \(2016\) Concluding observations on the combined seventh and eighth periodic reports of Japan](#) [29]

³⁵ A full assessment of the implementation of transitional justice measures and reparations schemes abroad is beyond the scope of this study. No one jurisdiction presents an ideal model. See, for instance, criticism of Australia’s approach to reparations for ‘the Stolen Generations’. In seeking to learn from other jurisdictions, Scotland should engage directly with survivor organisations who can speak to the lived experience of the implementation of reparations programmes abroad.

forced assimilation and child removal exposed the Yenish and Manouche/Sinti people to persecution, recognised in international law as a crime against humanity.³⁶ An earlier Swiss reparations scheme provides for redress for those affected by historical policies of child removal, including women forced to surrender their children for adoption.³⁷

- In 2025, following an inquiry process which centred indigenous peoples and their cultural values, Victoria's Yoorook Justice Commission published 100 recommendations for reparations to indigenous peoples affected by rights violations including child removal and cultural dispossession.³⁸ Australian states are implementing reparations programmes for 'the Stolen Generations'; indigenous people affected by forced child removal and associated cultural loss.³⁹ Separately, the state of Victoria has established a reparations programme for women who were forced to surrender their children for adoption.⁴⁰
- In recent years, Canada has established multiple federal reparations programmes including settlement agreements with indigenous survivors of abuse in residential and day schools and Inuit communities affected by historical forced displacement.⁴¹ It has also established cultural programmes for indigenous women, girls and 2SLGBTQI+ people.⁴² These programmes focus on harms associated with child removal and cultural loss.
- In 2024, the Brussels Court of Appeal ordered the state to pay compensation for the systematic forced removal and residential segregation of mixed-race Métis children during Belgium's colonisation of Congo. The Court held that these actions constituted persecution, recognised in international law as a crime against humanity.⁴³
- In 2024, New Zealand's Royal Commission of Inquiry into Abuse in Care published its final report.⁴⁴ In a 2021 interim report, the Commission made recommendations for a transformative approach to holistic redress for survivors of abuse, which would centre Māori values, Disabled people's values and human rights.⁴⁵ In response, the government established a survivor-led redress design group, which made recommendations to government.⁴⁶ New Zealand is already well known for its standing commission of inquiry; the Waitangi Tribunal,⁴⁷ which makes recommendations for reparations to Māori, including apologies and land restitution.
- In 2023, Norway's Truth and Reconciliation Commission, established to investigate the

³⁶[Council of Europe | Switzerland: Federal Council recognises crime against humanity against the Yenish and Manouche/Sinti and reiterates its apology](#)

³⁷[Federal Office of Justice](#)

³⁸[Yoorook, Recommendations for immediate and lasting reform](#)

³⁹See discussion Healing Foundation Australia

⁴⁰[Victorian Government Australia | Historical Forced Adoptions Redress Scheme](#)

⁴¹[Canadian Government | Reconciliation](#)

⁴²Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and other people. See further: [Canadian Government | Missing and murdered Indigenous women, girls and 2SLGBTQI+ people](#)

⁴³[RCN Justice & Démocratie | Cour d'appel de Bruxelles](#) (in French)

⁴⁴[Abuse in Care: Royal Commission of Inquiry | Whanaketia – Through pain and trauma, from darkness to light](#)

⁴⁵[Abuse in Care: Royal Commission of Inquiry | He Purapura Ora, he Māra Tipu from Redress to Poretumu Torowhānui](#)

⁴⁶[Redress Design Group \(2023\) High-level design for an effective survivor-led and survivor-centred redress system](#)

⁴⁷[The Waitangi Tribunal](#)

impact of historical Norwegianisation policies and injustice against the Sámi and Kvens/Norwegian Finns presented its report to the Norwegian parliament.⁴⁸ The parliament adopted sixteen reparations measures in response to the report.⁴⁹

- In 2023, Sweden's Truth and Reconciliation Commission on the impact of forced assimilation policies on the Tornedalian, Kven and Lantalsiet minorities submitted its report to government. The report included recommendations for reparations.⁵⁰ In 2024, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence urged Sweden to adopt these recommendations.⁵¹ Work on a Truth and Reconciliation Commission for the Sámi is ongoing.⁵²
- In 2022, Denmark agreed to pay compensation to surviving Inuit adults who had been sent from Greenland to Denmark as children, as part of a forced assimilation experiment. Denmark has committed to establishing a truth and reconciliation commission which will explore other aspects of historical forced assimilation.⁵³
- In 2021, Finland established a Truth and Reconciliation Commission to identify and assess the consequences of historical discrimination against the Sámi. Its work is ongoing.⁵⁴ The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has stressed the need for Finland to offer substantive reparations measures, including financial compensation.⁵⁵
- In France, there is strong political support for a possible reparations scheme for The Children of Creuse; adults who as children were forcibly removed from Réunion to France from 1963 to 1982.⁵⁶

In these jurisdictions, to varying degrees, governments have begun to recognise that doing justice to survivors of historical racist and assimilationist policies means revisiting traditional legal approaches to historical injustice and developing alternative approaches where necessary.⁵⁷ This document offers examples of promising approaches drawn from their proposals and actions. It suggests that Scotland should commit to the principle of 'transformative reparations' for 'the Tinker Experiments'. A commitment to 'transformative reparations' reflects the understanding that reparations should go beyond addressing the immediate material consequences of any given rights violation. They should also seek to transform the systemic inequalities that generated the human right abuses the state now seeks to repair. In the absence of a transformative approach, the benefits of a reparations programme may be undermined by persistent structural injustices.⁵⁸ Transformative

⁴⁸[Sannhet og forsoning](#) (in Norwegian)

⁴⁹[Rapport til Stortinget fra Sannhets- og forsoningskommisjonen](#) (in Norwegian)

⁵⁰[Som om vi aldrig funnits](#) (in Swedish).

⁵¹[United Nations \(2024\) Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence](#)

⁵²[About the Sannings Commission](#)

⁵³ See discussion in <https://docs.un.org/en/A/HRC/54/31/>

⁵⁴<https://sdtsk.fi/en/home/>

⁵⁵<https://docs.un.org/en/A/HRC/57/50/Add.3>

⁵⁶<https://justice-initiative.eu/reparation-for-the-enfants-de-la-creuse-historic-bill-presented-in-paris/>

⁵⁷ There is an older practice of reparations for forced dislocation and internal displacement in the context of war. See e.g. the U.S. Civil Liberties Act, 1988, providing for reparations for Japanese Americans interned during World War II.

⁵⁸ Yepes, Transformative Reparations <https://journals.sagepub.com/doi/10.1177/016934410902700411> 645. See also <https://docs.un.org/en/A/69/518> [72]

reparations require long-term state engagement. Although immediate targeted reparations are required, the harms of ‘the Tinker Experiments’ will not be undone in months or years.⁵⁹

This document suggests that a transformative reparations programme for ‘the Tinker Experiments’ would place genuine respect for cultural difference at its heart. This means that government must (1) ensure that Gypsies/Travellers are enabled to lead in designing, developing and implementing reparations measures for ‘the Tinker Experiments’ (2) frame the abuses associated with ‘the Tinker Experiments’ in ways which recognise the distinct cultural losses inflicted (3) show willingness to make reparations for abuses which may not have been considered unlawful at the time they were perpetrated and (4) ensure that the beneficiaries of any reparations programme are not held to state-centric or assimilationist standards which reinforce ongoing cultural harms.

Participation and Leadership

This document deliberately avoids prescribing detailed reparations measures, precisely because beneficiaries of any reparations programme must be actively involved in designing it.⁶⁰ Consultation with survivors of ‘the Tinker Experiments’ to date has not been sufficient to meet international human rights standards.⁶¹ Under Article 25 ICCPR, people have the right to participate in public affairs, especially where decisions taken directly affect them.⁶² The right to effective participation is also recognised in Article 15 of the Framework Convention on Minority Rights.⁶³ The right of minorities to enjoy their own culture under Article 27 ICCPR also protects a right to participate in decisions affecting that culture.⁶⁴ In its most recent Concluding Observations on the United Kingdom, the Committee on Economic, Social and Cultural Rights emphasised that effective people must be able to participate in all relevant initiatives designed to respond to ‘the Tinker Experiments’.⁶⁵ Therefore, any reparations programme should be developed and implemented through genuine good faith dialogue with affected Gypsies/Travellers in Scotland, respecting their chosen decision-making processes and representatives.⁶⁶ There are a range of potential models for facilitating participation. In Ireland, for example, the Special Advocate for Survivors is tasked with ensuring that the views of survivors and affected people ‘are central to the delivery of the State’s response to the

⁵⁹ Gallen, James, and Luke Moffett. "The palliative role of reparations in reconciling societies with the past: redressing victims or consolidating the state?." *Journal of Intervention and Statebuilding* 16.4 (2022): 498-518, 501 discussing a critical concept of reconciliation.

⁶⁰ For a Scottish example of failures to appropriately meet survivors’ needs in designing a redress scheme see <https://www.childabuseinquiry.scot/sites/default/files/2023-03/scottish-government-findings.pdf>

⁶¹ Note also the public sector equality duty under s. 149 of the Equality Act 2010, recently discussed in *Trevor Donald v. SSHD* [2024] EWHC 1492

⁶² See e.g. <https://docs.un.org/en/A/HRC/39/28> at [60] and [66]

⁶³ See <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a4811> at [75] – [78] discussion

⁶⁴ See *Apirana Mahuika et al. v. New Zealand*, Comm. No. 547/1993, U.N. Doc. CCPR/C/70/D/547/1993 (2000), United Nations Human Rights Committee; <https://juris.ohchr.org/casedetails/897/en-US>. See also CERD Concluding Recommendations <https://www.refworld.org/policy/polrec/cerd/2016/en/117834> at [24]-[25]; <https://docs.un.org/en/A/HRC/17/38> [70]

⁶⁵ <https://digitallibrary.un.org/record/4062539> [54]

⁶⁶ For more detailed discussion of the implementation of the right to participation see <https://docs.un.org/en/A/HRC/21/46>[68]; <https://docs.un.org/en/A/69/518>[74]; <https://docs.un.org/en/A/HRC/34/62> [31]-[35]; <https://docs.un.org/en/A/HRC/42/45> [61]-[72]; <https://docs.un.org/en/A/76/180> [90]-[92]

legacy of institutional trauma and forced family separation'.⁶⁷ The Special Advocate's work will be informed by an advisory council comprised of people with lived experience of these issues.⁶⁸

Participatory measures should ensure involvement from a representative and diverse section of affected people.⁶⁹ Many human rights violations associated with 'the Tinker Experiments' concern gendered experiences (for instance, around child removal or conditions in the home). Any reparations scheme must therefore prioritise women's effective participation.⁷⁰ Where necessary, measures should be taken to build capacity within affected communities, to ensure equitable participation.⁷¹

Transformative practice in other jurisdictions goes beyond securing opportunities for affected people to participate in reparations consultations, and instead seeks to ensure that they can lead on designing and implementing reparations measures. For example, the New Zealand Royal Commission of Inquiry on Abuse in Care proposed that a Māori collective should lead the design of the state reparations scheme.⁷² In Victoria Australia, the Stolen Generations Reparations Steering Committee recommended that an advisory board, whose membership would be selected by the Stolen Generations community, should be established to provide advice on the implementation and operation of a reparations programme.⁷³ A survivor-led approach of this kind may be appropriate in the context of a response to 'the Tinker Experiments' because Gypsy/Traveller people in Scotland have historically been excluded from decision-making processes affecting the most personal dimensions of their lives.

Recognise the Harms of Forced Assimilation

The St. Andrews Report described the harms inflicted by 'the Tinker Experiments' in terms of 'cultural genocide'.⁷⁴ Reparations schemes are often criticised for diminishing victims' experiences of harm by fragmenting them; recognising some elements but not others, or misunderstanding experiences because essential context is overlooked.⁷⁵ 'Cultural genocide' is not a recognised wrong in international law.⁷⁶ However, as a concept, it helpfully emphasises

⁶⁷ <https://www.specialadvocate.ie/about/about-the-special-advocate/>

⁶⁸ <https://www.specialadvocate.ie/about/advisory-council/>

⁶⁹ See e.g. Advisory Committee on the Framework Convention, Opinion on Finland <https://rm.coe.int/6th-opinion-finland-en/1680b65a0b> [87] –[89]

⁷⁰ See similarly <https://digitallibrary.un.org/record/797194> [76]

⁷¹ See recommendations <https://docs.un.org/en/A/HRC/34/62> [70]– [82]

⁷² <https://www.abuseincare.org.nz/reports/from-redress-to-puretumu/from-redress-to-puretumu-5/1-1-introduction-18>. Government rejected this recommendation.

⁷³ <https://www.vic.gov.au/stolen-generations-reparations-steering-committee-report/summary-recommendations>. Government accepted this recommendation: <https://www.vic.gov.au/about-package#design-of-the-package>

⁷⁴ St Andrews Report p. 75.

⁷⁵ See e.g. Sköld, J., Sandin, B., & Schiratzki, J. (2018). HISTORICAL JUSTICE THROUGH REDRESS SCHEMES? The Practice of Interpreting the Law and Physical Child Abuse in Sweden. *Scandinavian Journal of History*, 45(2), 178–201. <https://doi.org/10.1080/03468755.2018.1555100>

⁷⁶ For discussion of recognition of cultural genocide in international human rights law, see <https://docs.un.org/en/A/71/317> [28]–[29] and [43]. On the relationship between the cultural and physical (mass

the harmful *interconnections* of segregated and substandard housing, criminalisation and police harassment, sanctions against nomadism, forced assimilation,⁷⁷ dissolution of kinship networks⁷⁸ and cultural dispossession at the heart of the ‘Tinker Experiments’. Canada’s Truth and Reconciliation Commission, which examined the legacies of ‘Indian Residential Schools’ used ‘cultural genocide’ to describe how similar state strategies - including restriction of populations’ movement, controls on language and spiritual practices, and disruption of families - interacted ‘to prevent the transmission of cultural values and identity from one generation to the next’.⁷⁹

A transformative reparations scheme must recognise the cultural context and consequences of human rights violations involved in ‘the Tinker Experiments’.⁸⁰ In particular:

- The reparations scheme must recognise the impacts of both threatened and actual forced child removal⁸¹ on family life and cultural continuity. Although Scotland has offered redress for certain abuses in state care, it has not offered reparations for actual or threatened child removal. Failure to offer these reparations reinforces the assimilationist assumption that removal of Gypsy/Traveller children within the scope of ‘the Tinker Experiments’ was justified.
- Where survivors and their descendants are currently living in substandard housing, government must take measures to vindicate the right to adequate, culturally appropriate housing.⁸² However, government must also make reparations for the ‘historical’ forced displacement of survivors (or of their parents and elders where relevant) and for the cultural consequences of that forced displacement. In addition to depriving affected people of dignified housing, ‘the Tinker Experiments’ weaponised housing in the service of forced assimilation. Consequences included cultural losses,

killing) dimensions of genocide see Novic, E. (2014). Physical-biological or socio-cultural ‘destruction’ in genocide? Unravelling the legal underpinnings of conflicting interpretations. *Journal of Genocide Research*, 17(1), 63–82. On the drafting background to the Declaration and the Convention see https://hannaschreiber.com/wp-content/uploads/2023/01/Cultural_Genocide_Culturecide_An_Unfinis.pdf. For the argument that cultural genocide may come within the scope of the crime of “persecution” see Novic, *The Concept of Cultural Genocide* (OUP, 2016) 142-169.

⁷⁷ St Andrews report p. 22.

