

Institutional Child Abuse Inquiry: Review of the Executive decision

Many victims of institutional child abuse greeted the recent announcement by the Northern Ireland Executive of an inquiry into institutional abuse with joy and relief. After years of courageous campaigning, it seemed they could finally see a glimmer of justice at the end of a dark tunnel.

The announcement pointed towards the establishment of an inquiry, with both statutory and non-statutory elements, and augmented by a research team to examine written evidence, plus an acknowledgement forum for the recounting of experiences by victims and an advocacy and support service for victims. So far so good, and much of what was announced chimed with the calls of both victims and Amnesty International over the previous two years of campaigning. Yet, it is clear that the Executive's plan will require much further work if they are not to ultimately prove a disappointment to victims.

Of particular concern to us has been the fact that, rather than setting up an inquiry with full statutory powers to compel the attendance of witnesses and the production of records, the Executive was initially moving to establish a non-statutory inquiry, pending new legislation through the Assembly to "be available to the inquiry prior to it concluding", according to the Ministers' statement. Meanwhile, the Executive has stipulated that the inquiry must conclude within two and a half years, and simultaneously warned that the parallel legislative process at Stormont could take as long as two years. Simple arithmetic would suggest, therefore, that the inquiry might only receive the powers to carry out its work properly in its dying months, with the clock ticking all the while.

Given that, in other similar investigations, institutions used every recourse available to avoid full cooperation where it was not legally mandated, the Northern Ireland inquiry seemed to be attempting the impossible... with one hand tied behind its back and with a time-set guillotine poised to fall on its work. Amnesty International publicly warned that under the proposals, the Northern Ireland inquiry would have the odds stacked against it. To set an arbitrary time limit on the inquiry and to deny it the requisite powers for most of its term of operation seems unlikely to be a recipe for success.

But now the good news. At a December meeting with Jonathan Bell and Martina Anderson, the Junior Ministers leading on the issue for the Executive, Amnesty International has been assured that the Executive now believe they have the Assembly support necessary to pass legislation under an accelerated timetable so that, when the Inquiry proper starts work in 2012, it will have the requisite powers to compel the production of written evidence and the appearance of witnesses. With the Executive hoping to announce the Chair of the Inquiry panel early in the New Year, the first and most important task will be to ensure that the terms of reference for the inquiry are absolutely watertight and that the legislation being drafted at Stormont provides the necessary powers and the independence to the panel. These will be crucial to the success or failure of the whole enterprise.

As enshrined in international and regional human rights treaties, victims of human rights abuse have a right to an effective remedy and reparation, including compensation. Yet, while many victims in the Republic of Ireland were able to receive financial reparation through the Redress Board established by the State, there seems to be much less on the table for victims north of the border.

Indeed, the Executive has said that it is "not minded at this stage that any potential reparation" from it will be monetary and is instead asking the inquiry to make recommendations on obtaining financial reparations from the institutions. The Executive proposal is worrying on two counts; both in terms of implied responsibility and the prospects and likely timetable for obtaining the revenue.

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Rule of Law and Transitional Justice: A New UN Report

This October the United Nation's Secretary-General issued a major report taking stock of the rule of law and transitional justice initiatives which have been undertaken since 2004 (when the first set of UN recommendations were issued) on the rule of law and transitional justice in conflict and post-conflict societies. The Report reaffirms the commitment of the United Nations and the Office of the Secretary-General to advancing rule of law initiatives promoting international peace and security. The report is contextualized by the prescient reality that in conflict and post-conflict societies, the United Nations assists countries in establishing the rule of law by ensuring accountability and reinforcing norms, building confidence in justice and security institutions, and promoting gender equality. Importantly, the report advances the thinking of the UN on the centrality of transitional justice and its associated mechanisms to promote the rule of law and to establish and build confidence in the law. The Report affirms the important of building confidence in the rule of law and legal norms in societies emerging from conflict, as central to maintaining peace and security.

