Redressing Historical Institutional Abuse: International Lessons

Seminar Report

Ulster University, Belfast campus, York Street, Belfast

28 March 2015

The one-day seminar 'Redressing Historical Institutional Abuse: International Lessons' was held at the Belfast campus of Ulster University on March 28, 2015.

The conference was organised by Professor Patricia Lundy, Ulster University; Institute of Research in Social Sciences (IRISS).
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   Historic institutional abuse - delivering a just settlement for victims
The one-day seminar ‘Redressing Historical Institutional Abuse: International Lessons’ was held at the Belfast Campus of Ulster University on March 28th, 2015.

The conference was organised by Professor Patricia Lundy, Ulster University; Institute of Research in Social Sciences (IRISS).

Over 70 people attended the seminar including Sir Anthony Hart (Chairperson, Historical Institutional Abuse Inquiry), Junior Minister, senior politicians, representatives of the Catholic Church, members of the legal profession, victims and survivor groups, human rights organisations and survivors/victims of historical institutional abuse.

This report is a full transcript of the seminar proceedings. Thank you to Elizabeth Super for note taking.

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Welcome and Introduction – Professor Patricia Lundy

Good morning: a very warm welcome to Ulster University.

Hearings on historical institutional abuse in Northern Ireland have been running since January 2014. Victims are involved with the process in two main ways—both through the acknowledgement forum and in giving evidence to the inquiry. To some victims, this process has been cathartic. To others, it has been unsettling and disturbing.

The Historical Institutional Abuse Inquiry was recently granted a 12-month extension. As a result of this extension, the report and any subsequent recommendations are not expected until 2017. Yet it is unacceptable to wait until 2017 to discuss redress at a policy level and to formulate measures or options. This conference aims to move the redress discussion and debate forward.

Any redress programme in Northern Ireland must have meaningful participation and involvement of victims and survivors in the design, implementation and monitoring of the process. Redress in the form of compensation would acknowledge and validate victims and survivors experiences of historical institutional abuse. While apologies are symbolic, they are less meaningful if not followed with an effective redress process. No further harm must be caused by the unnecessary delay in the State’s commitment and obligation to implement a redress process. Today is thus about the victims and survivors and serves as an opportunity to ask questions of highly experienced academics and practitioners here today. The objective is to learn lessons from international experience — particularly through examples of good practice and what worked or didn’t work in other countries.

We are very privileged to have such acclaimed speakers here today; some have travelled very long distances to be here – Canada, Sweden, Scotland and the Republic of Ireland.

The 1\textsuperscript{st} Panel is chaired by Professor Cathy Gormley-Heenan (Director of IRISS): the speakers are Patrick Corrigan, Northern Ireland Programme Director, Amnesty International; Pearse Mehigan, Solicitor, Legal Adviser to One in Four, Republic of Ireland; Shelagh McCall, Human Rights Commission Scotland.

The 2\textsuperscript{nd} Panel is chaired by Professor Rory O’Connell (TJI): the speakers are Professor Kathleen Mahoney, University of Calgary, Canada; Dr Johanna Skold, Linkoping University, Sweden; Dr Catherine O’Rourke, Transitional Justice Institute, Ulster University.

We are delighted and honoured that they have chosen to be with us this morning.

The seminar is timely. There is growing momentum amongst victims and survivors that there should be genuine consultation and tangible
measures put in place to scope and develop effective redress measures. Many victims and survivors have already given testimony to the HIAI; some are advanced in years. Victims and survivor have ‘a right to effective remedy’; I hope today’s seminar will move this discussion forward.

Panel 1

*Patrick Corrigan: ‘HIAI and developments to date; opportunities and challenges towards redress’*

Today’s seminar comes at an apt time in terms of the longer process of delivering truth, justice and reparations for victims of institutional abuse in Northern Ireland. The presentation today will set out how we have gotten here—primarily through a long slog by victims and survivors and others supporting them—and examining how we can get to the point of delivering appropriate redress and reparations.

In May 2009, the Ryan report was published after an investigation into institutional abuse south of the border. The report was highly anticipated and its publication and spotlight on the breadth and depth of institutional abuse served as a catalyst for victims north of the border to say ‘what about us’ and ‘don’t we deserve the same’. Following the Ryan report, victims and survivors in Northern Ireland started to come out and to reveal what happened to them publicly. While this had been happening on a small scale before the report, the momentum from the Ryan report started something much larger.

A further BBC spotlight programme in October 2009 threw more focus on institutional abuse in Northern Ireland, kick-starting and sharpening minds around a larger campaign. By November 2009, victims and survivors were on the streets, petitioning and demonstrating public support behind their call for an inquiry. A 6,000-signature petition was delivered to Stormont and MLAs voted to back an inquiry. In March 2010, the Stormont Health Committee further publicly backed the inquiry.

Amnesty International became involved in October 2010. Amnesty’s viewpoint has been to address historical institutional abuse through a human rights framework. That is, it asserts that victims and survivors are not asking for charity, nor are they asking for help because people have suffered. Rather, the State has failed in its obligation to protect these individuals and continues to fail to meet its international legal obligations if it does not bring truth and justice for the victims.

Between January and June 2011, the Office of the First Minister and Deputy First Minister (OFMDFM) established an interdepartmental taskforce on historical institutional abuse and opened a consultation into what an inquiry might look like. In September and October of the same year, a relatively short time after the beginning of campaigning, OFMDFM announced the inquiry and
published the terms of reference shortly after.

The terms of reference published in 2011 are still, for most part, the terms of reference being used now by the Inquiry. These terms of reference were handed down from the OFMDFM through an Executive Directive rather than being negotiated by the Assembly. They included three main parts:

- An acknowledgement forum
- Research investigation team to do background and context work
- An Inquiry and Investigation panel with statutory power (which will submit a report to OFMDFM)

This three-part process was supposed to deliver:

- An apology
- Findings of the failings—whether the failings were institutional or state, private operators or state actors
- Recommendations
- Redress

Yet the Executive did not decide to establish a redress board. It instead said that this was a decision for the inquiry itself and could be a final recommendation of the inquiry. The Inquiry thus may recommend whether there is a requirement or desirability for redress to be provided by the individual institution or the Executive to meet the needs of victims (note that this neither commits to redress nor commits to the State’s responsibility to provide redress). Further, if there is to be redress and this redress is to be delivered by the State, the Inquiry must provide recommendations on what the redress process should look like (e.g. financial, provision of services, or combination of both) and these recommendations will be discussed by the Executive. (Note that this uncertainty around process pushes the issue of redress even further ‘down the line’, particularly when combined with the recent 12-month extension.)