⁷⁸ On the importance of ensuring that deployments of cultural genocide are not divorced from reproductive injustice see Paquette E. Reconciliation and Cultural Genocide: A Critique of Liberal Multicultural Strategies of Innocence. *Hypatia*. 2020;35(1):143-160. doi:10.1017/hyp.2019.15

⁷⁹ The Australian *Bringing Them Home* report (1997) concluded that the forcible removal of indigenous children from their families constituted genocide within the meaning of Article 2(e) of the Genocide Convention https://bth.humanrights.gov.au/sites/default/files/documents/bringing_them_home_report.pdf. Not all indigenous children were removed from their families, but the Report was clear that partial removal, with the intention to substantially destroy the group could constitute genocide. In *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998) the ICC noted in passing that ‘acts of threats or trauma which would lead to the forcible transfer of children from one group to another’ might also violate Article 2(e). However, there is limited international jurisprudence on forcible transfer of children as a dimension of genocide.

⁸⁰ These claims primarily relate to social and economic rights rather than to physical integrity. Rebutting the argument that violations of social and economic rights are not an appropriate target for reparations see Evelyn Schmid, Aoife Nolan, ‘Do No Harm’? Exploring the Scope of Economic and Social Rights in Transitional Justice, *International Journal of Transitional Justice*, Volume 8, Issue 3, November 2014, Pages 362–382.

⁸¹ St Andrews Report p. 22, 31-35

⁸² On degrading conditions at existing authorised sites see Clark C. The Green Agenda: Why the Provision and Development of Gypsy/Traveller Sites in Scotland is a Health Hazard as Much as an Accommodation Priority. *Social Policy and Society*. 2024;23(4):938-950. doi:10.1017/S1474746424000034

such as disruption of community ties and loss of access to traditional nomadic routes, stopping places and sites of spiritual importance. They likely also included economic losses, such as lost income or earning capacity.⁸³

- The SHRC's Draft report indicates that some survivors will require dedicated housing provision as part of any reparations package.⁸⁴ Again, people affected by 'the Tinker Experiments' who are currently living in inadequate housing⁸⁵ should be rehoused, or their existing homes refurbished, as a matter of urgency,⁸⁶ and following a rights-based participatory strategy.⁸⁷ However, the reparations scheme must also provide a tailored remedy⁸⁸ for the long-term economic, social and cultural consequences of confinement to segregated,⁸⁹ substandard or degrading housing.⁹⁰ Some harms inflicted may be analogised to those experienced in other forms of state-controlled accommodation, particularly where children are concerned.⁹¹ This is because, at various periods in the evolution of 'the Tinker Experiments', affected children and their parents were practically prevented from obtaining alternative housing, or from resuming a nomadic lifestyle, because of the threat of forced child removal.⁹²

⁸³ See an equivalent argument re: expropriation here: Carlsen Häggrot, M. (2019). Public Caravan Sites for British Gypsy Travellers: Kymlicka and an Argument from Expropriatory Compensation. *Ethnopolitics*, 20(3), 269–286.

⁸⁴ SHRC Draft 52-53

⁸⁵ On the right to adequate housing see e.g. <https://docs.un.org/en/A/74/183> and <https://www.refworld.org/legal/general/cescr/1991/en/53157>

⁸⁶ See e.g. <https://docs.un.org/en/A/74/183> 24/25

⁸⁷ <https://docs.un.org/en/A/HRC/37/53> 11

⁸⁸ See Fell Report p. 23. See also, by analogy *Case of González and ors ('Cotton Field') v Mexico, González and ors v Mexico*, Preliminary objection, merits, reparations and costs, IACHR Series C No 205, IHRL 4151 (IACHR 2009), 16th November 2009, Inter-American Court of Human Rights [IACtHR] [529] confirming that ordinary welfare provision cannot constitute reparations

⁸⁹ Long-term segregation from the wider population has had lifelong psychological, economic and social consequences (Fell Report, 17-20).

⁹⁰ Fell Report 10-13. See by analogy *Moldovan and Ors v. Romania* (2007) 44 EHRR 16; *MSS and Belgium v. Greece* App. No. 30696/09, Eur. Ct. H.R. (2011).

⁹¹ For instance, the Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021 provides for financial redress for child neglect in relevant care settings. Neglect here includes failure to provide adequate shelter. On a similar basis, a reparations scheme for the 'Tinker Experiments' should make provision for those whose basic housing needs were neglected while living with their families in designated housing. Those who were children at the time have an especially strong claim because they were dependent on others for their care, and the state radically limited their parents' and elders' power to defend their rights. Residential institutionalisation is an appropriate analogy because those affected were compelled to live in sub-standard state-provided housing in a context of social exclusion. The 'Tinker Experiments' experience may be distinguished from, for example, the Irish Magdalene Laundries, or Scottish industrial schools, because family units were permitted to live together. However, the experiences also have key elements in common, including spatial segregation, degrading living conditions attributable to long-term state neglect, and an associated life-long sense of social stigma which actively prevented dignified integration into the wider community, particularly through later work or marriage. In addition, many of those affected by the 'Tinker Experiments' experienced these harms as young children, when they were entirely dependent on others for their care, and intensely vulnerable to the institutionalised harms visited upon them.

⁹² See Fell Report, 13-17, emphasising the impact of a shared family memory of child removal on parents' fear of losing their children, and children's fear of being removed. Note also that the 'Tinker Experiments' ran alongside active policies of eviction and forced relocation of those who maintained a nomadic or semi-nomadic lifestyle, including confiscation of property

Show Willingness to Critique and Revisit the Legal Standards of the Past

The First Minister's apology of June 25 2025 repeatedly refers to the 'Tinker Experiments' as 'historical policies' which are part of Scotland's 'past'.⁹³ However, the right to reparations is not exhausted by the passage of time. Governments are obliged to make reparations for their predecessors' wrongdoing.⁹⁴ In addition, the Van Boven principles confirm that limitations periods should not apply to gross violations of international human rights law.⁹⁵ Gross violations of international human rights law include 'systematic racial discrimination' and 'a consistent pattern of gross violations of internationally recognized human rights'.⁹⁶ The SHRC has found evidence suggesting that survivors of 'the Tinker Experiments' experienced violations of this kind. Given the severity of the rights violations involved in 'the Tinker Experiments', there are good reasons to disregard their 'historical' character.

Alternatively, the 'historical' nature of the abuses may appear relevant because 'the Tinker Experiments' involved interventions which were lawful at the time they occurred.⁹⁷ A full exploration of these arguments is beyond the scope of this research. It is likely that some abuses associated with 'the Tinker Experiments' involved breaches of then-applicable law.⁹⁸ However, even if others were lawful when they were carried out, their lawfulness was the product of a legislative and justice system characterised by endemic anti-Traveller and anti-Gypsy prejudice. The St. Andrews report demonstrates that past legislation was actively developed to support forced assimilation.⁹⁹ A transformative approach to reparations is incompatible with reliance on past discriminatory legal standards to evade affected people's justice claims. Several reparations programmes for mass human rights abuse in other jurisdictions address wrongs which were not unambiguously prohibited by the law in force at the time they occurred. Examples include redress schemes for Australia's Stolen Generations,¹⁰⁰ and Canada's Indian Residential School Settlement Agreement.¹⁰¹ Recently,

essential to the maintenance of domestic life.

⁹³ <https://www.gov.scot/publications/historical-policies-affecting-gypsy-traveller-communities-first-ministers-statement/>

⁹⁴ https://digitallibrary.un.org/record/1489576/files/E_CN-4_1999_65-FR.pdf [87]

⁹⁵ Van Boven-Bassiouni Principle 6. See also *Kolk and Kislyiy v. Estonia* (dec.) [2006], ECHR, no. 23052/04 24018/04, referencing the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Note, however, that the UK has not ratified the Convention.

⁹⁶ <https://digitallibrary.un.org/record/172321> [11]

⁹⁷ In some limited circumstances, the state may be held accountable for past failure to legislate effectively against foreseeable serious risks of human rights abuse; see e.g. *O'Keeffe v. Ireland* [2014] ECHR 96.

⁹⁸ See, for instance, discussion of standards of care <https://www.iicsa.org.uk/reports-recommendations/publications/investigation/child-migration/3-inquiries-approach-standards-issues.html> and <https://www.abuseincare.org.nz/reports/whanaketia/part-7/chapter-3>. An emphasis on past legal standards may be important where perpetrators seek to deny responsibility for harm on the basis that certain abuses, though illegal, were normal. See further Sköld, J., Sandin, B., & Schiratzki, J. (2018). HISTORICAL JUSTICE THROUGH REDRESS SCHEMES? The Practice of Interpreting the Law and Physical Child Abuse in Sweden. *Scandinavian Journal of History*, 45(2), 178–201. <https://doi.org/10.1080/03468755.2018.1555100>

⁹⁹ See especially Chapter 3.

¹⁰⁰ <https://bth.humanrights.gov.au/the-report/part-4-reparation/chapter-13-grounds-for-reparation#colonial-legal-standards> Part 4, Chapter 13.

¹⁰¹ See *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 (S.C.J.) *per* Winkler R.S.J., acknowledging that the settlement agreement reflected the findings of the Royal Commission on Aboriginal Peoples (1996). See also *Gathering Strength* (1998) p. 4 https://publications.gc.ca/collections/collection_2018/aanc-inac/R5-620-1998.pdf See also discussion in Mahoney, K. (2019). Indigenous Legal Principles: A Reparation Path for Canada's

Switzerland has formally accepted that between 1926 and 1973 Yenish and Manouche/Sinti people in Switzerland were subjected to persecution, a crime against humanity. Switzerland has apologised for persecution, notwithstanding the argument that, until the 1990s, state responsibility for the crime of persecution could only be recognised in connection with war.¹⁰²

Finally, the 'historical' nature of abuses may appear relevant where they occurred before the United Kingdom had ratified a relevant human rights treaty.¹⁰³ The European Convention on Human Rights (ECHR) presents no major difficulties in this respect. Although some human rights violations associated with 'the Tinker Experiments' began before the Convention came into force in September 1953, the SHRC has found clear evidence of relevant ongoing violations dating from the 1950s onwards. Other key human rights treaties were ratified later in the twentieth century. In principle, a state can only be held liable for breaches of obligations in force for that state at the time the breaches occurred. However, the major UN treaty bodies have recognised the concept of a 'continuing violation'.¹⁰⁴ In ratifying a key human rights treaty, the state undertakes to bring its policies and actions into alignment with treaty norms. A state may therefore be held responsible for 'affirming' pre-ratification violations of a right protected under a given treaty after that treaty has been ratified.¹⁰⁵ The precise application of

Cultural Genocide. *American Review of Canadian Studies*, 49(2), 207–230.
<https://doi.org/10.1080/02722011.2019.1626099>

¹⁰² <https://www.coe.int/en/web/roma-and-travellers/-/switzerland-federal-council-recognizes-crime-against-humanity-against-the-yenish-and-manouche/sinti-and-reiterates-its-apology>. The Swiss apology is based on, and accepts the conclusions of, an academic legal opinion. The opinion argues that until the 1990s, the law on state responsibility did not recognise the crime of persecution except in the context of war. See, however, by contrast, the 2024 decision of the Brussels Court of Appeal in the Children of the Belgian Congo case, https://rcn-ong.be/wp-content/uploads/2024/12/Appel-Bruxelles-02.12.2024-AFFAIRES-DES-METIS_Anonyme.pdf holding that the removal and racial segregation of mixed-race children born in the Congo constituted persecution and 'inhumane acts', and that Belgium was required to compensate the victims. The Court held that the reference to war is not part of the crime of persecution itself under international law, but was intended to specifically limit the jurisdiction of the Nuremberg Tribunal.

¹⁰³ Ratification may not be determinative. For instance, some scholars argue that the prohibition of racial discrimination is a *ius cogens* norm, which bound states long before the ratification of relevant treaties; Van Boven Van Boven, Theo. "Racial and Religious Discrimination." *Max Planck En* (2007), B 1.8. By contrast see Du Plessis, Max. "Historical Injustice and International Law: An Exploratory Discussion of Reparation for Slavery." *Human Rights Quarterly*, vol. 25 no. 3, 2003, p. 624-659, 636-637

¹⁰⁴ See discussion at Article 14 Draft Articles on Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission 2001*, Volume II (part two) http://legal.un.org/ilc/publications/yearbooks/english/ilc_2001_v2_p2.pdf

¹⁰⁵ See for example, *Lovelace v. Canada*; CCPR/C/13/D/24/1977 (UN Human Rights Committee, ICCPR, denial of cultural rights); *Szijjarto v. Hungary* (CEDAW, gender discrimination, health rights family rights) CEDAW/C/36/D/4/2004; *Munoz-Vargas v. Spain* U.N. Doc. CEDAW/C/39/D/7/2005); *SC and GP v. Italy* (2017) E/C.12/65/D/22/2017 (CESCR, Gender equality, family rights, health, cultural life); *Dragan Durmic v Serbia and Montenegro* CERD/C/68/D/29/2003, 8 March 2006, para 6.4. (CERD, racial discrimination). See also CEDAW 2016 Concluding Observations on Japan CEDAW/C/JPN/C O/7-8 [29]. The ECtHR has also recognised that states may be required to address violations originating before ratification which have been reinforced by acts or omissions occurring afterwards. Relevant Article 8 ECHR (private and family life) cases include *Zorica Jovanovic v Serbia* (2013) ECHR 63, [46]; *Kuric v. Slovenia* [2012] ECHR 1083. Pre-ratification events can also be taken into account as part of the background to issues before the Court in considering post-ratification violations; *Hokkanen v. Finland* [1994] ECHR 32. In particular, historical discrimination against a group may result in the classification of

this argument to any individual will depend on their circumstances. However, the SHRC's analysis and the St. Andrew's report demonstrate that state policies in the later decades of the twentieth century did not end the harms of the 'Tinker Experiments'; indeed, some new policies exacerbated them. The First Minister's June 2025 apology accepted that the harms caused by 'the Tinker Experiments' continue to be felt today,¹⁰⁶ and a reparations scheme should reflect this acknowledgment.

Reject State-Centric or Assimilationist Approaches

The preceding sections discuss the substantive focus of any reparations programme for 'the Tinker Experiments'. This section briefly discusses the design and administration of transformative reparations decision-making processes, while recognising that the ultimate shape of those processes should be determined in close collaboration with those affected by the 'Tinker Experiments'. Recent negative experiences with British redress schemes, particularly in the context of the Windrush scandal,¹⁰⁷ remind us that the experience of a reparations process may be as important as its eventual outcomes.¹⁰⁸ A transformative reparations programme would not inflict further harm and trauma on affected people.¹⁰⁹ It would not revictimize affected people by prioritising the interests of government over those of victims, or by reinforcing monocultural or assimilationist norms.¹¹⁰ Instead it would seek to develop new relationships between state agencies and those affected by the 'Tinker Experiments'. In this respect a transformative reparations programme would:

- Avoid reinforcing longstanding imbalances of power in Scottish society. First, a reparations scheme should avoid undue delay¹¹¹ or bureaucracy.¹¹² Second, the government should not be a 'judge in its own case'. Government should ensure that reparations decision-making processes are genuinely independent, non-adversarial and transparent. Any reparations programme should include an independent oversight mechanism,¹¹³ supported by sufficient technical and financial resources. This should remain in operation until the programme has been fully implemented.¹¹⁴ Finally, government is required to provide appropriate resources, information¹¹⁵ and assistance to intended beneficiaries while they are engaging with reparations

that group as 'vulnerable' for the purposes of the ECHR; *MSS and Belgium v. Greece* App. No. 30696/09, Eur. Ct. H.R. (2011); *DH v. Czech Republic* [2008] ECHR 922; *Oršuš and Others v Croatia* [2010] ECHR 337.