The Secretary-General confirmed that:

For societies emerging from conflict, weak justice and security institutions struggle to manage the wider socio-economic and political challenges inherent in recovery processes. Institutional actors may prove to be incapable or unwilling to pursue accountability for serious crimes of the past. Civil society is not yet in a position to hold institutions accountable. In the absence of responsive Government, large swaths of the population may turn to belligerents for their justice and security needs, lending legitimacy to terrorist organizations and warlords. Civic trust is at a nadir, undermining collective efforts to meet rule of law challenges. The risk of relapse into violent conflict only increases with time (para 7).

While the extremity of these challenges are not a daily reality in Northern Ireland, we remain a post-conflict society, emerging from a conflict in which the rule of law was deeply engaged in the management of the conflict and where serious rule of law deficits existed. From our perspective, there are many reflections and recommendations in this report that speak directly to the challenges facing post-conflict rule of law enforcement and implementation. Thinking on the range of transitional justice initiatives surveyed in the Report one can see a persistent overlap with ongoing local conversations including, how to ensure accountability for serious human rights violations committed during the conflict, how to foster strong levels of civic trust, and how best to bolster and continue reform of legal norms and institutions. The Report's attention to a range of judicial and non-judicial mechanisms including prosecutions, reparations, truth seeking, and institutional reforms make it highly relevant reading for those interested in these issues in Northern Ireland.

For example, given ongoing calls for a truth recovery process in Northern Ireland the Report astutely notes that "truth commissions can expose patterns of violations, raise awareness about the rights of victims and offer road maps for reform" (para 20). The Report makes a critical link between broader institutional capacity-building and truth-telling. It points out that when institutional capacity-building is successfully undertaken it can provide a "safer environment for authorities to conduct investigations, or for witnesses and victims to participate in truth-telling mechanisms". (para 20) These kinds of conceptual and practical linkages are important to reflect upon given the paucity of movement on truth-recovery in the jurisdiction and the pitfalls that have been encountered in the operation of new institutions (e.g. the Police Ombudsman) and the reform of older institutions (e.g. PSNI)

In breaking new ground the report pays substantive and detailed attention to marginalized and vulnerable groups in post-conflict societies. For example, this Report gives serious consideration to the role and experiences of children in conflict and argues for a serious mainstreaming and consideration of their views and experiences in transitional justice processes (para. 21 and 22). In bringing children into transitional justice processes the Report also recommends that mechanisms such as truth, prosecution, and reparations "must be supported by child-friendly policies, procedures and practices".

A new departure from the 2004 Report is the inclusion of Commissions of Inquiry as a transitional justice tool. The Report argues that when properly resourced and staffed, Commissions can be "effective tools to draw out facts necessary for wider accountability efforts" (para 25).

Given the experience with Commissions of Inquiry in Northern Ireland, it is notable that the Secretary-General's report does not view these Commissions as an end point in their own right, but rather as a means to broaden and deepen accountability.

Finally, the Report confirms that states "have an obligation to act both against perpetrators and on behalf of victims". In this aspect, the transitional tool of reparations are articulated as being "the most victim-centered mechanism available and the most significant means of making a difference in the lives of victims"(para 8). The Report also affirms that reparations are an important vehicle to address gender inequality, formally viewed as a "root cause of violence against women and girls". A unique element of this report is the linkage between reparation for sexual and gender-based harms with efforts to eliminate economic and social marginalisation, (para 27) with specific emphasis on "increased access to health, education, property rights and positive redistributive measures". The Report calls upon the Security Council to "encourage further attention to the rights of victims to a remedy and reparation, in particular the victims of conflict-related sexual and gender based violence".

The Report is accessible on line at <http://www.unrol.org/doc.aspx?d=3096>

Fionnuala Ní Aoláin

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Fundamentally, it would appear to be a negation of the ultimate responsibility which the State bears for the abuse suffered by children in institutions operating within its jurisdiction. The Executive position is incompatible with its human rights obligations and ultimately unsustainable.

Secondly, at a practical level, it may prove to be a long-drawn out and difficult process for the Northern Ireland Executive to persuade the religious orders, which ran many of the institutions where abuse is alleged, to provide the money for the proposed compensation fund. Better by far that the State ensure that victims are not short-changed and then ensure that the institutions contribute an appropriate proportion of the costs involved.