The Inquiries began and have been doing remarkable work. They were advertised locally and internationally and received 500 applications. Most of these applications were from Northern Ireland and presumably most of which are individuals making allegations of suffering abuse of one form or another in institutions. To date, Northern Ireland has had an acknowledgement forum and a public inquiry for just over a year. The Inquiry requested, and was granted, a year-long extension. After this extension was granted, however, the Inquiry was asked to take on issues from the Kincora inquiry, addressing allegations of state involvement in perpetrating or covering up abuses. As such, the initial one-year extension may not prove sufficient given the additional burden of Kincora.

With this context in mind, Amnesty International has been clear from the beginning that the right to reparation and redress is a fundamental component of justice within the international human rights standard. Reparations and redress are not a matter of charity or political debate but rather they are a state obligation.
The State must carry out an investigation and deliver reparations, which could include restitution, compensation, rehabilitation, satisfaction and/or guarantees of non-repetition.

Within these options for reparation, compensation is a requirement that the state is obligated to deliver. International human rights establishes a standard on how to assess and deliver compensation—it must address the degree to which individuals have been failed by the state and the economic impact of that failure (e.g. in access to education, employment and living conditions) from the time of the failure or the abuse they suffered to present. This compensation should not have to be linked to prosecution or a legal procedure, rather, it can and should be delivered through a separate body.

There are a range of challenges to redress in Northern Ireland or obstacles in getting from here—where the outcome may only be a report of stories of abuse and who and how individuals were failed—to a programme of redress. There has been no firm political or legal commitment to redress.

There is no executive commitment. The Inquiry Act itself refers back to the terms of reference handed down by OFMDFM without any legal requirement to deliver redress.

Redress is at least partly dependent on the final recommendations from the Inquiry. When questioned about the potential for redress, government ministers have failed to answer, repeatedly referring to the terms of reference to assert that they will not pre-empt the Inquiry’s final recommendations.

There are disparate views by victims on what redress is appropriate or desired. The concluding question to victims asks what they think is appropriate for redress. The victims themselves give very different responses to this question—some don’t want to engage, others want justice or a memorial or financial compensation. These disparate views may provide political opt-out from giving financial redress as some victims do not want the money.

There is significant deference to Inquiry chairperson. Thus, much depends on how Sir Anthony assesses these issues and his final recommendations. If Sir Anthony makes recommendations that are unsatisfactory to victims, it may be too late for any further redress, as the recommendations of an independent inquiry are politically difficult to challenge.

The Inquiry has been extended by 12 months. This has delayed any potential redress to at least 2017. Yet the victims are all getting older and there are victims who will not be around in the 2+ years it will take to get the recommendations, make political decisions around any redress scheme and then to begin implementation of the scheme.

The Inquiry has shown resistance to requests for an interim report.
Because there is no redress process running parallel to the Inquiry, Amnesty International have met with ministers to ask about an interim report focused on issue of redress. It has been clear that the ministers are reluctant to do so.

There are government budget restrictions—we are in a time of austerity. Redress programmes in the Republic of Ireland had high costs in order to give compensation or reparations to victims. OFMDFM has not necessarily thought of budgeting for any future redress payments.

There is political reluctance to pay for the ‘sins of the church’. There is a political view that this was a mistake of the Catholic Church and thus it is the Church that should be paying for the redress (Edwin Poots, for example, asserted that ‘victim-makers should be victim-payers’). While this is acceptable in terms of shared responsibility, the State has international legal obligations it must fulfil.

Despite the challenges, there are opportunities for redress as well. There is strong public and media support for victims. The Inquiry recommendations will carry significant weight. The deference given to the Inquiry can also be a positive—if the Inquiry makes strong recommendations on a redress process, it will be difficult for politicians to back away. Thus, the deference given to the Inquiry has taken the decision away from politicians and put it into the hands of an independent-minded inquiry.

The 12 month extension has brought issues of redress into focus. Despite the reluctance of OFMDFM, there is strong cross-party support for interim measures. The extension has provided the time and opportunity for the examination of good practice models from outside Northern Ireland (like this conference). There is scope for OFMDFM to do preparatory work in advance of report. OFMDFM could commission work to advance possibilities on what redress might look like; and open discussions with private parties and homes into how they could contribute. When the report is issued, OFMDFM will have done the groundwork and be ready to implement a scheme.

There is scope for an interim redress scheme, similar to the one in the Republic, which could bridge the gap between now and the final report publication. The State has human rights obligations of which a redress scheme is part. If the State fails to deliver a redress scheme, it could be open to legal challenge.

Pearse Mehigan: ‘Learning Lessons from the Republic of Ireland’

In the Republic of Ireland, Bertie Ahern apologised to all victims of childhood abuse. The value, impact and significance of this apology cannot be overstated. Apologies give recognition and acknowledgement, as well as taking responsibility for the abuse and providing some relief to victims and
survivors over any sense of guilt or responsibility about the abuse.

Following this apology, the Irish government established two bodies to examine historical child abuse in the Republic of Ireland: the Commission to Enquire into Child Abuse (to look into the abuse of children in residential institutions, to determine its causes and responsibility) and a compensation scheme for victims and survivors. This compensation scheme was provided for within the Residential Institutions Redress Bill, providing that a Committee would consider the amount of awards to be made for various categories of abuse (e.g. severity of abuse and categories of injuries). The Committee reported its findings within its final report (Towards Redress and Recovery). The Report made five broad conclusions in quantifying the amount of redress provided to individuals:

- The ‘injuries received by a number of victims of abuse are among the most serious kinds of personal injury known to the law; many survivors not only 'lost their childhood, but much of their adulthood as well'.
- No form of abuse or consequential injury is reducible to mathematical calculation.
- There is an almost infinite variety of combinations of abuse and the effects of that abuse.
- The nature of the injury varies in severity both in terms of the abuse itself and in relation to its physical and psychological consequences.
- Some system of guidelines or weighting is desirable in the search for a degree of consistency in the level of redress and this is desirable in helping to speed up the process of determining individual cases and to make the amount of redress more predictable thus assisting the informal settlement of applications.