¹⁰⁶ <https://www.gov.scot/publications/historical-policies-affecting-gypsy-traveller-communities-first-ministers-statement/> See also Fell Report p. 23

¹⁰⁷ See further <https://justice.org.uk/justice-publishes-report-on-the-windrush-compensation-scheme-for-victims-of-the-windrush-scandal/> and <https://www.kcl.ac.uk/legal-clinic/assets/reforming-redress-schemes-roundtable-report.pdf>

¹⁰⁸ See similarly <https://docs.un.org/en/A/HRC/EMRIP/2019/3/Rev.1> [79]

¹⁰⁹ See Van Boven-Bassiouni Principle 10

¹¹⁰ New Zealand's Royal Commission sought to centre Māori and Disabled values in its recommendations for reparations <https://www.abuseincare.org.nz/reports/from-redress-to-puretumu/from-redress-to-puretumu-4/he-karakia-3>

¹¹¹ See Joinet-Orentlicher Principle 32. See also *Paulino Tomás v Portugal* App no 58698/00 (ECtHR, 27 March 2003)

¹¹² See Van Boven-Bassiouni Principle 12.

¹¹³ For an oversight model incorporating survivor leadership see <https://www.rcaanc-cirnac.gc.ca/eng/1726518716763/1726518750940>

¹¹⁴ See similar recommendation <http://digitallibrary.un.org/record/4059062> p. 17

¹¹⁵ <https://docs.un.org/en/E/CN.4/2005/102> [60]

processes. Measures should also be taken to protect their well-being, privacy and cultural safety, including through provision of appropriate psychosocial support during the applications process.¹¹⁶ Professional and community legal support should be funded as necessary.¹¹⁷ Consideration should also be given to funding organisations advocating for affected people's right to reparations.¹¹⁸

- Prioritise recruitment of Gypsy/Traveller individuals to roles in leading, administering and implementing reparations programmes. This should include roles in making decisions on applications for final redress, following the model of Victoria Australia's Independent Assessment Panel, most of whose members are Aboriginal and/or Torres Strait Island persons.¹¹⁹ Other personnel involved in administering any reparations programme should receive appropriate training and guidance. Where it is intended that state services (e.g. education, health, social welfare) will be involved in implementing reparations initiatives, measures should be taken to eliminate discriminatory practices within those services and to ensure cultural competency training for other participating professionals.¹²⁰ To the extent practicable, a reparations programme for 'the Tinker Experiments' should aim to facilitate 'self-repair' by prioritising funding for grassroots actions and peer support over bureaucratised state-centric measures.¹²¹
- Adapt elements of the reparations programme as necessary to take account of individual differences within the group of beneficiaries.¹²² Gypsies/Travellers in Scotland are not a homogenous group. Relevant differences include varying experiences of past suffering, present vulnerabilities and intersecting experiences of structural inequality (on the basis of gender, age, disability, sexuality or experiences of state care, homelessness, addiction, incarceration or emigration).
- Recognise that cultural rights include a right to re-interpret and adapt cultural traditions.¹²³ Any reparations scheme should avoid distinguishing between

¹¹⁶ For an example of best practice see the discussion of Finland's Sámi psychosocial support unit. <https://documents.un.org/doc/undoc/gen/g24/117/05/pdf/g2411705.pdf>

¹¹⁷ On experiences of legal need in the recent Windrush redress scheme see <https://westminsterresearch.westminster.ac.uk/item/vww2g/the-windrush-compensation-scheme-unmet-need-for-legal-advice> [https://researchportal.lsbu.ac.uk/files/8394557/Time For Justice WJC 7.11.2024.pdf](https://researchportal.lsbu.ac.uk/files/8394557/Time%20For%20Justice%20WJC%207.11.2024.pdf)

¹¹⁸ See Canada's Advocacy and Public Information Programme <https://www.rcaanc-cirnac.gc.ca/eng/1100100015576/1571581687074#sect8>

¹¹⁹ <https://www.vic.gov.au/about-package#design-of-the-package>

¹²⁰ See Canadian TRC Calls to Justice [23] <https://www.rcaanc-cirnac.gc.ca/eng/1524499024614/1557512659251>

¹²¹ <https://docs.un.org/en/A/HRC/17/38> [70]. See further Gilmore, Sunneva, and Luke Moffett. "Finding a way to live with the past: 'self-repair', 'informal repair', and reparations in transitional justice." *Journal of Law and Society* 48.3 (2021): 455-480. See also Christoph Sperfeldt, Rachel Hughes, The Projectification of Reparation, *Journal of Human Rights Practice*, Volume 12, Issue 3, November 2020, Pages 545–565 on the 'projectification' of reparations.

¹²² See e.g. <https://www.refworld.org/legal/general/hrc/2004/en/52451> [15] <https://docs.un.org/en/A/HRC/42/45> [108], <https://rm.coe.int/reparation-and-reconciliation-processes-to-overcome-past-conflicts-and/1680ad8a41> [21] See also UNESCR General Comment No. 20 <https://www.refworld.org/legal/general/cescr/2009/en/68520> [17] on multiple or intersectional discrimination.

¹²³ See also <https://docs.un.org/en/A/HRC/49/54> [27]. See also by analogy the UNHRC's recognition that protection of indigenous land resources encompasses contemporary or modernised versions of traditional practices; *I Länsmän v Finland (Communication No 511/1992)*, UN Doc CCPR/C/52/D/511/1992, para 9.3; *Apirana Mahuika v New Zealand, Communication No 547/1993*, UN Doc CCPR/C/70/D/547/1993 (2000) para 9.4.

beneficiaries on the basis of adherence to externally-imposed notions of ‘authentic’ Gypsy/Traveller identity.¹²⁴ In this respect, any reparations measures should recognise that Gypsy/Traveller cultural practices have evolved over time, including as a result of the harms inflicted by ‘the Tinker Experiments’. So, for instance, the housing sites established during ‘the Tinker Experiments’ may now hold deep cultural significance for some affected people. An individual who now prefers to remain in residence at a site where they were once compelled to live as part of ‘the Tinker Experiments’ has an arguable claim to remain there on the basis of cultural need,¹²⁵ rather than accepting housing elsewhere.¹²⁶

- Ensure that the reparations process does not subject people affected by ‘the Tinker Experiments’ to a parallel inferior administrative or legal regime. In particular, the government should ensure that any reparations scheme supplements beneficiaries’ existing rights to seek a remedy under domestic law.¹²⁷ The government should not require beneficiaries to trade away other rights as a condition of participation in any reparations measure. The government should not require applicants to any redress scheme to sign waivers as a condition of participating in any redress scheme or as a condition of receiving a payment.¹²⁸ The government should also revise limitations periods for appropriate categories of legal dispute,¹²⁹ and should ensure that affected people can access legal aid where necessary.¹³⁰

Part III: Reparations for ‘the Tinker Experiments’.

This section will consider how the five dimensions of reparations – restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition – might be addressed in the context of a reparations programme for ‘the Tinker Experiments’. Satisfaction is associated with apologies, truth recovery and commemoration.¹³¹ Restitution, compensation and rehabilitation are typically achieved through financial payments. Guarantees of non-repetition require legal and other reforms.

¹²⁴ See Fell Report p. 22 on the experience of cultural ‘gatekeeping’.

¹²⁵ [https://docs.un.org/en/A/HRC/9/9 18/25](https://docs.un.org/en/A/HRC/9/9%2018/25) (incorporating traditional practices in housing reparations)

¹²⁶ See example in SHRC Draft p. 53. On the right to culturally adequate housing see e.g. <https://www.refworld.org/legal/general/cescr/1991/en/53157> 8(g)

¹²⁷ See SHRC Draft p. 52 noting litigation as a route to change.

¹²⁸ Scotland’s Redress scheme for survivors of abuse in state care currently makes redress payments conditional on signing a waiver. See further https://clannproject.org/wp-content/uploads/Appendix-3_Dr-Maeve-ORourke-Recommendations-to-Scottish-Parliament.pdf at pp. 3-5 explaining the negative impacts of waiver in the context of Irish redress provisions. Only four law firms responded to the Scottish government’s evaluation of the scheme <https://www.parliament.scot/-/media/files/committees/education-children-and-young-people-committee/correspondence/2023/scotlands-redress-scheme--final-draft-waiver-report--1st-june-2023.pdf>. Even where a waiver is signed, it does not relieve the state of its reparative obligations under international human rights law; see e.g. *Coppin v. Ireland* CAT/C/73/D/879/2018 [11.7]

¹²⁹ See Van Boven-Bassiouni Principle 6. See also Canadian TRC Calls to Justice [26] <https://www.rcaanc-cirnac.gc.ca/eng/1524502695174/1557513515931>

¹³⁰ SHRC Draft p. 53

¹³¹ Satisfaction is also often associated with other measures, including criminal prosecution.

Apology, Truth and Memorialisation¹³²

On June 25 2025, during Gypsy Roma Traveller History Month, the First Minister offered an apology for 'the Tinker Experiments'.¹³³ The SHRC's research shows that a public apology will be an important element of any comprehensive reparations programme for the 'Tinker Experiments'.¹³⁴ Apologies can give official recognition to the victims as rights-holders, and affirm the validity and importance of human rights principles which have been breached in the past.¹³⁵ Apologies may be an essential companion measure to other forms of reparation; for instance, material compensation without an apology may be experienced as transactional or half-hearted. However, apologies must be accompanied by concrete actions to address both past and ongoing abuses of all relevant human rights, and to prevent their recurrence.¹³⁶ The First Minister's statement suggested that Scotland is open to further action, but did not outline any detailed plans for reparations for 'the Tinker Experiments'.

This document discusses additional aspects of reparations below. Here, it argues that, even if other kinds of reparations for 'the Tinker Experiments' are planned for the future, the apology itself fell short of international standards. This section explains why a rights-centred approach requires additional formal apologies and further symbolic reparations measures.

In keeping with the principle of participation, the content and dissemination of an apology for 'the Tinker Experiments' should be agreed in close consultation with representatives of those affected.¹³⁷ Although the First Minister's apology was informed by a consultative process, the consultation was 'limited and brief', and intended as 'the beginning of a conversation'.¹³⁸ The published consultation (the Fell Report) does not discuss the apology's content in any detail. However, it suggests that the First Minister's apology may not have been as comprehensive as survivors would have wished. For example, one consultation participant requested an apology for the historical forced migration of Gypsy/Traveller children 'shipped abroad'. The First Minister's apology did not directly address this issue. It is also significant that Gypsy/Traveller representatives were only present in the Chamber during the apology as audience members, and did not have an opportunity to respond directly to it.¹³⁹

¹³² See general discussion of apologies in international human rights law at <https://docs.un.org/en/A/74/147> 10-19.

¹³³ <https://www.gov.scot/publications/historical-policies-affecting-gypsy-traveller-communities-first-ministers-statement/>

¹³⁴ SHRC Draft pp. 50-51. See also St Andrews Report p. 77 and Fell Report pp 22-25.

¹³⁵ <https://docs.un.org/en/A/69/518> at [39]

¹³⁶ <https://docs.un.org/en/A/74/147> [57], [60]; <https://docs.un.org/en/A/76/180> [72]. See also for example, the President of the Sámi parliament discussing the Norwegian state apology <https://www.arcticcircle.org/journal/reclaiming-truth--a-sami-perspective-on-norways-apology-and-the-path-to-reconciliation>

¹³⁷ <https://docs.un.org/en/A/74/147> [49]-[50]. See e.g. recommendation at https://www.abuseincare.org.nz/_data/assets/pdf_file/0009/23121/whanaketia-part-8.pdf p.27

¹³⁸ <https://www.gov.scot/publications/historical-policies-impacting-gypsy-traveller-communities-colloquially-known-tinker-experiment-s-scottish-governments-response/pages/2/>

¹³⁹ Contrast, for example, Canada. Crown-Indigenous Relations and Northern Affairs Canada. *Indian Residential Schools Statement of Apology - Phil Fontaine, National Chief, Assembly of First Nations*. 2008. <https://www.rcaanc-cirnac.gc.ca/eng/1100100015697/1571589725919>. See also Canada's national gestures of reconciliation <https://www.rcaanc-cirnac.gc.ca/eng/1100100015576/1571581687074#sect6>

An effective apology for ‘the Tinker Experiments’ must involve comprehensive and truthful public acknowledgment of its facts and history, and acceptance of state responsibility for all of its associated harms.¹⁴⁰ The apology should recognise specific individuals and incidents of harm. The First Minister’s June 2025 apology acknowledges the contents of the St. Andrew’s Report and refers in general terms to ‘children being removed from families, and families ‘forced to live in substandard accommodation and degrading conditions’. However, it does not discuss incidents, places, or perpetrators in any detail. A member of the public who had not read the St. Andrews Report is unlikely to have fully understood what ‘the Tinker Experiments’ entailed. In addition, although the First Minister’s apology repeatedly recognises that the ‘Tinker Experiments’ were wrong and harmful, it stops short of the language adopted by the Church of Scotland in its own apology, which recognises that the ‘Tinker Experiments’ were ‘an intentional attempt to destroy a culture and a way of life’ and ‘a deliberate attempt...to forcibly assimilate Gypsy/Travellers’.¹⁴¹ It is not clear that the First Minister has directly accepted the state’s responsibility for the cultural losses at the heart of ‘the Tinker Experiments’. The apology is an acknowledgment of failures rather than an admission of responsibility.

Where appropriate, a public apology should include official declarations ‘restoring the dignity, reputation and legal rights of the victim[s] and/or of persons connected with the victim[s].’¹⁴² For instance, an apology recognising those who were removed from their families on the basis that their parents lived in inadequate housing could acknowledge that their removal was illegitimate.¹⁴³ The First Minister’s June 2025 apology did not contain any statement to this effect.

Apologies should include a commitment to ensure that past human rights violations are remedied and not repeated.¹⁴⁴ The First Minister’s June 2025 apology includes general commitments to improve Gypsy/Travellers’ lives, including by advocating for their rights. However, it does not specifically characterise the harms of the ‘Tinker Experiments’ as human rights violations, and most commitments to improvement mentioned were already adopted as policy independent of any commitment to make reparations for the ‘Tinker Experiments’.

To ensure genuine recognition for victims, and to contribute to public understanding, an apology should be widely publicised and highly visible.¹⁴⁵ The First Minister’s June 2025 apology was reported in Scottish media, but further work will likely be necessary to strengthen public understanding of its purpose and significance.

Personal apologies¹⁴⁶ to particular individuals, in addition to a wider public apology, may be

¹⁴⁰ <https://docs.un.org/en/A/69/518> [62]-[63]

¹⁴¹ <https://www.churchofscotland.org.uk/news-and-events/news/articles/a-statement-from-the-church-of-scotland-in-response-to-the-publication-of-the-scottish-government-commissioned-report-on-archival-research-conducted-to-explore-20th-century-policies-affecting-gypsytraveller-communities-in-scotland>

¹⁴² Van Boven-Bassiouni Principle 15; <https://docs.un.org/en/A/69/518> [37].

¹⁴³ See by analogy <https://www.sbs.com.au/nitv/article/victoria-acts-to-remove-criminal-records-of-stolen-generations/8mw2zmigh>

¹⁴⁴ Van Boven-Bassiouni Principle 15

¹⁴⁵ In 2012 the UN Special Rapporteur on Indigenous Peoples criticised the United States for ‘burying’ an apology to Native Americans in a wider parliamentary debate on unrelated matters: <https://docs.un.org/en/A/HRC/21/47/Add.1> [74].