In 2002, in return for an indemnity from the Irish Government, religious orders agreed to pay €128 million to help meet the expected cost of compensation. Nine years later they have only paid a fraction of that amount. Northern Ireland abuse victims, many of whom are now in advanced years and in poor health, could have a long and unrewarding wait for any compensation payments, unless the Executive is reminded of and duly pays heed to its obligations in this regard. This looks set to be another key task for the Inquiry panel.

In short, the Executive has travelled a long way towards meeting the disparate needs of victims – for truth, for justice, for redress, for acknowledgement - but much more will need to be done to ensure that this difficult balancing act delivers for those who have already suffered so much betrayal in childhood. For wider society too in Northern Ireland, there is a need to see accountability for past human rights violations take the place of the undue deference and impunity of the past.

Patrick Corrigan, NI Programme Director, Amnesty International

CAJ responds to UK Commission on a Bill of Rights discussion paper ‘Do we need a UK Bill of Rights?’

The creation of a Commission on a Bill of Rights was announced by the UK Coalition government in March 2011 further to the following commitment in the Coalition’s Programme for Government that:

‘We will establish a Commission to investigate the creation of a British Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in British law, and protects and extends British liberties...’

Given work since CAJ’s inception in advocating for a Bill of Rights as a fundamental building block for peace, CAJ was at pains to emphasise the separate and still awaited provision for a Bill of Rights for Northern Ireland supplementary to the ECHR. We have consistently argued that such a bill should reflect our particular circumstances as provided for in the Belfast/Good Friday Agreement. As the above citation demonstrates, the UK’s Bill of Rights debate has had a very different genesis from the UK debate of recent years - motivated by differing political agendas around constitution-building, making rights more British, the linking of rights to responsibilities, and even the proposed weakening of the ECHR.

It is worth noting that given the differing views of the parties to the Coalition any legislation implementing such a UK Bill is unlikely to appear before the next UK General Election – meaning, were there the political will, there would be enough time to legislate for the Northern Ireland Bill of Rights in the meantime. CAJ also challenged the NIO premise that the Northern Ireland Bill should only proceed when there is ‘consensus’ in Northern Ireland. CAJ pointed out that whilst it is the case, differences exist between political parties in Northern Ireland as to the content of a Bill of Rights and how the process should be taken forward. The Belfast/Good Friday Agreement was a package containing many elements different political parties had divergent views upon; and its individual component parts were not subject to consensus requirements on all sides. Our submission emphasised:

- CAJ has no objections in principle to human rights protections being strengthened across the UK. However we are conscious that this is neither the primary origin nor the likely outcome of the current process. Our greatest concern is the potential the UK Bill of Rights process has to undermine, further stall or be promoted as a substitute for the Northern Ireland process the mandate for which is set out in an international peace treaty;
- It is important to emphasise that in addition to providing for a Bill of Rights for Northern Ireland the Belfast/Good Friday Agreement also explicitly guarantees the incorporation of the European Convention on Human Rights into Northern Ireland law; retrogression from this in Northern Ireland would therefore be incompatible with international treaty commitments;
- The 1998 Agreement was endorsed by referendums in both jurisdictions on the island of Ireland and there is widespread support among people in all communities across Northern Ireland for a Bill of Rights; in a further bilateral agreement, the 2003 Joint Declaration, the UK state again committed introducing the necessary legislation into Westminster for a Bill of Rights giving effect to rights supplementary to the ECHR reflecting the particular circumstances of Northern Ireland; the taking forward of this commitment is still awaited;
- There is a further risk that the UK debate, to the extent it may seek to promote a more ‘British’ interpretation of rights, will not only be challenging in the British-Irish context but could also risk undermining the broader universality of human rights across Europe.

CAJ’s submission is available at <http://www.caj.org.uk/contents/1044>

Council of Europe Human Rights Commissioner visits CAJ

We were recently honoured to welcome the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, to our office. Mr Hammarberg was in Belfast to celebrate International Human Rights Day and took time out of his busy schedule to spend an hour with CAJ staff and Executive members in celebration of our 30th anniversary year.