Experiences of victims and survivors in Ireland have demonstrated that there is, and can be, no relationship drawn between the severity and the frequency of abuse and its corresponding impact on the victim/survivor. For example, there are many cases in which individuals have suffered what may be characterised as ‘low grade’ abuse, whose lives have been completely destroyed. Conversely, there are cases of individuals who suffered extreme forms of sexual abuse (extreme as to severity, frequency and violence), yet they have readjusted and, at least on the surface, appear to be functioning.

The Compensation Scheme Committee, in attempting to engage and deal with the complexity of quantifying individual experience, had a difficult task. The completion of the Committee’s work led to the passage of the Residential Institutions Redress Act 2002 which established a weighting system for the making and review of awards. The Act further established the procedure for individual applications to the Redress Board:

- Establish residency in one of the institutions appended to the Act
• Provide an account of the experience (including sexual abuse including where, when and how often, naming perpetrator if possible and giving as much evidence as possible). This was difficult due to:
  • The passage of time
  • Lack of education
  • Psychological injury
  • Provide a medical report, usually obtained from a psychiatrist or psychologist, setting out abuse and how it impacted his/her childhood and his/her adult life.

These applications were ranked based on the Compensation Board weighing scale for valuation of the severity of abuse and consequential injury. The scale itself was broken down into component parts:

Severity of abuse, divided into:
• Sexual abuse
• Physical abuse
• Emotional abuse
• Neglect
• Severity of injury resulting from the abuse
• Medically-verified physical or psychiatric illness (e.g. loss of sight or hearing, permanent scarring, STDs, depression, personality disorder or PTSD)
• Psychosocial effects of the physical or psychiatric illness (e.g. inability to show affection or trust, cognitive impairment or educational retardation, destructive relationships, sexual dysfunction, substance abuse or alcoholism)
• Loss of opportunity (e.g. working below employment capacity)

Further points of note about the Scheme:

The maximum award for redress was €300,000.00, although the Board had discretion to make an additional award of up to 20% of the normal award in exceptional cases where it was appropriate to do so.

The Redress Scheme was run on a no-fault basis—if an individual could establish proof of residency and proof of injury, (s)he was entitled to an award without having to establish liability on the part of a third-party.

Though the Scheme was intended to be non-adversarial, the Board on occasion subjected the applicant to a vigorous cross-examination which re-traumatised the victim/survivor.

Where victims and survivors were dissatisfied with the award or with the process itself, they could appeal to the Review Committee. Though appeals often led to a higher award, the individuals had to undergo a second hearing, which was often emotionally draining and distressing.

Alternatively, mediation could be used as a means of resolving cases. Alternative dispute resolution provides an amenable forum in which to discuss and deal with issues which is lacking under redress scheme. Further, settlement arrived at through mediation can be more satisfying to victim/survivor than redress schemes, as the victim/survivor has had an opportunity to speak openly and be heard. Mediation allows the
individual to be heard on their feelings both about the abuse and their subsequent treatment. The church (or institution) is then allowed to respond in a meaningful way. In this way, mediation opens dialogue and this can be cathartic. It provides not just financial redress but also options for counselling or other redress.

**Shelagh McCall: ‘Taking a Human Rights Approach to Justice and Remedies’**

Scotland has also had to embark in acknowledging and trying to remedy the abuse of children in care. To do so, Scotland has taken a human rights-based approach. This presentation will focus on the details of that approach and where it has led to today.

The Scottish Parliament was re-established after devolution. This re-established Parliament first received petitions from victims and survivors in 2000. In 2001 a cross-party group on abuse was established, and in 2004, the First Minister apologised on behalf of Scotland, acknowledging the harm done by care homes. The apology was followed by a 2005 strategy to address survivors and a support group for survivors.

Scotland had a series of discrete reviews into which particular institutions, particular times and systems were in place to protect children in care. These reviews were reported in the 2007 Shaw Report. In 2008, an acknowledgement and accountability forum was suggested and in 2009, the Scottish Human Rights Commission was contracted to develop a human rights framework for the design and functioning of this acknowledgement and accountability forum. This Framework for the design and implementation of a proposed response to historical child abuse in Scotland was published in 2010. This Framework relied on international human rights law, research on survivors and international experience to establish a best practice in human rights for dealing with these issues. In addition to the acknowledgement and accountability forum, it included other remedies to ensure justice and responsibility. The recommendations for the forum and other remedies included an official investigation or mechanism to determine state liability, identification and remedy for barriers to access to justice, potential legislation to facilitate apologies and reparations including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Scotland used a human rights-based approach—using international human rights law to ensure that the rights of individuals are put at the centre of practices and politics—based on principles of participation, accountability, non-discrimination, empowerment and legality.

Participation – individuals should be involved in decisions that affect their rights and must be supported so that they can participate in the decision-making process.
Accountability – monitoring of how rights are affected by policies and practice as well as remedies for what happens when it goes wrong.

Non-discrimination, empowerment & Legality – every individual should understand their rights and be fully supported to take part in developing policy and practice that affects them.

This framework was recommended to Scotland for use in addressing abuse. Survivors took the framework and used it to advocate for justice and remedies. In 2011, Scottish Ministers agreed to participate in this ‘interaction’. The interaction was designed to be participative; everyone takes part in the discussion, decision-making and outcomes—rather than having a single body to decide on proposals.

The interaction used a ‘fair’ methodology: facts; analyse rights, identify responsibilities and recall:

Facts – what are the key facts that everyone needs to know?

Analyse rights – done within the human rights framework.

Responsibility – identify who has responsibility for addressing the facts and addressing the rights (what needs to be done and who needs to do it).

Recall – recall participants to review whether agreed actions have happened, whether more needs to be done or if the actions have been enough

The interaction involved victims/survivors, government officials/ministers, religious orders, care workers and institutions. Monica McWilliams, an independent figure from outside the jurisdiction, chaired the interaction and a reference group made up of survivors monitored the interaction. When the interaction was complete, an action plan was published (in 2014) and was subject to a public consultation. The Scottish government has subsequently agreed to implement the plan.

The Action Plan contains the following outcomes:

- Acknowledgement of historic abuse of children in care and effective apologies for victims.

- Apology law – make full consideration of the merits of an apology law.

- Establishing a national record of what happened – the government has established an independent forum/confidential committee model where survivors give experience of care, every effort will be made to bring this work into process of establishing a national record.