¹⁴⁶ Apologies may be written, face-to-face or a combination of both.

appropriate in some circumstances. This practice has previously been implemented as part of the Windrush Compensation Scheme,¹⁴⁷ the Scottish redress schemes addressing child abuse in the care system¹⁴⁸ and some Australian redress schemes.¹⁴⁹

It may be appropriate for specific state agencies, such as the police, to offer apologies of their own.¹⁵⁰ Where non-state agents such as charities and religious organisations were involved in human rights abuses, they should offer appropriate formal apologies of their own.¹⁵¹ As noted above, an apology on behalf of the Church of Scotland was published on June 25, 2025.¹⁵² In other contexts – for instance, the Church of Sweden’s apology to the Sámi people – religious organisations have gone beyond oral or written statements of apology, and have offered apologies at ceremonial public events.¹⁵³ The Canadian Truth and Reconciliation Commission encouraged churches to build on apologies with additional reconciliation initiatives.¹⁵⁴ The St Andrews Report, similarly, encourages charity and faith-based organisations to educate their membership on the ‘history, culture and contributions of Gypsies/Travellers in Scotland and on the consequences of assimilationist rhetoric’.¹⁵⁵

Memorialisation

Apologies are often temporary interventions. Therefore, in addition to a new public apology, government should offer to fund longer-term or permanent symbolic reparation.¹⁵⁶ This could include public commemorations and memorialisation of the ‘Tinker Experiments’ and its victims,¹⁵⁷ including those affected by forced child migration. Any memorials or commemorations should be highly visible.¹⁵⁸ Affected people should be centrally involved in deciding on the shape that appropriate permanent memorials should take.¹⁵⁹ The St Andrews report suggests two possible initiatives: a memorial for Traveller child migrants,¹⁶⁰ and the

¹⁴⁷See <https://www.gov.uk/government/publications/windrush-compensation-scheme-full-rules/windrush-compensation-scheme-full-rules-accessible-version#part-2-eligibility> Part 3.1

¹⁴⁸ See s. 99 Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 and ss. 54-56 National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Australia).

¹⁴⁹See e.g. <https://territoriesredress.gov.au/personal-acknowledgement> ; <https://www.nationalredress.gov.au/about/about-scheme/reports-and-statistics/direct-personal-response-action-plan>; <https://www.premier.vic.gov.au/helping-heal-hurt-forced-adoptions-victoria>

¹⁵⁰ See e.g. Recommendation 5b of the Australian Human Rights Commission’s *Bringing Them Home* report <https://bth.humanrights.gov.au/the-report/part-4-reparation/chapter-14-making-reparation>

¹⁵¹ See also Recommendation 6 of the Australian Human Rights Commission’s *Bringing Them Home* report <https://bth.humanrights.gov.au/the-report/part-4-reparation/chapter-14-making-reparation>

¹⁵²<https://www.churchofscotland.org.uk/news-and-events/news/articles/a-statement-from-the-church-of-scotland-in-response-to-the-publication-of-the-scottish-government-commissioned-report-on-archival-research-conducted-to-explore-20th-century-policies-affecting-gypsytraveller-communities-in-scotland>

¹⁵³See further, Gindt, Dirk. “‘The Long Road of Reconciliation’ The Church of Sweden’s Performative Apology to the Sámi People.” *Scandinavian-Canadian Studies* 30 (2023): 1-30.

¹⁵⁴ See further Canadian TRC Calls to Action https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf [58]-[62]

¹⁵⁵ St Andrews Report p. 79

¹⁵⁶ See e.g. Recommendation 7 of the Australian Human Rights Commission’s *Bringing Them Home* report <https://bth.humanrights.gov.au/the-report/part-4-reparation/chapter-14-making-reparation>

¹⁵⁷Van Boven-Bassiouni Principle 15; For further discussion and key examples see <https://docs.un.org/en/A/HRC/25/49>

¹⁵⁸See e.g. Canadian TRC Calls to Action https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf [81]-[82]

¹⁵⁹ <https://docs.un.org/en/A/HRC/25/49> [96]-[97]

¹⁶⁰ Fell Report p. 24

designation of Bobbin Mill as a protected heritage site.¹⁶¹ It is essential that Gypsies/Travellers in Scotland and the wider community are encouraged to engage with any memorial; for instance, through cultural interventions and educational, artistic and research initiatives.¹⁶² Scotland should also commit to progressive future development of the memory of the 'Tinker Experiments';¹⁶³ for instance, if witnesses who were previously silent or unheard come forward to tell their stories, or if historical research uncovers additional evidence of abuses.

As well as supporting dedicated memorialisation processes, it may also be appropriate for government to adopt a national policy on public institutional representations of the history of the 'Tinker Experiments' and their lasting impact on the rights of Gypsies/Travellers in Scotland.¹⁶⁴ To this end, government should also consider commissioning a national review of practice and policy in museums, archives, heritage organisations and libraries.¹⁶⁵ Any review should involve close collaboration with relevant representatives of Gypsies/Travellers in Scotland. This review should explore existing best practice and opportunities for local and regional commemoration and memorialisation of 'the Tinker Experiments'.¹⁶⁶ The St Andrews report, to similar effect, recommends that local authorities should meet with local Gypsy/Traveller communities to consider how relevant experiences can be appropriately represented within local history and heritage initiatives.¹⁶⁷

Government should also review and address all obstacles to individual and researcher access to relevant documents and objects in the custody of museums and archives, including local authority and private archives.¹⁶⁸ The Joinet-Orentlicher Principles include an obligation to ensure that records of past abuses are preserved in appropriate archives, and made accessible to those affected.¹⁶⁹ The St Andrews report suggests that all materials relevant to the historical treatment of Gypsies/Travellers in Scotland should be transferred to a 'community-informed' and 'co-led' archive following the model of Canada's National Centre for Truth and Reconciliation.¹⁷⁰ It may also be appropriate for government to fund scholarships or apprenticeships for Gypsies/Travellers in Scotland to train as archivists or curators to support this endeavour.

Cultural practices and events are increasingly recognised as an important element of efforts

¹⁶¹ St Andrews Report p. 78. For an Irish example of a proposed use of a site of conscience in commemorations of historical injustice see <https://www.gov.ie/en/department-of-children-disability-and-equality/publications/national-centre-background-and-progress-to-date/> <https://openheartcitydublin.ie/> For an Australian example see <https://kinchelaboyshome.org.au/kinchela-boys-home/heritage/>

¹⁶² <https://docs.un.org/en/A/HRC/25/49> [64]-[65] <https://docs.un.org/en/A/HRC/45/45> [61]

¹⁶³ <https://docs.un.org/en/A/HRC/45/45> [96]

¹⁶⁴ See <http://digitallibrary.un.org/record/4059062> 16

¹⁶⁵ See St. Andrews Report p. 79

¹⁶⁶ See similar Canadian TRC recommendation here: <https://www.rcaanc-cirnac.gc.ca/eng/1524504831027/1557513782811> [69] – [70]

¹⁶⁷ St Andrews Report p. 78.

¹⁶⁸ The St Andrews report at p. 78 recommends that private archives should be supported to audit and catalogue relevant holdings, and that local authorities should audit archival materials within their own areas.

¹⁶⁹ Principles 14-19. For detailed guidance see also <https://docs.un.org/en/A/HRC/30/42> [96] and https://www.ica.org/app/uploads/2023/12/ICA-HRWG-Basic-Principles_endorsed-by-PCOM_2016_Sept_English.pdf

¹⁷⁰ St Andrews Report at p. 78. See a similar French proposal to establish an archival centre as a reparations measure for adults transported to France from Réunion as children https://www.assemblee-nationale.fr/dyn/17/textes/l17b1233_proposition-loi#

to make reparations for other mass human rights abuses; particularly through memorialisation.¹⁷¹ Care should be taken to ensure that symbolic reparations include a commitment to cultural recognition; for instance, by centring culturally significant languages, music and performance in commemorations.

Truth Recovery

Truth recovery is an essential dimension of any reparations process, and affected people should have significant influence over the form that truth recovery takes. There is some survivor support for additional research,¹⁷² and for the development of publications documenting and preserving the memory of ‘the Tinker Experiments.’¹⁷³ The St Andrews report also encourages the government to commission additional research into the ‘Tinker Experiments’ and ‘other housing and child welfare policies affecting Gypsy/Traveller communities’.¹⁷⁴

The St. Andrew’s report, the Fell Report and the SHRC investigation already contain sufficient evidence of a range of human rights abuses to justify the establishment of a reparations programme.¹⁷⁵ However, Scotland is obliged to establish a public inquiry into at least some dimensions of ‘the Tinker Experiments’. This is because ‘the Tinker Experiments’ involved severe, widespread and systemic breaches of human rights, in which the state was deeply involved.¹⁷⁶

In principle, there is a right to an investigation for all human rights abuses,¹⁷⁷ including severe violations of economic, social and cultural rights.¹⁷⁸ The kind of investigation required will depend on the rights violation involved. In some instances, a state-commissioned academic investigation will suffice, particularly if the rights violation involved has also been the subject of decisions by a national body capable of providing a valid remedy for the purposes of Article 13 ECHR.¹⁷⁹ However, under the ECHR there is an obligation to establish an ‘effective investigation’ whenever there is an arguable claim that an individual has suffered a violation of Article 3 (inhuman or degrading treatment)¹⁸⁰ or a serious breach of Article 8 (breach of the right to private or family life, particularly in the context of forced child removal).¹⁸¹ An ‘effective

¹⁷¹See <https://docs.un.org/en/A/HRC/25/49>. See also wider academic discussion in Cynthia E Cohen, Reimagining Transitional Justice, *International Journal of Transitional Justice*, Volume 14, Issue 1, March 2020, Pages 1–13

¹⁷² See SHRC Draft 54-56, particularly highlighting accounts of eugenicist research.

¹⁷³ See e.g. Fell Report p. 23

¹⁷⁴ St Andrews Report p. 78. The report also sets out principles for the conduct of this research at p. 79.

¹⁷⁵ See e.g. Fell Report, p. 22.

¹⁷⁶ For a more detailed discussion see <https://w2w113.n3cdn1.secureserver.net/wp-content/uploads/2021/10/ORourke-Background-Research-Report-27.9.21.pdf> (Part 3); <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf> [105] – [116]

¹⁷⁷ Van Boven-Bassiouni Principle 3(b)

¹⁷⁸ See e.g. UNCESCR General Comment No. 24, UN Doc E/C.12/GC/24 (2017)[40]

¹⁷⁹ See e.g. *LF v. Ireland* [2020] ECHR 364.

¹⁸⁰ On the relationship between degrading treatment and racial discrimination see *East African Asians v. UK* [1981] 3 EHRR 76. See also *VC v Slovakia* (2014) 59 EHRR 29 [118] noting, in reaching a finding of a violation of Article 3 that the victim had been ostracised by her community, and that her ‘physical and mental well-being and emotional, spiritual and family life’ had been affected.

¹⁸¹ See e.g. *Zorica Jovanovic v Serbia* (2013) ECHR 63. See further <https://w2w113.n3cdn1.secureserver.net/wp-content/uploads/2021/10/ORourke-Background-Research-Report-27.9.21.pdf> at pp. 6-10.

investigation’ in this sense would take the form of an independent statutory inquiry focused on establishing responsibility for a defined range of human rights abuses. It would have power to compel production of relevant evidence. It would explicitly establish the legal responsibility of both state and non-state actors for the key abuses involved in ‘the Tinker Experiments’ and make evidence-based recommendations to prevent recurrence. An effective investigation would be transparent and would facilitate involvement by the victims and their family members. Effective investigations aim to secure ‘the right to truth’; the right of victims and the wider community to know the facts surrounding a serious human rights violation.¹⁸² Scotland should urgently review the evidence presented in St. Andrew’s report, the Fell Report and the SHRC’s research, with a view to determining the necessary scope of an appropriate public inquiry.

Public inquiries are often criticised for failing to provide victim-centred justice.¹⁸³ Following a commitment to transformative reparations, any public inquiry into ‘the Tinker Experiments’ should be designed in close consultation with affected people, to ensure that it fulfils affected peoples’ needs for acknowledgment and truth recovery while avoiding re-victimisation. In particular, the inquiry must be designed so that affected people who wish to do so can present written or oral testimony in a supportive non-adversarial forum, and meaningfully contribute to the process of determining state and non-state responsibility for human rights abuses.¹⁸⁴ A full discussion of these issues is beyond the scope of this research. However, one approach is to supplement the public inquiry with an additional survivor-focused process. In Northern Ireland, a statutory inquiry into abuses in Magdalene laundries and mother and baby homes has been preceded by an Independent Panel. One purpose of the panel was to work in close consultation with survivors and affected people to gather evidence, including testimonies, to inform the later work of the statutory inquiry.¹⁸⁵ The wider reparations programme could also support affected people to establish grassroots initiatives to preserve and share the history of ‘the Tinker Experiments’ outside the context of a state investigation, as part of reparations commitments to memorialisation or cultural revitalisation.¹⁸⁶

Care must be taken to ensure that material reparations measures for verified abuses are not delayed in order that a public inquiry or additional truth recovery activities can be carried out. There is Scottish precedent for sequencing reparations so that urgent financial redress is not delayed by an inquiry. The Scottish Child Abuse Inquiry was set up in October 2015. Public hearings began in May 2017, and hearings and investigations are ongoing. Scotland’s Redress Scheme is independent of the inquiry and opened in December 2021. An advance payment scheme for people aged over 70 and terminally ill people opened in April 2019.¹⁸⁷ In Northern Ireland, a financial redress scheme for survivors of institutional abuse in mother and baby

¹⁸² docs.un.org/en/E/CN.4/Sub.2/1997/20/Rev.1 (1997) [117]

¹⁸³ See e.g. <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=8a39ca72-39c0-43ba-8505-01be5bc4bfd3>

¹⁸⁴ For discussion and evaluation of public inquiries into historical abuse and possible alternatives see [https://transformingjusticeproject.org/wp-content/uploads/2023/07/Non-recent Institutional Abuses And Inquiries-1.pdf](https://transformingjusticeproject.org/wp-content/uploads/2023/07/Non-recent-Institutional-Abuses-And-Inquiries-1.pdf)

¹⁸⁵ See further <https://w2w113.n3cdn1.secureserver.net/wp-content/uploads/2021/10/30092021-Truth-Recovery-Final-Report-FINAL-Online-Version.pdf>

¹⁸⁶ See for example <https://healingfoundation.org.au/2025/02/11/commemorations-a-vital-healing-tool-for-stolen-generations-survivors-and-communities/>

¹⁸⁷ <https://www.gov.scot/news/redress-for-historical-abuse-survivors/>

homes and Magdalene laundries will, similarly, run alongside a public inquiry.¹⁸⁸ Canada's Truth and Reconciliation Commission originated in the Indian Residential Schools Settlement Agreement. The first payments were made under the Agreement in 2006. The Truth and Reconciliation Commission held its first major national event in 2010.

Material Reparations¹⁸⁹

People whose human rights were breached as a result of 'the Tinker Experiments' are entitled to material reparations. The SHRC's research shows that financial payments would make a tangible difference to survivors' lives.¹⁹⁰ Material reparations often take the form of individual monetary payments such as lump sums or pensions, distributed through a dedicated out-of-court redress scheme.¹⁹¹ Financial remedies alone cannot repair the consequences of serious breaches of human rights. In addition, if they are not part of a comprehensive reparations scheme, they may be seen as a way to buy victims' silence.¹⁹² However, if properly designed and administered, financial redress schemes can contribute to restoring the dignity of those directly affected by mass human rights abuses. In the short term, they can also help to put affected people in a better position to benefit from other aspects of reparation; for instance, by addressing some of the consequences of protracted ill-health or poverty.¹⁹³

Material redress is typically framed as responding to individual suffering, whereas other forms of reparation, such as public apologies or law reform, have collective impact. However, in some circumstances – particularly where long-term investment is needed to undo the consequences of decades of exclusion¹⁹⁴ – collective material redress,¹⁹⁵ provided to groups of affected people or their wider communities may be more appropriate.¹⁹⁶ For instance, affected communities might receive reparations grants to spend on developing shared social

¹⁸⁸ <https://www.executiveoffice-ni.gov.uk/news/inquiry-and-redress-scheme-be-established>

¹⁸⁹ The St Andrews Report at p. 77 uses the term "socio-economic restitution".