Mr Hammarberg congratulated CAJ on reaching this significant milestone, saying:

"Congratulations to CAJ on its birthday after 30 years of great contributions to human rights causes."



Mr Hammarberg cuts a 30th anniversary cake, along with
Lisa Gormley, CAJ Vice Chair

Taking a closer look on CAJ

Each month in 2011, Just News will profile a different staff member, outlining his/her role in the organisation and giving an overview of the kind of work they do on a day to day basis. If you believe the CAJ staff person can be of any assistance to you, please contact them directly.

Adrienne Reilly
Human Rights Programme Officer

While CAJ has a number of specific programme areas such as criminal justice, policing and equality, it also employs a Human Rights Programme Officer with a remit to focus on broader human rights issues, particularly in relation to a Bill of Rights for Northern Ireland, training and education, capacity building both locally and internationally and treaty monitoring.

Adrienne Reilly currently holds this post of Human Rights Programme Officer at CAJ and benefits periodically from the invaluable work of a number of interns and volunteers. Adrienne previously worked for the UN in Vietnam and at the Transitional Justice Institute at the University of Ulster.

The human rights programme area, like most other programme areas at CAJ, involves proactive and reactive work, such as responding to consultations on the Bill of Rights for Northern Ireland, international human rights treaties, the Belfast/Good Friday Agreement commitments and UN Security Council Resolutions. Under this programme area, CAJ also offers training on human rights, presents and participates in human rights conferences and facilitates workshops.

This year the Human Right Programme Officer engaged in a process of developing a series of Rights Guides, focusing on making information on human rights more accessible to those who use our services either directly or indirectly. In December, CAJ will produce its first Rights Guide on the Human Rights Act, which will also be available online. CAJ will continue to develop this series of Rights Guides which will focus on a range of issues which are of importance to the general public.

The Human Rights Programme Officer has also delivered a number of training sessions this year and CAJ continues to offer bespoke training, free of charge, on human rights issues. Those who are interested in arranging human rights training sessions, or finding out more about this free service offered by CAJ should contact Adrienne using the contact details below.

The Human Rights Programme Officer also represents CAJ on the Board of Directors of the Human Rights Consortium.

For more information on this contact adrienne@caj.org.uk or telephone **028 9031 6000**

Creative reflections on key human rights instruments

This month's creative reflection has been reproduced with the kind permission of Blackstaff Press.

Neither an Elegy nor a Manifesto *For the people of my province and the rest of Ireland* By John Hewitt

Bear in mind these dead:
I can find no plainer words.
I dare not risk using
that loaded word, Remember,
for your memory is a cruel web
threaded from thorn to thorn across
a hedge of dead bramble, heavy
with pathetic atomies.

I cannot urge or beg you
to pray for anyone or anything,
for prayer in this green island
is tarnished with stale breath,
worn smooth and characterless
as an old flagstone, trafficked
with journeys no longer credible
to lost destinations.

The careful words of my injunction
are unrheterical, as neutral
and unaligned as any I know:
they propose no more than thoughtful response;
they do not pound with drum-beats
of patriotism, loyalty, martyrdom.

So I say only: bear in mind
those men and lads killed in the streets;
but do not differentiate between
those deliberately gunned down
and those caught by unaddressed bullets:
such distinctions are not relevant.

Bear in mind the skipping child hit
by the anonymous ricochet;
the man shot at his own fireside
with his staring family around him;
the elderly woman
making tea for the firemen
when the wall collapsed;
and the garrulous neighbours at the bar
when the bomb exploded near them;
the gesticulating deaf-mute stilled
by the soldier's rifle in the town square;
and the policeman dismembered
by the booby-trap in the car.

I might have recited a pitiful litany
of the names of all the dead;
but these could effectively be presented
only in small batches,
like a lettered tablet in a village church,
valid while everyone knew everyone,
no longer, where a family name persists.