- Commemoration – consideration to be given to appropriate forms of commemoration (e.g. a national children’s day, education in schools regarding childcare in Scotland and/or memorials) – which shall be guided by the views of survivors.
Access to justice and effective remedies:

- National Inquiry – the added value national inquiry shall be considered

- Review of statute of limitations

- Current statute of limitations is reliant on a 'date of knowledge' which has limited the efforts of many to seek a remedy.

- The development of a consistent approach to investigation.

In 2010, the police force was united into one big force, creating a specific team into child abuse so that, regardless of where victim approaches the police, the allegations are dealt with by same team and the victim is facilitated to make formal complaints.

Consider the development of a national survivor support fund.

Survivors must be supported to better understand the national action plan.

Further proposals have suggested the establishment of a national support forum or survivors fund. This fund would set aside money for a no-fault compensation scheme, paid compensation and tendered individual apologies to those qualified under scheme. It would be person-centred, individualised and self-directed by survivors. This plan would be part of a flexible redress mechanism to fit all kinds of needs of all survivors in one central place—so that the information follows the survivor and a central point of contact could access various support services that survivors may need.

Where the state is responsible, it must both provide reparations for survivors and ensure that the institutions responsible for the abuse must contribute to those reparations in a way appropriate to its liability. If the institutions responsible fail to contribute to the reparations, the state must bear the whole weight. It is critical that these recommendations do not await the outcome of the Inquiry. In announcing the Inquiry, the Scottish government said that work to develop this support fund would continue, though it did not specify whether it would begin operation or wait for the publication of the Inquiry report.

Consultations on the Inquiry were held, involving survivors in an active way. An announcement is expected at the end of April (2015) as to the terms of reference and future progression for the Inquiry. The Consultation itself included the following issues:

- What should the outcomes be?
- What time frame should be considered?
- What types of abuse should be considered?
- What is the definition of a child?
- Should the Inquiry include both acts and failures to act (omissions)?
- What types of care settings should the Inquiry cover (child care, foster care, kinship care)?
• When should the Inquiry report? How long should it take? When should it meet?
• What should the Scottish Government look for in a chair and panel? Independent and external? Who should do it?

The next steps within the Scottish Inquiry include monitoring the Action Plan both through the external review group of survivors and the Scottish national action plan on human rights justice and safety action group. Survivors in Scotland have been on a long journey. It remains to be seen whether this approach can be effective for redress. At the least, it has empowered survivors to know and claim their rights. The Scottish system has brought rights-holders and duty-bearers together and has encouraged the government to find a better solution.

**Discussion and Q&A**

**Question 1:** In Northern Ireland, we are victims of the border as well. Take two victims on either side of the border—living a mile apart—who both live in squalor. Following the Irish process, the person on the Republic side receives compensation and buys a house. The person in Northern Ireland does not get compensation so he cannot buy a house and is instead stuck in squalor. These two people live only a mile apart yet will live drastically different lives because of the compensation down south. This needs to be taken on board when considering compensation here.

**Question 2 (to Shelagh McCall) – The presentation referred to a decision in Scotland in which arguments made by lawyers for Sisters of Nazareth in Scotland in which everyone outside of three years was excluded were accepted. Does this still hold true? Also how do we get knowledge disseminated to victims and survivors? We need a strong system of advocacy. It would be good for the groundwork on this to be done before the Inquiry concludes, in preparation for any eventual outcome.**

**Answer 2 (Shelagh McCall):** Scotland has many appalling decisions in its history – there are two main challenges in making an exception to the statute of limitations. First, after prescriptive period had passed, those liable for abuse could initially rely on defense that it was outside of time (may breach their human rights to charge them for a crime after the specified length of time), however, this defense has since been removed. Second, there is a concern that if the court creates one special category, it will need to create many, however there seems to be something particular about the damage done by child abuse (e.g. the nature, scale, duration). It is a battle that will not be won by legal minds but instead by political minds. It is an on-going discussion and hopefully Scotland will change its legislation.

**Response 2 (response to Shelagh McCall’s response):** Here, it seems that the Minister did not want to be responsible for setting a precedent in
removing statute of limitations because someone might use this as a weapon later on. It is unbalanced; however, that institutions cannot be held responsible after three years but individuals can be arrested for crimes 40 years on.

Question 3 (for Shelagh McCall): In light of another year’s extension, should more support be given to survivors (particularly those who are elderly, infirm, and mentally ill)? Should additional help be given to survivors who were prepared for end of inquiry? Scotland seems to have a stronger support system, stronger team and survivors support fund. Here in Northern Ireland, survivors haven’t had the support services they need. In light of the extension, who is going to support the survivors here?

Answer 3 (Shelagh McCall): The Survivors Support Fund in Scotland is only a recommendation. Services in Scotland now can be accessed through the national health system, though there is also a central support service. Survivors there say the same—that it is taking too long and they may not be around for it. The Scottish commission is pushing for these measures to move and not wait for inquiry, as in looking comparatively at the Northern Ireland process they can see the issues in waiting.

Response 3 (in response to Shelagh McCall’s response): In hindsight, survivors didn’t know what they were signing up for with the inquiry. Survivors thought the inquiry would take two years but it has already been seven years.

Question 4 (for Shelagh McCall): Has the inquiry in Scotland now started or is it just proposed? When do they expect that it will begin?

Answer 4 (Shelagh McCall): An announcement as to the Inquiry Chair and terms of reference is expected at the end of April 2015.

Question 5 (for Patrick Corrigan): There is a quote by Edwin Poots that the DUP will never pay for clerical abuse. This has been their position since 2009. How is Northern Ireland going to get around that?

Answer 5 (Patrick Corrigan): It remains to be seen how entrenched the position is. OFMDFM has been reluctant to commit much in the way of resources to the inquiry process and to agreeing a redress process. Having said that, neither the DUP nor any other party are immune to public opinion. The Inquiry is happening because of campaigning and public opinion. The way forward for victims is in their own hands. Victims need to take their case to those with decision-making power—MLAs and ministers are open to hearing cases from them. This is a battle for us collectively to win

On issue of payments, while inquiry is elongated, there is a good case for interim measures without prejudice to inquiry and eventual findings. We need to bridge the gap between now and 2-3 years when there is a final scheme. Amnesty International will be advocating with OFMDFM that
victims have shown lots of goodwill and ministers need to respond to that.

Question 6 (for Pearse Mehigan): Does the categorisation of victims in the South for redress purposes work? Is it better than all victims getting the same amount? If you categorise victims and survivors again, it could be considered another form of abuse.