¹⁹⁰ See SHRC Draft pp. 51-52

¹⁹¹ Where payments are made *ex gratia*, without admission of liability, they may not fulfil the right to an effective remedy under Article 13 ECHR; *O'Keeffe v. Ireland* [2014] ECHR 96 [118]

¹⁹² See further <https://docs.un.org/en/A/69/518> [11]

¹⁹³ Studsrød, Ingunn and Elisabeth Enoksen. "Money as Compensation for Historical Abuse : Redress Programs and Social Exchange Theory." *The Journal of the History of Childhood and Youth*, vol. 13 no. 2, 2020, p. 288-306. Project MUSE, <https://dx.doi.org/10.1353/hcy.2020.0039>.

¹⁹⁴ For further discussion see e.g. Waldorf, L. (2012). Anticipating the Past: Transitional Justice and Socio-Economic Wrongs. *Social & Legal Studies*, 21(2), 171-186. <https://doi.org/10.1177/0964663911435827> (Original work published 2012)

¹⁹⁵ Collective reparations are recognised in the Van Boven-Bassiouni Principles at [13] and in the Joint-Orientlicher Principles at Principle 32. Collective redress is distinct from individual redress paid to members of a group, as under the ECHR pilot judgments framework (see e.g. *Broniowski v Poland* (2005) 40 EHR 21 and *Hutten-Czapska v Poland* (2007) 45 EHRR 4). The ECtHR's Article 41 framework does not rule out the possibility of collective redress payments.

¹⁹⁶ See wider discussion of the practical implementation of collective reparations here <https://reparations.qub.ac.uk/assets/uploads/QUB-Collective-Reparations-Report-SP-LR.pdf>

services, infrastructure or cultural projects,¹⁹⁷ in accordance with their own shared priorities. Further consultation with people affected by ‘the Tinker Experiments’ will be needed to identify whether and where collective financial reparations should be paid. Survivors stress that the impacts of the ‘the Tinker Experiments’ vary from one affected person to the next.¹⁹⁸ The First Minister’s apology also accepted that individuals have been affected in different ways.¹⁹⁹ Given this reality, collective financial measures can supplement but not substitute for financial redress for violation of direct victims’ individual rights.²⁰⁰

Non-state actors who were involved in relevant human rights abuses (e.g. the Church of Scotland and relevant charities) should contribute funds to any state-administered material reparations scheme.²⁰¹ There are precedents in Scotland’s and Australia’s redress schemes for survivors of child abuse in care.²⁰²

It is not unusual for redress schemes to allow next of kin to claim financial redress on behalf of deceased victims.²⁰³ Such provision enables recognition the familial and intergenerational harms of the ‘Tinker Experiments’. Family members may also benefit from collective reparations.

Compensation

Under the Van Boven-Bassiouni principles,²⁰⁴ compensation must be paid for any economically assessable damage resulting from a serious human rights violation. A state obligation to pay damages may also arise under Article 41 ECHR.²⁰⁵ Relevant losses may include deprivation of property or income or necessary expenditure flowing from a rights violation. Recent Scottish and UK redress schemes have permitted recovery for necessary expenditure. Examples include the Scottish Government Mesh Fund²⁰⁶ and the Windrush Compensation scheme.²⁰⁷ On this basis, survivors of ‘the Tinker Experiments’ might reasonably expect to recover costs of, for example, medical expenses or some home repairs and modifications made necessary by poor housing conditions.

A material redress scheme for ‘the Tinker Experiments’ should also recognise moral or ‘non-pecuniary’ losses.²⁰⁸ Relevant redress for the Tinker Experiments is likely to focus on breaches of social, cultural and economic rights (including the right to family life). Further consultation

¹⁹⁷On justifications for collective redress in the context of destruction of a way of life see e.g. <https://www.waitangitribunal.govt.nz/assets/Uploads/He-Tirohanga-o-Kawa-ke-te-Tiriti-o-Waitangi.pdf> p. 106

¹⁹⁸ See Fell Report p. 22.

¹⁹⁹ <https://www.gov.scot/publications/historical-policies-affecting-gypsy-traveller-communities-first-ministers-statement/>

²⁰⁰ See also UNCAT General Comment 3 (2012)

²⁰¹ <https://docs.un.org/en/A/HRC/42/45> [95]; <https://docs.un.org/en/A/78/181> [44]-[55]

²⁰² <https://www.gov.scot/publications/scotlands-redress-scheme-contributor-list/> (Scotland) and <https://www.nationalredress.gov.au/institutions-landing/guidance-institutions> (Australia)

²⁰³ See e.g. <https://www.gov.scot/publications/redress-survivors-historical-child-abuse-care-scotland-act-2021-statutory-guidance-next-kin/>

²⁰⁴ Principle 20.

²⁰⁵See generally Rules of the European Court of Human Rights at pp. 74-75 https://www.echr.coe.int/documents/d/echr/rules_court_eng

²⁰⁶ <https://www.nss.nhs.scot/patient-support-schemes/mesh-scheme/about-the-original-scottish-government-mesh-fund-that-closed-on-30th-june-2022/>

²⁰⁷<https://www.gov.uk/government/publications/windrush-compensation-scheme-full-rules/windrush-compensation-scheme-full-rules-accessible-version#part-2-eligibility> at [3.2] – [3.10]

²⁰⁸ Van Boven- Bassiouni Principle 20 (a), (c) and (d). See also Rules of the European Court of Human Rights at p. 75 https://www.echr.coe.int/documents/d/echr/rules_court_eng

with affected people will be necessary to identify priority areas for financial redress.²⁰⁹ However, relevant categories of loss include:

- Discrimination
 - Distress, humiliation and frustration associated with the experience of discrimination.²¹⁰
- Housing
 - Humiliation and debasement associated with degrading living conditions, combined with racial discrimination.²¹¹
 - Distress due to interference with one's home e.g. through forced eviction.²¹²
 - Damage to health caused by long-term poor living conditions.²¹³
- Family Life
 - Distress and moral harm associated with loss of contact with a family member.²¹⁴
 - Loss of the opportunity to form a relationship with a family member.²¹⁵
- Cultural Rights
 - Interference with cultural or linguistic rights.²¹⁶

In other jurisdictions, redress schemes have been established to provide individual

²⁰⁹ St Andrews Report p.78. For a possible model for consultation see https://www.amnesty.org.uk/files/what_survivors_want_from_redress.pdf

²¹⁰ *Sampanis & others v. Greece*, App. No. 32526/05, Eur. Ct. H.R. (5 June 2008); *Beizaras and Levickas v. Lithuania* App No. 41288/15 (ECtHR, 14 January 2020); *DH v. Czech Republic* [2008] ECHR 922; *Oršuš and Others v Croatia* [2010] ECHR 337

²¹¹ *MSS and Belgium v. Greece* App. No. 30696/09, Eur. Ct. H.R. (2011). See also, in the Inter-American system; *Yakye Axa Indigenous Cmty. v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125 (June 17, 2005). On the right to reparations for breach of the right to adequate housing see Right to a remedy at <https://docs.un.org/en/A/76/408> [65]

²¹² *Connors v. UK* [2004] HLR 52; *Bagdonavicius and Others v. Russia I* App no 19841/06 (ECtHR, 11 October 2016); *Buckland v. UK* [2012] ECHR 1710; *Hirtu v. France* [2020] ECHR 324. The UNCESCR has also held that damages should be payable where the right to adequate housing is breached by forced eviction; *Mohamed Ben Djazia and Naouel Bellili v. Spain*, CESCR, Communication No. 5/2015, UN Doc. E/C.12/61/D/5/2015 (20 June 2017); *López Albán v Spain*, Admissibility and merits, Communication No 37/2018, UN Doc E/C.12/66/D/37/2018, IHRL 4042 (CESCR 2019), 11th October 2019. In the Inter-American system see Inter-American Court of Human Rights, *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, Judgment of November 20, 2013.

²¹³ *L'opez Ostra v. Spain* [1994] ECHR 46

²¹⁴ *Hokkanen v. Finland* [1994] ECHR 32; *TP and KM v. UK* [2001] ECHR 332; *Venema v. Netherlands* (2004) 39 EHRR 5; *AD and O'D v. UK* [2010] ECHR 340; *Soares de Melo v. Portugal* [2016] ECHR 186; *Keegan v. Ireland* [1994] ECHR 18

²¹⁵ *P. C and S v. UK* App. no. 56547/00 [2002] ECtHR; *H v the United Kingdom* 32185/20 (ECtHR, dec, 21 May 2022)

²¹⁶ *Güzel Erdagöz v. Turkey*, App. No. 37483/02 (2008); ECtHR; *Munoz Díaz v. Spain* (2009) ECHR 168. See also *Case of the Plan de Sánchez Massacre v Guatemala*, 268 members of the Plan de Sánchez Village v Guatemala, Merits, [2004] IACHR 1, IACHR Series C No 105, IHRL 1488 (IACHR 2004), 29th April 2004, Inter-American Court of Human Rights [IACtHR]

compensation for equivalent harms:

- Discrimination
 - Norway's 2004 payment scheme for Tater/Romani people provided individual payments to address the impacts of forced assimilation, and of bullying and victimisation involving public authorities or carried out with their approval.²¹⁷
- Housing²¹⁸
 - Norway's 2004 payment scheme for Tater/Romani people provided individual payments to address the impacts of historical forced relocation.²¹⁹
 - It is also possible to include current housing needs in collective reparations measures. For example, in New South Wales, Australia, housing authorities are responsible for delivering priority housing assistance to members of the Stolen Generations.²²⁰
- Family Rights²²¹
 - The Historical Forced Adoption Scheme, Victoria, Australia is a payment scheme for women whose children were forcibly removed before 1990.²²²
 - Switzerland's Federal Solidarity Scheme is a payment scheme for individuals affected by 'compulsory social measures', including women forced to release their children for adoption before 1981.²²³
 - Stolen Generations redress and reparations schemes including in Victoria,²²⁴ Commonwealth Government Territories²²⁵ and New South Wales Australia²²⁶ involve payment schemes to survivors of historical policies of child removal targeting First Nations families.
- Cultural Rights
 - Scotland's Redress For Survivors (Historical Child Abuse In Care) (Scotland) Act 2021, provides for financial redress for abuse of children in residential institutions including 'abuse specific to the travelling community' such as 'denial of culture'.²²⁷

²¹⁷See discussion in https://www.griffith.edu.au/_data/assets/pdf_file/0034/1762783/Norway-Special-Report-FINAL-revision-1-May-2023.pdf at 43

²¹⁸Of course, where an individual receives a lump sum or periodical payments under a scheme which recognises a range of rights violations, they are generally free to spend it as they wish e.g. on housing.

²¹⁹https://www.griffith.edu.au/_data/assets/pdf_file/0034/1762783/Norway-Special-Report-FINAL-revision-1-May-2023.pdf at 43

²²⁰See [https://www.parliament.nsw.gov.au/tp/files/80500/2021-SGRS-Interim-Report-\(Final\)-%5Baccessible%5D.pdf](https://www.parliament.nsw.gov.au/tp/files/80500/2021-SGRS-Interim-Report-(Final)-%5Baccessible%5D.pdf) Access to stable housing is also understood as a means of redressing harm associated with the forced removal of children.

²²¹The focus here is on schemes which compensate for forced removal of children, rather than on abuse of adults or children in residential institutions.

²²²https://www.vic.gov.au/sites/default/files/2025-07/DJCS-Redress-Historical-Forced-Adoptions_Application-Form-9826-July-2025.pdf No redress scheme was established for adopted people.

²²³<https://www.bj.admin.ch/bj/en/home/gesellschaft/fszm/solidaritaetsbeitrag.html>

²²⁴See discussion at <https://www.vic.gov.au/sites/default/files/2022-02/SGRP%20Steering%20Committee%20Final%20Report%20-%20dated%2020%20July%202021.PDF>

²²⁵<https://territoriesredress.gov.au/>

²²⁶https://www.nsw.gov.au/sites/default/files/noindex/public%3A//2024-03/25151_Response_into_Reparations_for_Stolen_Generations_Document_v11%20%281%29.pdf25151_Response_into_Reparations_for_Stolen_Generations_Document_v11%20%281%29.pdf p. 7

²²⁷<https://www.gov.scot/publications/redress-survivors-historical-child-abuse-care-scotland-act-2021-statutory-guidance-eligibility-updated-april-2025/pages/4/>

- Canada's Indian Day Schools Settlement agreement addresses cultural and linguistic losses suffered by Indigenous children at non-residential schools.²²⁸
- The 'common experience payment' under Canada's Indian Residential School Settlement Agreement addresses harms including cultural loss.²²⁹
- Australian Stolen Generations reparations schemes including in Victoria,²³⁰ Commonwealth Government Territories²³¹ and New South Wales²³² include payment schemes to survivors of policies of child removal targeting First Nations families. These schemes are intended to recognise both the cultural and familial costs of removal.
- Canada's 'Sixties Scoop' settlement provides for individual compensation payments for cultural losses associated with mass child removal.²³³

Best practice suggests that compensation should take account both of past losses, and the longer-term impacts of those losses in terms of social and economic destabilisation.²³⁴ For instance, material redress for loss of income should recognise both the original loss and its longer-term financial impacts; on housing, on pension planning, on access to opportunities to exercise civil and political rights, and on access to cultural heritage. Payments should not be subject to tax, and should not be taken into account in assessing entitlements to means-tested benefits.²³⁵ To best respect beneficiaries' autonomy, they should ordinarily be able to decide whether to receive their compensation in a lump sum or in instalments.²³⁶

Material reparations must be paid in proportion to the severity of the violations and the harm suffered.²³⁷ If material reparations fall short of this standard, they may deprive victims of full recognition as rights holders.²³⁸ Where an administrative redress scheme is established to ensure that individuals can access redress more efficiently than via civil litigation, the redress paid should not be significantly less than the damages which would be available via the courts. For similar reasons, any financial redress scheme should make dedicated provision for individuals who suffered especially severe abuses.