Accident, misfortune, disease, coincidence
of genetic factors or social circumstance,
may summon courage, resolution, sympathy,
to whatever level one is engaged.
Natural disasters of lava and hurricane,
famine or flood in far countries, will evoke
compassion for the think-shanked survivors.

Patriotism has to do with keeping
the country in good heart, the community
ordered with justice and mercy;
these will enlist loyalty and courage often.
And sacrifice, sometimes even martyrdom.
Bear these eventualities in mind also;
They will concern you forever:
but, at this moment, bear in mind these dead.

**John Hewitt, *The Selected Poems of John Hewitt*, ed. Michael Longley & Frank Ormsby
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Estate of John Hewitt.**

Civil Liberties Diary - October

6 October

The Office of the First Minister and deputy First Minister (OFMdFM) announced that a governmental-backed inquiry into historical institutional child abuse can only take a maximum of 30 months. This inquiry is set to examine allegations of abuse in children's homes and other care institutions run by Catholic religious orders, state and voluntary groups, going back to 1945.

A High Court judge ruled that a yearlong wait for the trial of a teenager accused with a weapons offence is in violation of rule of law standards. He ordered the Public Prosecution Service to provide a day-to-day account of the case's history.

12 October

A High Court judge ruled that denying an 11-year-old boy a place at an oversubscribed high school was not unreasonable and therefore not a breach of the European Convention on Human Rights. The boy had sought a judicial review against the school's decision to deny him a place.

The British Government announced that it would not hold an Inquiry into the murder of Patrick Finucane, despite assurances that a full Inquiry would be established. Prime Minister David Cameron has instead decided to hold a review of the case. This review will be of government papers from the Ministry of Defence, Home Office, Cabinet Office, and Northern Ireland office.

The UK Border Agency conducted another arrest raid on a marriage ceremony, this time in Co Down. Such raids, often conducted with significant media access, lead to the arrest of couples on suspicion of a sham marriage.

13 October

The Public Health Agency announced funding for a programme to address specific health needs of ethnic minority communities in

Northern Ireland. This programme, designed to complement already existing services, will include holistic health services, social wellbeing assessments, advice on aftercare and potential referrals.

19 October

An independent analysis commissioned by OFMdFM of reports into the draft Cohesion, Sharing and Integration strategy has criticised the plans. Despite being completed in 2010, the report release was delayed as government officials decided how to best proceed.

The Policing Board has publicly committed to tackling the crime of human slavery. Consultation is currently ongoing in Northern Ireland as to prosecuting men who purchase sexual services from human trafficking victims, regardless of whether they knew that the woman was acting under duress.

The cost of living for pensioners has increased by 20 percent due to inflation and the rising costs of electricity and gas prices in Northern Ireland.

25 October

The Prison Review Team released its final report on the Northern Ireland Prison Service. The report found that Catholic inmates were more likely to be detained without privileges and to have force used against them. The Prison Service is expected to hold a recruitment campaign to address gender and religious imbalances in staffing. The report recommended that equality and diversity reports should regularly be completed, examined and acted upon if needed.

26 October

Mr Justice Treacy ruled that the Department of Education must reconsider a refusal to provide a dedicated bus service to a post-primary Irish language school. The Department of Education made its decision on the basis of an economic assessment and the concern that providing a bus which went directly to the school would set a precedent for further schools to request

the same. In his ruling, Mr Justice Treacy held that legislation placing a duty on the Department to encourage facilitating Irish Medium Education (derived from the Belfast/Good Friday Agreement) had not been given sufficient weight.

Allegations were brought forward about inappropriate conduct in the Lissue and Forster Green children's facilities. The cases were reviewed by Bob Stinson. In his report, Stinson recommended that further action be taken where the police find that the facility authorities and staff have breached their professional codes of practice.

28 October

The Court of Appeal held that deportation orders against two sisters from Holland should be quashed. The sisters, who had served prison sentences for trying to smuggle cocaine into Northern Ireland, argued that they posed no threat to others and no risk of reoffending. Their verdict may be significant for other European Union nationals who have served prison sentences in the UK and are now facing deportation.

*Compiled by Elizabeth Super
from various newspapers*

Just News welcomes readers' news, views and comments.

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