Answer 6 (Pearse Mehigan): It is a difficult task to categorise anyone who has suffered childhood sexual abuse and there is always the risk of pigeonholing victims and survivors. The impact that abuse has on an individual is unique to the individual—some victims are more affected than others. The system in the Republic is better than a general assessment because it provided structure—but, within this structure, the board was able to factor in lots of component parts of the abuse. For example, in one case, the same priest abused three brothers. They came from the same background and same familial setting but the impact of the abuse on each of them has been vastly different. An assessment seems too clinical but there is scope to award someone more or less for the psychosocial effects as well. Any programme of redress needs to be individualised to the person, the impact of the abuse and the hurt suffered—no two cases or individuals are the same.

Panel 2

Professor Kathleen Mahoney: ‘Personal Experiences as Chief Negotiator of the Indian Residential Schools Settlement’

Canadian residential schools were created with racist intent—they sought to destroy the Indian culture in Canada and to absorb all Indians into the body politic. As asserted by the Canadian Minister for Indian Affairs: ‘we can’t kill the Indian but we can kill the Indian in the child.’ Within the schools, children were dressed in a English style and forced to speak English. Native languages and indigenous and cultural practices were forbidden.

Over 150 residential schools were established coast to coast. While some schools were residential for 10 months of the year, others were of year-round or permanent residency. In these permanent schools, a child could enter at age three and not leave the school again until age 17.

The schools were run by churches—the Roman Catholic Church, Anglican church, Presbyterian church, Methodist church and United Churches of Canada. The last school closed in 1996.

Over 150,000 children were forced to attend the Indian Residential Schools over 10 generations. More than 3,000 students died from illness and beatings while in the care of the schools or by freezing to death while attempting to escape from the schools. (The schools had up to a
60% death rate.) Students were further subjected to:

- sexual and physical abuse (37,951 claims of abuse have been filed)
- nutritional experiments, such as the denial of vitamins or of particular foods
- vaccination experiments – proven by government documents
- deprivation of food and warm clothing
- inferior education by unqualified teachers (including ex-convicts, longshoremen and other non-qualified individuals)

Further, the government aid provided to the schools was 1/3 of that given to other residential facilities (e.g. reform schools). While not all of the schools were abusive—and several pleaded with the government for additional funds to buy winter boots or shoes, Christmas gifts and food—they were strapped for resources and unqualified teachers were far less expensive than qualified teachers.

Currently, indigenous people in Canada rank lowest on every life metric available. Further harms that have resulted from this abuse include, for example, pregnancies, forced abortions, forced adoptions, alcoholism and drug use, post-traumatic stress disorder, lack of trust, eating disorders, hyper vigilance and physical injuries, amongst others.

In 1991, an aboriginal leader went on Canadian national television to talk about abuse to himself and his community. As he was the Grand Chief of Manitoba and the first leader to speak out and call for inquiry, it began a wave of others coming forward to speak out both individually to the court and through class action lawsuits.

The Royal Commission on Aboriginal Peoples called for an inquiry into residential schools in 1996, in response to the Oka crisis where the National Guard had to be called to quell an uprising. The Government responded in 1998 with a statement of reconciliation and a $350M payment to the Aboriginal Healing Foundation. This statement was not an apology and did not admit liability or responsibility—it carefully used the language of 'regret' and being 'regretful'.

In 1999, the United Churches of Canada stepped forward and admitted liability for abuses perpetrated in their residential schools. This concerned the Justice Department, as it worried about Courts bogging down with the number of cases (the cases were expected to take at least 52 years to clear), and it recognised the need to get the cases out of courts and into alternative processes.

The Canadian government thus held dialogues with grassroots organisations and community elders to determine an alternative process for adjudication of these cases. Despite this consultation, the Government ultimately imposed an alternative dispute resolution (ADR) process based on a tort model, in which claims could be brought for
personal injuries but were limited to intentional torts (thus not covering negligence). The ADR model treated survivors unequally, depending on where they lived and what religion they belonged to. For example, Catholics only received 75% of the compensation of other religions and certain provinces received higher compensation than others. The model was problematic—it ignored student on student abuse, was gender biased against women and there was no provision for lost opportunity or lost income, amongst other shortcomings.

There are further cultural reasons for the failure of the ADR programme. The survivors had requested a holistic approach—they wanted the potential for truth-telling, acknowledgement and apology, public education and awareness. The programme failed to address intergenerational harms and healing and it failed to provide compensation for loss of language, culture and family life. ADR further failed to require a formal apology from Canada, nor did it require provision for healing and commemoration.

In 2004, the Assembly of First Nations (AFN) and the University of Calgary Law Faculty convened a national conference to ask whether ADR will achieve reconciliation. Experts form across Canada and other countries from all disciplines (e.g. history, religion, law, government) examined the proposal and ADR process to determine whether it would achieve reconciliation. The answer by these experts was an overwhelming no.

The Canadian government in response asked the AFN for a comprehensive multidisciplinary critique and to re-write the ADR process. This resulted in the 2004 publication of a report and recommendations. Within a month, the Canadian government approached AFN to negotiate.

The AFN report contained five main recommendations:

1. The process must be holistic and comprehensive to address all harms
2. It must respect human dignity, equality and racial and gender equality
3. It must contribute to reconciliation and healing
4. It must do no further harm to survivors and families
5. It must be inclusive, fair, transparent and coherent

A series of legal decisions around the same time as the publication of the report further supported AFN’s call for a new process.

- MK and MH: limitation periods are inherently discriminatory against children (legislation is subsequently passed to elimination statutory limitation periods for sexual assault).
- Doe v Bennett – Archdiocese was held vicariously liable for sexual abuse by a priest
- Cloud v Canada – certified a class action for Mohawk Indian residential school (this class action spurred the government to come to the negotiating table, as
the Canadian government didn’t want a judge deciding damages or setting a precedent).

- Blackwater v Plint – held that Canada and the Church are jointly vicariously liable for sexual abuse of students by supervisor (75% on Canada and 25% on church)

Thus, in 2005, AFN began secret bilateral negotiations with Canada. After 5 months of negotiation Canada admitted liability and all other parties were joined to the negotiations at that point. An Agreement in Principle was signed on November 20, 2005 on behalf of Canada. The other parties—the other plaintiffs and the churches—signed. This signing indicated an attitude shift and was followed by a native religious ceremony, which had previously been banned by churches for many years as being pagan.