²²⁸ *McLean v. Canada* [2019] FCJ No 969 (QL)

²²⁹ <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/cep-2010-healing.pdf> p.5

²³⁰ See discussion at <https://www.vic.gov.au/sites/default/files/2022-02/SGRP%20Steering%20Committee%20Final%20Report%20-%20dated%2020%20July%202021.PDF>

²³¹ <https://territoriesredress.gov.au/>

²³² https://www.nsw.gov.au/sites/default/files/noindex/public%3A//2024-03/25151_Response_into_Reparations_for_Stolen_Generations_Document_v11%20%281%29.pdf 25151 Response into Reparations for Stolen Generations Document v11%20%281%29.pdf p. 7

²³³ <https://sixtiesscoopsettlement.info/wp-content/uploads/2020/06/Responding-Memorandum-of-Fact-and-Law-Plaintiffs-re-Objections-May-4-2018-1.pdf>

²³⁴ See, for example discussion in the context of New Zealand's response to abuse of Māori rights <https://www.waitangitribunal.govt.nz/assets/Uploads/He-Tirohanga-o-Kawa-ke-te-Tiriti-o-Waitangi.pdf> p. 106

²³⁵ For discussion of analogous issues see <https://commonslibrary.parliament.uk/research-briefings/cdp-2025-0116/>

²³⁶ This is the case with Australia's redress scheme for people abused in the care system <https://www.nationalredress.gov.au/apply/what-offer-redress/redress-payments>

²³⁷ Van Boven- Bassiouni Principle 18. See similarly the principle that where financial compensation is intended as a substitute for restitution of property or resources, the compensation should be equal in value to the interest damaged, confiscated or removed; <https://docs.un.org/en/A/HRC/39/1>

²³⁸ <https://docs.un.org/en/A/69/518> [47] See also discussion in <https://www.tandfonline.com/doi/epdf/10.1080/15564886.2017.1280108> at p. 301

Best practice may also require a material reparations programme to prioritise applicants who are terminally ill or living in extreme financial need. For example, the Canadian residential schools settlement agreement provided for an advance payment for older applicants, to be paid on application for financial redress, before their final claim was processed.²³⁹ A similar procedure was implemented in equivalent Scottish²⁴⁰ and Northern Irish schemes.²⁴¹

A two-part financial payments scheme, providing for both standardised and individually assessed payments, can balance needs for prompt settlement with the desire to provide more resources to those exposed to exceptional suffering. This model is associated with the Canadian Indian Residential Schools Settlement Agreement.²⁴² It has been adopted in Scotland,²⁴³ Lambeth²⁴⁴ and Northern Ireland²⁴⁵ in the context of redress for abuse in residential institutions. Standardised payments are paid to beneficiaries who can meet basic eligibility criteria; for instance, by showing that they lived at a particular address at a relevant time.²⁴⁶ Individually assessed payments require beneficiaries to demonstrate that they were subjected to designated severe human rights violations and to provide evidence of specific incidents. The evidentiary threshold for individually assessed payments should not be unduly burdensome.²⁴⁷

Rehabilitation

International human rights law also recognises an entitlement to measures of rehabilitation addressing the long-lasting mental, emotional, social and physical harm caused to victims and their communities. This entitlement to rehabilitation recognises that backward-looking redress or compensation may be inadequate to repair the harm done by severe breaches of human rights.²⁴⁸ Those affected will also require access to the means to ‘reconstruct their lives, get new life opportunities, fulfil their rights to justice and truth, and contribute to non-recurrence’.²⁴⁹ Where appropriate, survivors’ family members and descendants should be

²³⁹ https://www.rcaanc-cirnac.gc.ca/eng/1100100015594/1571582431348#sct1_5

²⁴⁰ <http://www.gov.scot/publications/financial-redress-for-survivors-of-child-abuse-in-care-advance-payment-scheme/>

²⁴¹ <https://www.cosica-ni.org/information-redress#toc-1>. See also Victoria’s Stolen Generations funeral fund: <https://www.premier.vic.gov.au/sites/default/files/2022-02/210423%20-%20Funeral%20Fund%20To%20Support%20The%20Stolen%20Generations.pdf>

²⁴² <https://www.rcaanc-cirnac.gc.ca/eng/1100100015594/1571582431348>

²⁴³ Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, ss. 38-39

²⁴⁴ The Lambeth scheme refers to a ‘harm’s way payment’ and an ‘individual redress payment’ <https://www.lambeth.gov.uk/sites/default/files/2021-08/lambeth-childrens-homes-redress-scheme-28-october-2019.pdf>

²⁴⁵ <https://www.cosica-ni.org/information-redress#toc-1>

²⁴⁶ This suggestion assumes that relevant records are readily accessible.

²⁴⁷ See, for instance, New Zealand’s Royal Commission suggesting ‘reasonable likelihood’ as the appropriate standard of proof within a trauma-informed scheme <https://www.abuseincare.org.nz/reports/from-redress-to-puretumu/from-redress-to-puretumu-5/1-1-introduction-21>. Scotland’s redress scheme for survivors of residential institutional abuse works on the basis of the ‘balance of probabilities’, which is a higher standard of proof, albeit it begins from the ‘presumption of truth’; Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 s. 36

²⁴⁸ See further Sveaass, N. (2013). Gross human rights violations and reparation under international law: approaching rehabilitation as a form of reparation. *European Journal of Psychotraumatology*, 4(1). <https://doi.org/10.3402/ejpt.v4i0.17191>

²⁴⁹ <https://docs.un.org/en/A/HRC/42/45> [98]

included in rehabilitation measures, particularly to recognise the effects of intergenerational trauma.²⁵⁰ To ensure that services are culturally accessible, government should fund and encourage participation of Gypsy/Traveller healthcare, welfare and cultural workers in developing dedicated rehabilitation measures for individuals affected by the ‘Tinker Experiments’. Where necessary, government should fund training measures to build community capacity.

Breaches of the right to health give rise to the right to reparations.²⁵¹ Those affected by ‘the Tinker Experiments’ have often experienced breaches of the right to health.²⁵² These include injuries to physical and mental health related to poor housing and experiences of sustained discrimination.²⁵³ Health difficulties may also arise from breaches of other human rights involving experiences of substantive inequality,²⁵⁴ structural violence²⁵⁵ and trauma.²⁵⁶ Redress in this respect might take the form of grants or benefits enabling survivors to access additional healthcare.²⁵⁷ However, reparations enabling as full a rehabilitation as possible would require specialised health services centring the particular needs of those affected by gross breaches of human rights.²⁵⁸ Older, disabled or chronically ill survivors may also benefit from additional social care provision.²⁵⁹ Government should develop cultural and gender-sensitive healthcare care pathways for Gypsies/Travellers in Scotland, with particular focus on the needs of those affected by ‘the Tinker Experiments’. These should enable access to good quality medical and psychological services including psychosocial support and trauma counselling.²⁶⁰ Affected people should be able to access care for life.²⁶¹ If collective rehabilitation is necessary, services should be established on a permanent independent basis. Existing services that are culturally appropriate and adapted to local needs should be supported and replicated. Possible models include Canada’s health and cultural support programmes for Indigenous survivors of abuse

²⁵⁰See further discussion <https://www.vic.gov.au/sites/default/files/2022-02/SGRP%20Steering%20Committee%20Final%20Report%20-%20dated%2020%20July%202021.PDF> pp. 41-43.

See also *Juvenile Re-education Institute v Paraguay* (2004) IACtHR Series C No 112, [319]

²⁵¹General Comment No. 14 <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/Health/GC14.pdf> [59] – [62]

²⁵² See also discussion of health issues among Travellers in Scotland <https://rm.coe.int/sixth-report-on-the-united-kingdom/1680b20bdc> [233]

²⁵³ See Fell Report p.25, noting a particular need for redress for health-related harms.

²⁵⁴ For example, on racism and the right to health see <https://docs.un.org/en/A/77/197>, particularly discussion of residential segregation at [26] – [28]

²⁵⁵ <https://docs.un.org/en/A/HRC/50/28> [68]-[75]

²⁵⁶ <https://docs.un.org/en/A/69/518> [35]

²⁵⁷ In Ireland, the Magdalene Restorative Justice Ex Gratia Scheme (Redress for Women Resident in Certain Institutions Act 2015) and the Mother and Baby Institutions Payment Scheme (Mother and Baby Institutions Payment Scheme act 2023) provide for funded healthcare, including a payment for survivors living outside of the jurisdiction. Similar provision is included in the Support for Survivors of Residential Institutional Abuse Act 2025.

²⁵⁸ <https://docs.un.org/en/A/69/518> [35]-[36]

²⁵⁹ See, for example, the Irish Caranua fund, which was empowered to pay for additional ‘home help hours’; <https://caranua.ie/what-is-the-fund/what-we-can-do/>. The paternalistic structure of Caranua, which provided benefits in kind rather than funding for survivors to spend on their own terms has been criticised. See discussion at Winter, Stephen, and Martin Wilkinson. "Evaluating paternalism in redress programs." *Politics & Policy* 52.6 (2024): 1399-1416.

²⁶⁰ <https://docs.un.org/en/A/HRC/30/42> [119]- [120]

²⁶¹ See e.g. Victoria Australia’s forced adoption redress scheme, which provides for life-long counselling access, and offers counselling to family members <https://www.vic.gov.au/redress-forced-adoptions>

in residential and day schools.²⁶² Government should encourage recruitment and retention of Gypsy/Traveller staff in developing and delivering relevant services.²⁶³

Preventive and public health measures may also be required to address the health impacts of intergenerational trauma; for instance, steps may be taken to include trauma work in the national curriculum where appropriate.²⁶⁴ Consideration should also be given to allowing survivors' family members to access dedicated healthcare services. For example, Canada's health and cultural support programmes are open to the spouses and partners of survivors of institutional abuse, as well as to other relatives affected by associated intergenerational trauma.²⁶⁵

Rehabilitation may also be necessary to help affected people to rebuild individual and community relationships which were disrupted by 'the Tinker Experiments'. For instance, government may be required to fund community-led supports for family reunification for individuals affected by forced removal of children.²⁶⁶ There is a precedent in the UK Government's Child Migrant Family Restoration Fund,²⁶⁷ established as part of a package of reparations measures for former child migrants. This fund, administered by the Child Migrants Trust, covers travel costs associated with family reunions. Some survivors may benefit from support in researching family history, and in accessing relevant records. In Australia, reparations for 'the Stolen Generations' have included funding for organisations such as Link-Up,²⁶⁸ which assist survivors in rebuilding connections to family and community. A recent settlement between the Canadian government and Inuit communities affected by historical forced displacement includes funding for a 'travel and healing programme', which is accessible to descendants of displaced people.²⁶⁹

In some cases, rehabilitation may be necessary to rebuild survivors' access to state and community services. This is because some survivors' complex needs may make it difficult to navigate existing services, or because long-term discrimination has undermined trust in state authorities. The Victims and Survivors Service in Northern Ireland may provide a useful model here. It offers supports to victims of historical abuse, in collaboration with specialist local

²⁶² See further <https://www.sac-isc.gc.ca/eng/1581971225188/1581971250953> and <https://www.sac-isc.gc.ca/eng/1594067962949/1594068284591>. The Indian Residential Schools Settlement Agreement included funding for the Aboriginal Healing Foundation to fund community-based healing initiatives. The Day Schools Settlement Agreement follows a similar model; <https://mcleanlegacyfund.ca/>. The Day Scholars Settlement Agreement established the Day Scholars Revitalization Society, which can make individual grants to allow survivors and their children to access health services; <https://www.drsociety.ca/>.

²⁶³ See e.g. Yoorook Commission recommendations [85] <https://www.yoorook.org.au/reports-and-recommendations/recommendations>

²⁶⁴ <https://docs.un.org/en/A/HRC/30/42> [120]

²⁶⁵ See further <https://www.sac-isc.gc.ca/eng/1581971225188/1581971250953> and <https://www.sac-isc.gc.ca/eng/1594067962949/1594068284591>. The Indian Residential Schools Settlement Agreement included funding for the Aboriginal Healing Foundation to fund community-based healing initiatives. The Day Scholars Settlement Agreement established the Day Scholars Revitalization Society, which can make individual grants to allow survivors and their children to access health services; <https://www.drsociety.ca/>

²⁶⁶ See suggestion in St Andrews Report p. 78

²⁶⁷ <https://assets.nationbuilder.com/cmt/pages/18/attachments/original/1708396681/FRF-Information-Pack-August-2014.pdf?1708396681>

²⁶⁸ <https://aiatsis.gov.au/family-history/you-start/link>. See also. <https://prov.vic.gov.au/koorie-services/victorian-stolen-generations-services>.

²⁶⁹ <https://www.qia.ca/what-we-do/qikiqtani-truth-commission/>

organisations.²⁷⁰ These include welfare advice, access to complementary²⁷¹ and psychological therapies, and personal development support, including education and training opportunities.

Finally, rehabilitation measures may be needed to respond to loss of cultural heritage. The SHRC's research indicates that survivors would support measures to protect and revive Gypsy/Traveller culture.²⁷² Children and grandchildren²⁷³ of survivors of 'the Tinker Experiments' may derive particular benefit from rehabilitation measure where survivors' experiences have inhibited their ability to pass cultural heritage down to future generations.²⁷⁴ Canada's Day Scholars settlement included funding towards the creation of a Day Scholars Revitalization Society, to support initiatives including cultural activities. Both survivors and their children are entitled to apply for individual grants from the Society.²⁷⁵

Interventions must be agreed in consultation with Gypsies/Travellers in Scotland and their representatives. Appropriate individual interventions may include:

- Funded access to teaching in languages of cultural importance, such as Scottish Cant and Beurla Regaird, particularly for those who were deprived of opportunities to learn these languages in childhood.²⁷⁶
- Funded access to training in other cultural practices, including in traditional arts, music and crafts, particularly for those who were deprived of opportunities to learn about these traditions in childhood.²⁷⁷
- Funded opportunities for survivors to record and share collective history and cultural knowledge.²⁷⁸
- Funded opportunities for survivors to socialise with other affected Gypsies/Travellers and to reconnect with Gypsy/Traveller culture, especially for individuals whose kinship connections have been damaged by the 'Tinker Experiments'.²⁷⁹
- Support for individuals to formally reclaim traditional personal and family names if desired, including by waiving relevant administrative fees.²⁸⁰
- Funded assistance to pursue nomadic or semi-nomadic lifestyles and to re-establish traditional nomadic routes where desired.²⁸¹

²⁷⁰ See e.g. <https://www.victimsservice.org/mother-baby-institutions-magdalene-laundries-workhouses/>

²⁷¹ See Canadian TRC recommendation 22 <https://www.rcaanc-cirnac.gc.ca/eng/1524499024614/1557512659251>

²⁷² SHRC Draft p. 53

²⁷³ Best practice suggests that this term should include adopted children, long-term foster children and others (e.g. nieces, nephews) raised in a survivor's home, and the next generation on the same basis.

²⁷⁴ See Fell Report p. 24 on 'lost' younger people.

²⁷⁵ <https://www.dsrsociety.ca/>

²⁷⁶ See similarly *Bringing Them Home* Recommendation 12A <https://bth.humanrights.gov.au/the-report/report-recommendations>. For further discussion of minority language rights see <https://docs.un.org/en/A/HRC/22/49>

²⁷⁷ See e.g. Canada's National Inquiry into Missing and Murdered Indigenous Women and Girls 'Calls for Justice' https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf [2.3]

²⁷⁸ See e.g. discussion of Sweden's 'living history forum' in <https://digitallibrary.un.org/record/4059062>

²⁷⁹ See St Andrews Reports p. 77. For an example see "Dublin Honours Magdalenes" <https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-flanagan-launches-report-of-the-dublin-honours-magdalenes-event/>

²⁸⁰ See similar recommendation from the Canadian TRC here <https://www.rcaanc-cirnac.gc.ca/eng/1524495846286/1557513199083>

²⁸¹ There is an analogous recommendation around 'return to country' in Recommendation 11 of the *Bringing*

Violations of cultural rights may be an especially appropriate target for collective reparations. Collective reparations are especially necessary to support individual rehabilitative measures, like those discussed above, where cultural heritage has been extinguished or diminished by decades of assimilationist policies. In other jurisdictions, reparations programmes have established collective funds to facilitate restitution of cultural rights and revitalisation of cultural heritage. Examples include:

- Canada's settlement with the descendants of Inuit people forcibly relocated to the High Arctic includes substantial contributions to the Qikiqtani Inuit Association's Benefits and Legacy Fund, which funds cultural projects focusing on crafts, music and dance, hunting and fishing and culturally sensitive daycare.²⁸² The settlement also included separate funding for revitalisation of traditional dog sledding.²⁸³
- The Norwegian Parliament's 2004 collective redress fund for Romani/Tater people affected by historical forced assimilation policies supported 'initiatives and activities that promote the preservation and development of the Romani/Travellers' culture, language and history'.²⁸⁴
- Canada's Indian Residential School Settlement Agreement provided for a Commemoration Fund, to support a range of community initiatives including efforts to 'promote Indigenous languages, cultures, and traditional and spiritual values'.²⁸⁵
- Canada's Federal Indian Day Schools Settlement Agreement established the McLean Day Schools Settlement Corporation to distribute funding for community-based legacy projects to support activities including cultural revitalisation.²⁸⁶
- Canada's 'Sixties Scoop' settlement agreement for indigenous people affected by historical policies of child removal funded the establishment of the Sixties Scoop Healing Foundation which makes grants to community organisations engaged in cultural reclamation and commemoration activities.²⁸⁷
- As part of Canada's Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ People the government funded a Cultural Spaces in Indigenous Communities Program, particularly focused on revitalising and constructing cultural activities for indigenous women and girls.²⁸⁸
- In 2024, the Australian government announced a major contribution to funding The Healing Foundation's collective healing grant programme.²⁸⁹ The programme funds Stolen Generations organisations to organise activities including cultural camps and

Them Home Report <https://bth.humanrights.gov.au/the-report/report-recommendations>.