The elements of the Agreement included:

- A common experience payment (given to everyone who attended school, regardless of abuse – initially capped at $2.9b but was negotiated to uncap). Payment was for loss of family life, language and culture and was determined by a calculation based on the number of years at a residential school.
- An advance payment for the elderly ($8,000 right away if any evidence of their attendance in a school was provided).
- An individual assessment process for individual damages (uncapped amount – churches contribute 25%, Canada 75% - so far $3.2b vicarious liability has been paid out (18% of claims have not yet been resolved).
- Payment is for serious sexual, physical or psychological abuse – can also prove loss of income, costs for health support and elder attendance. 37,951 claims filed to date, 24,249 hearings to date.
- Government also pays for a support worker at every hearing.
- Truth and Reconciliation Commission (capped at $60M).
- Healing Funds for Aboriginal Healing Foundation (capped at $125M).
- Commemoration (capped at $20M). Commemoration events, activities, memorials, and projects will be held at an individual, community and national level.
- Education credits (educational institution or traditional education for any family member - $150M).
- A further education fund - $250M.
- Legal fees of 15% to be paid by Canada.
- Commitment for apology.
- Claimants received a written personal apology from Minister of Indian Affairs in 2008 by Government and all opposition leaders.
- Pope Benedict gave an apology in 2009 on behalf of church.

The requirements for adjudication:

- The process is non-adversarial (instead it is inquisitorial) and the lawyers are not permitted to speak.
- Hearing is private and confidential.
• Hearings take place in culturally appropriate location.
• Claimant can have support persons with them.
• Can perform cultural ceremonies.
• Lawyers from the Department of Justice attend.
• Adjudicators take special training.

The Canadian Truth and Reconciliation Commission is unique in the Western world. It allowed survivors to tell their stories and have history recorded. It had a 5 year mandate with 7 national events and numerous community events and the final report will be issued in 2015. Canada and the churches agreed to provide all relevant documents to the Truth and Reconciliation Commission, subject only to privacy interests of individuals. The Commission payments are tax free and there is no claw-back; that is, participants/ recipients are not be penalised in their other benefits based on their payments from the TRC.

The creation of a permanent national research centre and archive will follow the conclusion of the Truth Commission’s work. There will be no time limit to filing statements in this archive. The Final Settlement will conclude in 2017. Reconciliation will take many years. The final lesson from Canada is that significant compensation must be a part of any settlement so that the settlement takes on the seriousness it requires.

Dr. Johanna Skold: ‘Limits of State Responsibility: The Swedish Redress Process in the Light of International Redress Models’

Internationally, 19 countries have taken steps to enquire into or to redress child abuse. Within these countries, there have been many inquiry commission reports and hundreds of thousands of people have been validated in claims for financial payments in redress schemes. The multitude of inquiries is similar in that they use interviews, oral hearings with or without written submissions from victims to focus on abuse and neglect of children in out-of-home care in the past.

Yet these inquiries also substantially differ from each other. The time periods examined by the inquiries range drastically—the largest timeframe is that examined within the Irish Ryan Commission 1914-2000, the shortest is in Norway, examining allegations from 1954-1979. Some of the inquiries are on a national basis, while others are regional. Further, state officials conduct some inquiries, while others are designed only as research projects or museum exhibitions. The inquiries further differ in materials and methods used—the Danish inquiry, for example, used artefacts (such as the investigation of a gymnastic horse for traces of blood) and forensic analysis to support testimonies given by informants.

The options for redress are similarly broad. Redress can take the form of an official apology (issued in most countries – with the exception of
Denmark), financial compensation or a broader scheme with multiple parts. While many redress schemes and class action settlements provide for financial compensation, there is limited comparative research on financial redress. An initial review indicates that there are disparate goals when implementing financial redress—government or church officials may see the financial redress as a symbolic acknowledgement of injury or solace for pain but the assessment processes can imply to survivors that the money received corresponds to the level or type of abuse they suffered.

Further, an initial refusal to apologise or the decision to take no political action (as found in Denmark and Australia) does not silence the issue of apology and reconciliation. Court proceedings in class action lawsuits have been started in Denmark and demonstrations have demanded an official apology (though there has not been a corresponding demand for compensation). Similar debates in Australia went on for 10 years before what has been called the ‘stolen generation’ were given an inquiry report in 2007 and an official apology in 2008.

The Swedish process of inquiry and redress began with a television documentary in 2005, in which six men came forward with their experiences of sexual, physical abuse and hard labour during their time in a boy’s home in the 1950s and 1960s. The documentary attracted attention and, within a couple of days of the broadcast, the National Board of Health and Welfare was commissioned to investigate institutional abuse between 1950 and 1980. The Board was initially given a few months to investigate, after which it presented its report (March 2006) and recommended that the government set up a committee to review and document experiences of abuse and neglect.

The Commission to Inquiry into Abuse and Neglect in Institutions and Foster Homes was established in June 2006 and ran until September 2011. The Commission was comprised of 4 interviewers and a documentary research team to review and report on documents and records.

The Swedish Inquiry included child welfare care institutions (such as foster homes) and examined individual experiences of abuse and neglect throughout the chain of child welfare services in his or her childhood. It found that these same individuals were able to tell of neglect and abuse both in foster homes and institutions. The Swedish Inquiry did not document any positive experiences of individuals in care nor did it focus on ‘naming and shaming’ (perpetrators were not identified in inquiry reports).

The Inquiry issued an interim report in December 2009, in which it documented interviews with 404 individuals (225 women and 179 men). The report deconstructed the types of abuse and neglect and the accompanying percentages of each. Following the interim report, a new
commission was established for redress. The Inquiry’s final report, based on interviews with 866 individuals, contained similar findings to those in their interim report.

The Commission to Investigate Redress operated for one year and recommended that the State should offer an official apology and financial compensation to victims, establish a museum exhibit and put measures in place to prevent future abuse. In September 2011, the Minister announced that there would be no financial compensation. Subject to much criticism, after three weeks the opposition and government agreed to enforce the recommendation for financial compensation and to include this compensation as part of a broader redress scheme. The Speaker of Swedish Parliament (rather than the Prime Minister) gave an official apology in 2011. 1,300 people, mostly survivors, attended the Official Apology Ceremony.

A redress scheme for financial compensation opened in January 2013. It grants a set amount to individuals who suffered severe abuse while in municipal care in institutions or foster homes. The scheme has had 5286 applications within two years though only 3437 (or 48.5 per cent) of these have been resolved.

Skold posited that the low proportion of validated claims can be tied to the writing of the Act. She elaborated four preliminary explanations:

1. Entire groups of applicants were excluded from the Financial

Redress Act – privately placed children, Finnish war children evacuated to Sweden after WWII and children in care after 1980 were all excluded from seeking financial redress

2. Case records are missing from the archives

3. The abuse itself was not ‘severe’ enough – the care leaver’s testimony fails to meet standards of the definitions of severe abuse and neglect (e.g. violence deemed to be part of ‘normal way to raise children at that time’—corporal punishment—is not considered severe abuse)

4. Abuse is viewed not to have been experienced in conjunction to care (such as if foster parents or staff of home were unaware of abuse – e.g. a girl raped by a lodger in her foster home cannot be compensated if she cannot prove that her foster parents knew and did not act to prevent it)

A new television documentary focusing on these excluded groups was broadcast in 2013. The future for these excluded groups has not been decided and we will see what happens.

Dr. Catherine O’Rourke: ‘Transformative Reparations: Practice and Principles’

According to the terms of reference of the Historical Institutional Abuse Inquiry: The Report of the Investigation and Inquiry Panel will make recommendations and findings on the following matters: “The
requirement or desirability for redress to be provided by the institution and/or the Executive to meet the particular needs of victims”.

Redress is defined as ‘remedy or compensation for a wrong or grievance’. Under international law, the term “reparation” generally implies measures for the redress of harms resulting from certain crimes or breaches of state responsibility. In Northern Ireland, the Assembly has chosen to use the term ‘redress’. The term ‘reparation’ is the preferred term under international human rights law. The two terms are broadly similar in meaning.

In 2005 the General Assembly of the United Nations adopted the Basic Principles and Guidelines on a Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. These Guidelines define ‘victims’ as ‘individuals who individually or collectively suffered harm,’ including ‘the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or prevent victimization.’ The Basic Principles state that for such victims “[r]eparation should be proportional to the gravity of the violations and the harm suffered.’

The Basic Principles define the contours of state responsibility. In accordance with international and domestic legal obligations, states must provide reparations for ‘acts or omissions which can be attributed to the state,’ as well as acts by the state itself.

The Basic Principles, which are the primary basis for international approaches to reparations, affirm that benefits awarded under reparations schemes may take the following forms (dependent on the nature of the violation):

- **Restitution**: A process to “restore the victim to the original situation” before the violations occurred, return the victim to the *status quo ante*. Where the violation is displacement from one’s land or dispossession of one’s home, in that setting, restitution may be possible. You may be able to restore the victim to their land or their home. The nature of the harm inflicted by many human rights violations is such that restoration to the situation before is generally impossible given the nature and the extent of the harm.

- **Compensation**: Financial payment, either one-off or by instalment, which include compensation for material loss, such as loss of property and livelihoods. It could also include the physical and psychosocial harms and costs relating to those harms (e.g. costs of psychological services or treatments and moral damages such as shame, stigma and ostracisation) that arise as a consequence of many human rights violations.
• Satisfaction: Satisfaction for victims refers to effective measures to end the human rights violation, including ongoing trauma caused by the violation.

• Rehabilitation: Includes, for example, medical and psychological care as well as legal and social services.

• Guarantees of Non-Repetition: Guarantees of non-repetition include the adoption of measures of reform and establishment of measures to prevent recurrence (ensuring accountability and that lessons are learned from past violations).

Reparations encompass both material and symbolic forms of redress that are awarded individually and/or collectively, through judicial or administrative mechanisms.

Judicial reparations are awarded to an individual as an outcome of criminal or civil judicial proceedings and/or.

Administrative mechanisms are large-scale programmes to address large-scale violations, in which reparations are awarded on the basis of membership of particular categories of victims. These categories will typically vary according to nature of violations experienced, the duration of the violation, the gravity of the violation.

Material reparations can include financial compensation, dedicated rehabilitative services to victims, and the restitution of land and property assets. Cash transfers can be one-off or periodic payments, such as pensions. Rehabilitative services can include medical services, educational benefits, and psychosocial amenities. Restitution activities typically prioritize land and housing.

Symbolic reparation may include the creation of memorials, monuments, and symbolic gestures such as apologies.

In an optimal reparative model, both material and symbolic reparations would be meaningfully present and engaged in ways that would be relevant and responsive to the victims of harms. Frequently, resource limitations mean that there are persistent trade-offs between one form of reparation over another, and there is genuine tension between the two.

A review current practice encompasses a beginning to end approach in respect of the project cycle—from the conception of reparations programs to the completion of delivery of benefits. Conception – how did reparations enter the conversation/come onto the political table.

Processes of transition offer a range of entry points for establishing reparations, including through negotiations between parties to conflict, the recommendations of truth commissions (which would seem quite appropriate to this discussion, given the Inquiry’s mandate to consider
recommendations for redress), and routine legislation.

In Timor-Leste, the delivery of reparations was linked to a domestically driven truth commission. The program prioritized violations that targeted those considered most vulnerable—people with disabilities, widows, victims of sexual violations, and women affected by severe trauma. The Timor-Leste case illustrates that truth recovery processes are an important entry point for reparation and that building political consensus around the need for reparations to victims is a necessary step to effective programs. Central to the story here was the critical role that domestic civil society and international law played as allies to the domestic process.

Design - quality design requires broad stakeholder involvement from the outset, the securing of longer-term and sustainable funding, and the employment of creative ways to ensure fairness and inclusion in the design of reparations benefits.

To deliver comprehensive reparations and establish an integrated response to victims, there must be a clear normative, institutional, and operational framework.

The core stakeholders in reparations are the victims of harm. Often, however, in processes of design and implementation they are the people most likely to be left out of the process of analysis, engagement, and referral. Reparations are likely to work better and be perceived as more relevant to victims if the harms that matter to victims are included from the outset.

Victims face substantial barriers of stigma associated with the disclosure of their victim status and consultation with victims requires careful and considered approaches. Consultations must be undertaken by technically trained staff in safe ways (such as through trusted service providers that have existing relationships with victims). Processes must adhere to ethical standards for engaging in research and consultation with victims and processes need to take account of the need for sex- and age-disaggregated approaches where relevant.

Delivery - under international human rights law, reparations are distinct from routine social service and welfare provision but countries often blur the lines between them.

Merging reparations with on-going social services may undermine the integrity of reparations as measures of redress to victims of harms for which the state is principally responsible, and may erode the distinct functions of repair to specific individuals and communities.