²⁸² <https://www.qia.ca/wp-content/uploads/qia/2019/10/2018-2019-Benefits-and-Legacy-Fund-Report.pdf>

²⁸³ <https://www.qia.ca/what-we-do/qikiqtani-truth-commission/>

²⁸⁴ See discussion at <https://www.regjeringen.no/contentassets/b3beb7e9982f4cd3a6ab324cbe6f3a9b/white-paper-no.-12-national-minorities-in-norway.pdf> 5.1.1.2. The fund was later transferred to the Arts Council for administration as a grants scheme.

²⁸⁵ <https://www.rcaanc-cirnac.gc.ca/eng/1100100015576/1571581687074#sect6>. See also Canada's National Inquiry into Missing and Murdered Indigenous Women and Girls 'Calls for Justice' https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf [2.5]

²⁸⁶ <https://mcleanlegacyfund.ca/> Funding is also available to establish local Survivor Committees to consult on the initiatives needed in their communities.

²⁸⁷ <https://www.sixtiesscoophealingfoundation.ca/about/how-we-started-2/recommendations>

²⁸⁸ See further <https://www.rcaanc-cirnac.gc.ca/eng/1628786076040/1628786094489>

²⁸⁹ See further <https://healingfoundation.org.au/2024/05/26/stolen-generations-funding-a-much-needed-boost-to-healing>

workshops.²⁹⁰

Specific collective interventions in the context of state responses to ‘the Tinker Experiments’ may include:

- It may be appropriate to establish a Gypsy/Traveller language and cultural centre to lead on cultural revitalisation efforts. Facilitating collective purchase of a suitable site may be appropriate to maximise opportunities for cultural self-determination.²⁹¹ This centre may be co-located with the community-governed archival centre, suggested in the St Andrews Report.²⁹² One example of an equivalent initiative is the centre for Romani/Tater culture and permanent exhibition at the Glomdal Museum, Norway, funded by the state as part of a collective reparations programme.²⁹³
- Government could fund a multi-year research programme²⁹⁴ to work with Gypsy/Traveller communities to identify cultural heritage which has been lost or is under threat in Scotland, and propose measures for preservation and revitalisation. Measures should adhere to the United Kingdom’s safeguarding obligations under the UNESCO Convention for Intangible Cultural Heritage 2003.²⁹⁵ A non-exhaustive list of possible areas of focus includes language, storytelling, folklore, music, trades and crafts, performance, social and culinary practices, animal husbandry, traditional healing practices,²⁹⁶ and knowledge of nomadic routes and sites of historical or spiritual importance.²⁹⁷ The St Andrews Report makes best practice recommendations for future collaborative research with Gypsies/Travellers in Scotland.²⁹⁸
- Government could commit to sustained investment in language education, particularly in adult education, to support individuals’ access to teaching of culturally significant languages, including Scottish Cant and Beurla Regaird.²⁹⁹
- Government could establish long-term funds for production of relevant films, artistic

²⁹⁰ <https://healingfoundation.org.au/2024/05/26/stolen-generations-funding-a-much-needed-boost-to-healing/>
²⁹¹ See for example Waitangi Tribunal <https://ndhadeliver.natlib.govt.nz/webarchive/20230914222921mp> <https://waitangitribunal.govt.nz/assets/W-T-Ngati-Kahu-Remedies-Report.pdf> 124

²⁹² St Andrews Report at p. 78.

²⁹³ See discussion at <https://www.regjeringen.no/contentassets/b3beb7e9982f4cd3a6ab324cbe6f3a9b/white-paper-no.-12-national-minorities-in-norway.pdf> 3.5.3

²⁹⁴ See Canada TRC recommendation 65 <https://www.rcaanc-cirnac.gc.ca/eng/1524504501233/1557513602139>

²⁹⁵ See further <https://ich.unesco.org/en/faq-00021>. The UK ratified the Convention in March 2024. The UK has not ratified the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions

²⁹⁶ <https://www.rcaanc-cirnac.gc.ca/eng/1524499024614/1557512659251>

²⁹⁷ For an example of community led mapping of culturally-significant territory see <https://www.landlawandjustice.eu/reclaiming-agency-community-mapping-and-the-use-of-technologies-by-latin-american-indigenous-peoples-to-protect-their-lands/>

²⁹⁸ St Andrews Report p. 78

²⁹⁹ See e.g. the Norwegian Parliament’s response to the country’s TRC investigating the impacts of forced Norwegianisation, particularly Resolutions 17, 19, 20, 21, 29 <https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Vedtak/Sak/?p=94524>

projects and events,³⁰⁰ to contribute both to revitalisation of Gypsy/Traveller cultural practices,³⁰¹ and to memorialisation of ‘the Tinker Experiments’.³⁰² This funding should prioritise Gypsy/Traveller artists, and should encompass any support necessary to develop their practice.

- Government could fund work with museums, libraries, heritage organisations and archives to explore how they can best enable individual and community access to artefacts and information relating to Gypsy/Traveller history and heritage. This should supplement the memorialisation work discussed above. The emphasis here should be on ensuring that these institutions are accessible to Gypsies/Travellers in Scotland, and can act effectively as community ‘facilitators of memory.’³⁰³ In some circumstances, it may be appropriate to explore possibilities for returning artefacts to family members or to an appropriate community-governed cultural centre, or to seek ongoing consent for retention.³⁰⁴
- Government may take measures to support individuals who wish to reconnect with a nomadic or semi-nomadic way of life, or to access and use spiritually important sites³⁰⁵ currently in private ownership.³⁰⁶ In addition to providing individual material and social

³⁰⁰ See Canada’s TRC <https://www.rcaanc-cirnac.gc.ca/eng/1524505403680/1557513866487>

³⁰¹ See SHRC Draft p. 52

³⁰² <https://docs.un.org/en/A/HRC/37/55>

³⁰³ <https://docs.un.org/en/A/HRC/25/49> [88]

³⁰⁴ See further the Yoorook Commission recommendations to the Victorian government at 26-33 <https://www.yoorook.org.au/reports-and-recommendations/recommendations>. The New South Wales Stolen generations reparations scheme provides funding for ‘keeping places’; culturally appropriate sites for retention and display of indigenous artefacts.

³⁰⁵ See discussion of spiritually important sites in Scotland at <https://www.youtube.com/watch?v=HA-NjBkKqfo>.

³⁰⁶ See by analogy Canada’s National Inquiry into Missing and Murdered Indigenous Women and Girls Calls for Justice <https://www.rcaanc-cirnac.gc.ca/ForcePDFDownload?url=https%3a%2f%2fwww.rcaanc-cirnac.gc.ca%2fdAM%2f%2fdAM-CIRNAC-RCAANC%2fdAM-REC%2fSTAGING%2ftexte-text%2fcall%20for%20justice%2017%2017097179431%20eng.pdf> at p. 16 and UN Expert statement on the UK-Mauritius Agreement over the Chagos Islands <https://www.ohchr.org/en/press-releases/2025/06/agreement-between-mauritius-and-uk-fails-guarantee-rights-chagossians-say-un> stressing the need to restore access to cultural sites. The right to access or use land for cultural purposes is protected by Article 27 of the ICCPR and adheres to minorities as well as to indigenous peoples; UNHRC General Comment No.23 <https://www.refworld.org/legal/general/hrc/1994/en/26900> [7]. See also UNCESCR General Comment No. 26 <https://docs.un.org/en/E/C.12/GC/26> [10]. Under the ICCPR, minorities are entitled to restitution or compensation where they have been prevented from pursuing traditional land use or occupation; *Angela Poma Poma v. Peru*, Communication No. 1457/2006, UN Doc CCPR/C/95/D/1457/2006, Views adopted by the UN Human Rights Committee on 27 March; *Daniel Billy et al. v. Australia*, Communication No. 3624/2019, UN Doc CCPR/C/135/D/3624/2019, Views adopted by the UN Human Rights Committee on 22 September 2022. The argument here is that ‘the Tinker Experiments’ inhibited or destroyed affected people’s ability to access or use land for particular purposes, so that reparations should involve rehabilitative (or restitutionary) measures to enable revival of that use. If this is impossible, other compensation should be offered. It is important, however, to consider alternatives, such as rights of access and use, or models for common management of access and use in specific areas; see e.g. reasoning in InterAmerican Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006 [132]; *Centre for Minority Rights Development and Minority Rights Group International and Centre on Housing Rights and Evictions (intervening) (on behalf of Endorois Welfare Council) v Kenya*, Merits, Comm 276/2003, 46th Ordinary Session (11-25 November 2009), 27th Activity Report, IHR 3591 (ACHPR 2009), November 2009, African Commission on Human and Peoples’ Rights [ACHPR] (recommending unrestricted access to certain lands for specific spiritual and pastoral purposes). For an overview of Australian approaches to questions of cultural access to and use of land see <https://soe.dccew.gov.au/overview/pressures/indigenous-governance-rights-and-access>

supports, and expanding provision of high quality appropriate authorised stopping sites, government would need to commission a review of current legal arrangements preventing relevant nomadic, cultural and spiritual practices requiring access to land. This review should make proposals for future law reform, particularly of the laws on trespass, planning regulations and protections against discrimination. A full analysis of current significant legal obstacles to securing and reviving nomadic practices in Scotland is beyond the scope of this document. In the United States, models are emerging for encouraging land owners to voluntarily facilitate indigenous groups in accessing their property, or to transfer ownership of that property for long-term community use.³⁰⁷ Scotland could champion equivalent projects.

A transformative approach to reparations suggests that Gypsies/Travellers in Scotland should be involved in leading, commissioning and implementing relevant projects, and should have funded access to any educational, capacity-building or training opportunities required to facilitate long-term engagement. Special measures should be taken to ensure that women³⁰⁸ and vulnerable and marginalized members of Gypsy/Traveller communities – for instance incarcerated people or children living in state care - are empowered to participate in cultural revitalisation programmes. In addition, care should be taken to ensure that adult survivors of the ‘Tinker Experiments’ who do not have children or grandchildren are not excluded from activities designed to reconnect with cultural practices or to share their cultural knowledge and personal experiences with younger people.³⁰⁹

Guarantees of Non-Repetition

Reparations measures must focus on the future as well as the past and present.³¹⁰ The First Minister’s June 2025 apology repeatedly acknowledged the importance of acting to ‘address the errors of the past and to work for a better future’.³¹¹ Similarly, participants in the Fell consultation have asked Scotland to learn from ‘the mistakes of the past’.³¹² In international human rights law, these commitments are supported by guarantees of non-repetition or non-recurrence; interventions designed to cease continuing rights violations and prevent past violations from happening again.³¹³ Relevant measures may include legislative reform, ratification of international treaties, or repeal or repudiation of laws which enabled abuses of human rights.³¹⁴ Under Article 1 ECHR, states are expected to ensure that their domestic law is compatible with the Convention.³¹⁵ In cases where a group rights violation has arisen as a result of national policy, the ECtHR may encourage the state involved to pursue reforms

³⁰⁷See discussion in <https://download.ssrn.com/2025/8/6/4748991.pdf>
<https://ecologyandsociety.org/vol28/iss1/art8/> <https://landforgood.org/wp-content/uploads/2024/03/LFG-OEFFA-Toward-Land-Justice-guide.pdf>

³⁰⁸On recognising women’s role in protecting minority culture see <https://www.rcaanc-cirnac.gc.ca/eng/1652970859580/1652970882836#chp3-2>

³⁰⁹ See Fell Report pp. 17-18

³¹⁰ <https://docs.un.org/en/A/HRC/45/45> [22]

³¹¹ <https://www.gov.scot/publications/historical-policies-affecting-gypsy-traveller-communities-first-ministers-statement/>

³¹² See Fell Report p. 23

³¹³ Van Boven-Bassiouni Principle 23. See also UNCERD Article 2(i)

³¹⁴ Joinet-Orentlicher Principles <https://docs.un.org/E/CN.4/2005/102/Add.1> Principle 38.

³¹⁵ See e.g. *Drozyk v. Ukraine* App No. 27849/15 (ECtHR 25 January 2024) [61]

designed to permanently end the breach.³¹⁶ It is beyond the scope of this research to comprehensively map recent human rights abuses which represent a recurrence or repetition of abuses associated with ‘the Tinker Experiments’. However, Gypsies/Travellers in Scotland are arguably exposed to analogous abuses today.³¹⁷

In addition to legislative reform, guarantees of non-recurrence are likely to require institutional and societal changes. For instance, effective reform will also often require providing training to relevant personnel, to support cultural change in institutions with a history of involvement in relevant abuses. It may also require measures designed to change majority populations’ attitudes at a personal and societal level.³¹⁸

As with all other elements of any transformative reparations programme, affected people should be empowered to lead in identifying priorities for action. Measures addressing the continuing human rights abuses associated with ‘the Tinker Experiments’ could include:

- Law reform.³¹⁹ The state should work in consultation with Gypsies/Travellers in Scotland and their representatives to revisit laws which have enabled the human rights abuses associated with ‘the Tinker Experiments’, particularly in the areas of trespass and private property, housing, planning and child law. Laws criminalising nomadic practices should be repealed. Government should also review existing anti-discrimination and minority rights legislation to ensure that rights enjoyed by Gypsies/Travellers in Scotland under international standards are adequately recognised in domestic law.³²⁰ To avoid backsliding on reparations measures into the future, government should establish local rights-based monitoring and accountability mechanisms to ensure continued improvement of health and housing conditions for those affected by the ‘Tinker Experiments’.³²¹
- Ensuring rights-centred practice: Government should review relevant statutory guidance to ensure that laws affecting Gypsies/Travellers in Scotland - particularly child law, planning law and housing law - are interpreted in accordance with international human rights standards.³²² Professionals in relevant areas of responsibility, including police, local authority officials, social workers,³²³ housing and planning officials, the judiciary, charity workers, lawyers, doctors, psychiatrists and other health and mental health workers should receive relevant training directly addressing the legacies of the ‘Tinker Experiments’ and their professions’ historical relationship to associated

³¹⁶ See e.g. *Broniowski v. Poland* [2004] ECHR 274 [193]-[194], *DH v. Czech Republic* [2008] ECHR 922 [216]

³¹⁷ For instance, on housing see e.g. <https://www.scottishhumanrights.com/news/scottish-housing-regulator-finds-serious-failings-in-perth-and-kinross-council-gypsy-traveller-sites/>; <https://rm.coe.int/sixth-report-on-the-united-kingdom/1680b20bdc> [103] –[104] (on barriers to nomadic lifestyles);

³¹⁸ <https://docs.un.org/en/A/HRC/27/52> 11

³¹⁹ On the need for legal protection see Fell Report p.24

³²⁰ See comparable recommendations at <http://digitallibrary.un.org/record/4059062> p. 19 and <https://docs.un.org/en/A/74/183> at pp. 23-25

³²¹ <https://docs.un.org/en/A/HRC/37/53> 13-14

³²² Again see <https://docs.un.org/en/A/74/183> at pp. 23-25. For an example see e.g. engagement with Canada’s TRC “Calls to Action” by the Advisory Committee on Homelessness <https://housing-infrastructure.canada.ca/homelessness-sans-abri/reports-rapports/advisory-com-consultatif-eng.html>

³²³ See further <https://www.iriss.org.uk/sites/default/files/2017-02/insight-35.pdf> and <https://content.iriss.org.uk/gypsy-traveller-intersectionality/index.html>

abuses.³²⁴ The St Andrews report recommends that local authorities should ‘consider conducting listening exercises that highlight the historic and ongoing impact of child welfare policies’ on local Gypsy/Traveller communities. Where this is done, listening exercises should feed into relevant training for professionals and staff working with Gypsy/Traveller children and their families.³²⁵

- Ensuring access to justice: Removing barriers to access to justice will be essential to defending affected people’s rights into the future.³²⁶ Government should fund the development of specialist legal advice services for Gypsies/Travellers in Scotland. In addition, government should review existing training in intercultural competency at all levels of the legal system; again particularly in the areas of housing and planning law and child law. This should include training to ensure that lawyers have the requisite knowledge to properly protect the rights of Gypsies/Travellers in Scotland in relevant proceedings. Training materials should be developed in collaboration with Gypsies/Travellers in Scotland. Government should also fund programmes designed to improve access to careers in Scotland’s legal professions for Gypsies/Travellers.
- Empowering Gypsy/Traveller leadership: Any reparations programme must recognise exclusion from public and political life as both a cause and a consequence of the abuses associated with ‘the Tinker Experiments’. Government should prioritise creating the conditions for effective participation of Gypsies/Travellers in Scotland in all aspects of the life of the state. Government should take measures to ensure their representation within public institutions and bodies, particularly those with a regulatory or law-making function, and especially in forums where the decisions taken will directly impact their communities.³²⁷ The work of existing visible Gypsy/Traveller leaders and representative organisations should be promoted and supported.³²⁸ Scottish civil society groups and human rights organisations should develop outreach programmes where necessary to encourage Gypsy/Traveller participation in their activities, and encourage recruitment and retention of Gypsy/Traveller personnel.³²⁹
- Improving Access to Employment and Education: The government must take measures addressing the wider socio-economic vulnerability of Gypsies/Travellers in Scotland,³³⁰ and empowering Gypsy/Traveller participation and leadership in the workplace.³³¹

³²⁴ See similarly, Australia’s *Bring them Home* report Ch. 14 Recommendations 8 and 9 <https://bth.humanrights.gov.au/the-report/part-4-reparation/chapter-14-making-reparation> and the Canadian TRC Call to Action [57] <https://www.rcaanc-cirnac.gc.ca/eng/1524504124015/1557514077713>. The St Andrews report at p. 79 suggests that the police should carry out a systemic review of ongoing and historical relationships with Gypsy/Traveller communities in Scotland, and to review existing initiatives for better relations with them. The suggestion in this document essentially suggests expanding that recommendation to all relevant professions.

³²⁵ St Andrews Report p. 78.

³²⁶ For general discussion of access to justice and human rights issues in Scotland see <https://www.scottishhumanrights.com/projects-and-programmes/spotlight-projects/access-to-justice-for-potential-human-rights-breaches/>. See also <https://docs.un.org/en/A/HRC/37/53> p. 16 *IDG v. Spain* UN Doc E/C. 12/55/D/2/2014, IHRL 3882 (CESCR 2015) stresses the importance of ensuring access to legal remedies as a dimension of the right to housing. See also <https://docs.un.org/en/A/HRC/40/61>.

³²⁷ See e.g. SHRC Draft p. 52. See also <https://docs.un.org/en/A/HRC/30/42> [114]-[115]. For discussion of approaches to participation in the context of indigenous peoples’ rights see <https://docs.un.org/en/A/HRC/18/42>

³²⁸ For comparable recommendations see <https://digitallibrary.un.org/record/797194> [102]

³²⁹ For comparable recommendations, again, see <https://digitallibrary.un.org/record/797194> [102]

³³⁰ See further <https://rm.coe.int/5th-op-uk-en/1680ab55b4> [218]

³³¹ See similar recommendation in <https://digitallibrary.un.org/record/797194> [99]

These should include measures to encourage and support recruitment of Gypsies/Travellers in Scotland across all sectors,³³² and to develop culture-sensitive access to relevant educational and training opportunities.³³³ These measures should integrate protection of Gypsy/Traveller identity and culture and guarantee their dignity and equality.³³⁴ Government should also ensure that all state-regulated education is genuinely accessible to Gypsies/Travellers in Scotland.³³⁵

- Education to challenge Discriminatory and Racist Social Attitudes:³³⁶ Government should fund educational programmes designed to address long-standing discriminatory attitudes across wider society,³³⁷ and ensure Gypsies'/Travellers' equal access to education. The St Andrews Report has made recommendations for relevant educational interventions,³³⁸ these should be adopted and expanded upon. Government should review and revise national curricula at all levels,³³⁹ particularly in the years of compulsory schooling, to include accurate and comprehensive discussion of Gypsy/Traveller heritage, arts, culture and history including the history of the 'Tinker Experiment'.³⁴⁰ Educators should receive appropriate training to support this curriculum,³⁴¹ and relevant materials should be incorporated into teacher training in post-secondary institutions. These materials should prioritise Gypsy/Traveller self-representation,³⁴² including self-representation by survivors of 'the Tinker Experiments'.³⁴³ Consideration should also be given to developing and supporting relevant public programmes of cross-community dialogue, engagement and adult education.³⁴⁴ Participation of Gypsy/Traveller education professionals in these initiatives should be funded and encouraged and programmes to train, recruit and support Gypsy/Traveller education professionals should be implemented.³⁴⁵ To secure this work for the future, relevant modules and courses in Gypsy/Traveller studies should be funded at university level.

³³²See similarly, Canadian TRC recommendations: <https://www.rcaanc-cirnac.gc.ca/eng/1524506030545/1557513309443>. See also the Chicago Reparations Won Curriculum <https://chicagotorture.org/reparations/ordinance/>

³³³ See further <https://docs.un.org/en/A/HRC/42/45> [103]-[106]

³³⁴ See similar recommendation in <https://digitallibrary.un.org/record/797194> [99]

³³⁵ St. Andrews Report p. 79.

³³⁶ See discussion at Fell Report p. 24

³³⁷ For comparable recommendations see <https://digitallibrary.un.org/record/797194> [96] and Framework Convention Advisory Committee Thematic Report <https://rm.coe.int/prems-104224-gbr-2568-framework-convention-thematic-commentary-no1-a4-/1680b1ff31> at p. 16.

³³⁸ St Andrews Report p. 79

³³⁹See also <http://digitallibrary.un.org/record/4059062> p. 17; <https://docs.un.org/en/A/HRC/46/57> [97]; <https://docs.un.org/en/A/76/180> [86]

³⁴⁰ On education and human rights responses to historical injustice see <https://docs.un.org/en/A/HRC/37/65> [78]-[80]. On the relationship between history teaching and human rights goals see <https://docs.un.org/en/A/68/296> [55]-[56].

³⁴¹ For detailed relevant recommendations from the Canadian TRC see <https://www.rcaanc-cirnac.gc.ca/eng/1524504501233/1557513602139>

³⁴² For comparable recommendations see <https://digitallibrary.un.org/record/797194> [107]

³⁴³ See discussion at Fell Report p. 25. For an example of Irish educational materials co-produced with survivors of institutional abuse see <https://www.universityofgalway.ie/irish-centre-human-rights/newsevents/mary-harney-dr-maeve-orourke-and-human-rights-law-clinic-students-influence-ncca-teaching-resources.html>

³⁴⁴ See Fell Report p. 23

³⁴⁵ See comparable recommendations in <https://digitallibrary.un.org/record/797194> [108] and <http://digitallibrary.un.org/record/4059062> p. 17

- Changes within media and social media platforms. Government should also take measures to monitor discriminatory, stereotyped, inflammatory or racist representations of Gypsies/Travellers in Scotland in media and social media and to respond appropriately.³⁴⁶ In addition, government should encourage positive representation and self-representation of Gypsies/Travellers in Scotland in traditional and new media,³⁴⁷ and encourage training and recruitment of Gypsy/Traveller media professionals.³⁴⁸ Government should work with social media platforms to address systemic bias against Gypsies/Travellers in Scotland.³⁴⁹ As suggested in the St Andrews Report, media organisations should undertake their own truth-seeking processes and formally apologise for their role in exacerbating discrimination against Gypsies/Travellers in Scotland.³⁵⁰
- Addressing crime against Gypsies/Travellers. Government should ensure prompt and effective investigation of any crimes against Gypsy/Traveller individuals and communities, including by investigating discriminatory motives, hate speech and incitement to violence. Government should ensure collection of data on reporting, investigation, prosecution and sentencing of these crimes, and make it publicly accessible, while respecting the right to privacy. In particular, measures should be taken to ensure that all allegations of harassment, discrimination against or abuse of Gypsies/Travellers in Scotland by police officers are thoroughly investigated.³⁵¹

While institutional reform preventing repetition of human rights abuses is an important part of any reparations programme, it cannot substitute for individual reparations for those harmed by past violations.³⁵² It would not be appropriate to delay all other reparations to those directly affected by ‘the Tinker Experiments’ until this work is completed.

Conclusion

This document outlines a rights-based approach to reparations for those affected by ‘the Tinker Experiments’. It draws on relevant human rights jurisprudence and on proposals adopted in a range of other jurisdictions which have recently provided reparations for abuses associated with forced child removal and forced assimilation affecting minoritised people.

The document makes the following key points:

- The SHRC has collated evidence of gross and systemic human rights abuses associated with the ‘Tinker Experiments’. This evidence is corroborated by additional research commissioned by government. Accordingly, survivors of ‘the Tinker Experiments’ and their descendants have a prima facie entitlement to reparations measures under international human rights law.

³⁴⁶ For comparable recommendations see <https://digitallibrary.un.org/record/797194> [93] See also <https://docs.un.org/en/A/HRC/28/64> <https://docs.un.org/en/A/HRC/45/45> [85] – [87]

³⁴⁷ See more detailed Canadian TRC recommendation here <https://www.rcaanc-cirnac.gc.ca/eng/1524505692599/1557513408573>

³⁴⁸ See <https://digitallibrary.un.org/record/797194> 108

³⁴⁹ For further recommendations on targeting of minorities on social media see <https://docs.un.org/en/A/HRC/46/57>

³⁵⁰ St Andrews Report pp. 79-80.

³⁵¹ For comparable recommendations see <https://digitallibrary.un.org/record/797194> [92]

³⁵² See *Kuric v. Slovenia* [2012] ECHR 1083

- Scotland's existing policy responses to Gypsy/Traveller communities cannot, by themselves, fulfil the obligation to make reparations to those affected by 'the Tinker Experiments'.
- The claim for reparations for 'the Tinker Experiments' is unusual in the United Kingdom context where recent reparations schemes for 'historical injustice' have focused on abuses suffered by children in state care. Whereas these schemes largely focused on violations of physical integrity, the abuses suffered by those affected by 'the Tinker Experiments' often fall within the scope of economic, social and cultural rights. Breaches of these rights also give rise to a right to reparations under international human rights law, and there is precedent for granting reparations in a range of other jurisdictions. Reparations programmes in many of these jurisdictions have focused on indigenous people. However, claims to reparations for 'the Tinker Experiments' do not depend on the assertion of indigenous status in domestic or international law.
- This document suggests that Scotland should adopt a 'transformative approach' to reparations for 'the Tinker Experiments'. This means, in particular, that:
 - Those affected by 'the Tinker Experiments' must be actively involved in designing and implementing any reparations programme. Accordingly, although this document, recommends human rights issues for consideration in the design of a reparations programme, it does not seek to have the 'final say'.
 - The reparations scheme must provide direct reparations for the harms at the heart of 'the Tinker Experiments' including actual and threatened forced child removal, forced displacement, and long-term discriminatory confinement to inadequate segregated housing.
 - Scotland must be willing to critique and revisit past legal standards which enabled the abuses at the heart of 'the Tinker Experiments'. Scotland should not rely on the idea that certain abuses are 'historical' in an attempt to justify excluding them from the scope of substantive reparations. Instead, any reparations scheme should recognise that some past abuses are ongoing in the present, while others have continuing and intergenerational consequence.
 - Any reparations programme should avoid reinforcing monocultural or assimilationist norms. In particular, Scotland's reparations programme should:
 - Avoid delay, or bureaucratic, biased or adversarial practices tending to reinforce longstanding imbalances of power in Scottish society.
 - Prioritise recruitment of Gypsy/Traveller staff to roles in leading, administering and implementing reparations programmes.
 - Recognise material differences between beneficiaries and adapt any reparations measures as necessary.
 - Avoid distinguishing between beneficiaries on the basis of adherence to externally-imposed notions of 'authentic' Gypsy/Traveller identity.
 - Preserve beneficiaries' rights to pursue justice in the courts as necessary.
- A comprehensive reparations programme must involve measures of satisfaction, restitution, compensation, rehabilitation and guarantees of non-repetition. In particular:
 - Satisfaction:
 - The First Minister's apology of June 2025 does not meet the standards required under international human rights law. Affected people may wish to request an additional public apology.
 - Scotland should support dedicated memorialisation processes in

collaboration with affected people. In addition, it may be appropriate to review how publicly funded institutions represent the history of ‘the Tinker Experiments’. Finally, government should review and address all obstacles to individual and researcher access to relevant documents and objects in the custody of museums and archives, including local authority and private archives

- Scotland should urgently review the evidence presented in St. Andrew’s report, the Fell Report and the SHRC to determine the proper scope of a public inquiry into the most severe human rights abuses associated with ‘the Tinker Experiments’. Care should be taken to appropriately balance the need for a public inquiry with the need to vindicate affected people’s rights, including by implementing the right to material reparations.
- Material Reparations (Restitution, Compensation, Rehabilitation):
 - Where appropriate, consideration should be given to allowing survivors’ family members to claim material reparations, to recognise relevant intergenerational harm.
 - Individual financial compensation should be paid to address losses including those related to breaches of the rights to freedom from discrimination, adequate housing, private and family life and cultural life.
 - Government should fund individual rehabilitation measures for individuals whose health has suffered as a consequence of ‘the Tinker Experiments’. It may also be advisable to commission some dedicated health services.
 - Government should also fund rehabilitation measures designed to enable the restoration and revitalisation of family, cultural and political relationships.
 - Care should be taken in deciding whether to fund rehabilitation measures on an individual or collective basis; in many instances a combination of individual and collective measures may be most appropriate.
- Guarantees of Non-Repetition
 - Scotland should learn from ‘the Tinker Experiments’ by (i) commissioning a programme of law reform focusing areas of particular exclusion for Gypsies/Travellers in Scotland, including housing law, planning law, child law and protections from discrimination (ii) ensuring rights-based practice in relevant areas of public service (iii) removing barriers to access to justice for Gypsies/Travellers in Scotland (iv) empowering Gypsy/Traveller leadership in public life (v) improving access to employment and education for Gypsies/Travellers (vi) funding educational programmes designed to address long-standing discriminatory attitudes across wider society (vii) ensuring change in media representations of Gypsies/Travellers in Scotland and (viii) addressing crime against Gypsies/Travellers