The delivery of benefits to victims requires approaches that take into account the identities and situations of the individual recipients as well as the context in which reparations are delivered. This includes key social determinants such as gender, sex, age, disability, and education level.
Additionally, the recipients’ domestic context—in particular whether rural or urban—is also an important consideration.

Finally, a persistent issue in the award of reparations to victims is the lack of sensitive and comprehensive investigation of claims. Standards of fairness derived from the due process norms of international law should apply to the investigation of claims for redress in administrative reparations programs. Appropriate training of investigative personnel, accompanied by flexible evidentiary standards, can assist to overcome some of these more serious shortcomings.

Applying a rights-based approach—the core conceptual basis of remedy underpinning IHRL, which treats reparations as a human right and not merely an entitlement—to the provision of reparations is fundamental to ensuring that the state recognizes its role in the provision of reparations; acknowledges the responsibility of perpetrators and fulfils its legal responsibilities to victims. This can be done with consideration of four main principles (the TJI Principles for Transformative Reparations):

1. Be transformative – reparations also must take a broader approach that tackles the structural discriminations that enable sexual violence to take place and that determine additional and subsequent harms. Reparations have the capacity to provide a bridge to transformative social, political, and economic outcomes for women and men who have been targeted, marginalized, and stigmatized by sex-based harms.

2. Respond in a timely way.

3. Consult and inform - adopting a rights-based approach to reparations includes informing and educating victims about their rights and entitlements as well as implementing consultative approaches that empower victims.

4. Work alongside and in tandem with other transitional justice processes.

Discussion and Q&A

Question 1 (for Kathleen Mahoney): Was there a window of opportunity for people to come forward within the Canadian process? How did the Canadian negotiation manage to persuade Canada and the Church to stop looking at the institutions as autonomous and self-governing and accept that they did have responsibility?

Answer 1 (Kathleen Mahoney): The window of opportunity is a problem—we are told by the First Nations that some people will need more time but that window is now closed (it was open 2007-2012). There were large public notices that it was coming to an end and providing the drop-dead
The closure of the window of opportunity is a problem but there is some fall-back as individuals will still be able to go before the truth commission to tell their story. However both the individual redress scheme and the common experience funds are no longer accepting new applications.

The Blackwater decision made the churches come to the table—the churches could see the writing on the wall. Though the Catholic Church has no national corporate business structure—it is organised by dioceses and much of the abuse happened where there is no property or money—the other churches checked the numbers and realised that they would be better off if the lawsuits could be ended. While most churches have since been exemplary in paying their share, the Catholic Church continues to lag behind.

Question 2 (for Johanna Skold): An influential person in Northern Ireland, under questioning, said that they are considering an inquiry under Swedish model. Hopefully they won’t, now that we’ve heard how that was run in shambles and that it was a disgrace to survivors.

Answer 2 (Johanna Skold): When I talk about the Inquiry Commission, it is important to know that survivors were quite satisfied with it. It was what happened after that—with the redress process—that proved problematic. There are critics of the Inquiry, of course, but many survivors afterward asserted after the Inquiry that they were happy with the Inquiry itself.

Question 3 (for Kathleen Mahoney): How did you get all of the 100,000 natives to come forward? Were they given letters and an opportunity to come forward? How did you get 100,000 people in agreement? Less than 1 in 10 here has come forward. Many victims do not understand the concept of redress; how can the inquiry judge what victims want if they don’t understand the question. They would, however, have understood financial compensation.

Answer 3 (Kathleen Mahoney): The different thing about the Canadian process is that the truth commission or inquiry came last. Survivors insisted on a truth commission for record and history—so that history couldn’t be repeated—but if they had the hearing first, things would bog down and people would die before anything was done. Regarding access to the individuals: it was already in motion as a series of legal actions. Some people were in courts with lawyers representing them (one lawyer had 12,000 clients), while others had class actions that purported to represent everyone. All of these parties had legal representatives. A further group of lawyers represented a certain number of clients but not in a group sense. When it came time to sign off on settlement agreement, those are the people that signed. The Assembly of First Nations was political representation of all first nations in Canada and hosted big meetings (expected 8,000 and 25,000 showed up), working groups
and circles to collect information. If represented by legal counsel, they can tell lawyer their stance, but anyone else could enter the courtroom and state their opinion and the judge would rule on it. Every judge had to determine whether this agreement was just and fair. Every jurisdiction ended up saying yes. All lawyers were on side. There were a few representatives who didn’t like it but they were very limited in number.

When it came to the truth commission, there was a wide amount of advertising. There should have been greater outreach to the non-aboriginal community. The first nations community already knew what had happened but Canada needed to hear stories of the non-aboriginal community. We worked through universities and high schools and there was a big response but would have liked more. We still have to see how the report is perceived when it is tabled in June.

Also of note – this history is being put into mandatory education in Canada as well.

Question 4 (for Kathleen Mahoney): Was it all Irish Christian brothers who were the abusers or were there any others? Have you come across where the children who were abused became abusers?

Answer 4 (Kathleen Mahoney): There were all sorts of churches in Canada running these schools. (In Sweden, the care facilities were not church-run but privately-run.) In Canada, it was quite common for the abused to become the abusers—children will repeat what they have been taught.

Question 5 (for Kathleen Mahoney): In terms of human rights values on the background of this, it seems that we need to consider the UN Convention on the Rights of the Child. When we’re looking for best practices, looking for items to import and use, it is important to remember that our countries are all very different. We have different views on what a child is and what the authority of a family is. Whereas things happen in the courts in Canada, it’s in Parliament in Sweden. Government inquiries are very different from Canada to Scotland to Sweden. We need to be cautious in replication. Does the UNCRC come into play?

Answer 5 (Kathleen Mahoney): Canada is a signatory to the CRC and it informed the thinking. Canada didn’t need to cite it, however, because there were already domestic laws and precedents for dealing with aboriginal groups who had different forms of traditional law. In Canada, the process had to be in the courts because native tribes don’t trust the government.

Question 6: A survivor made the following comment about the HIAI recommendations and directed it to Sir Anthony Hart - “be generous”.

Question 7: This idea of privately being handed to the state is a shock. I have never met a family or a survivor who were given by their parents to a care institution without intergenerational trauma and poverty
acting on that family. Also—we are in a time of austerity—and reparations are difficult to discuss. We need to remember that these were most impoverished children in our society. If you look at those of us who are paid by the state, looking at pensions for lifetime of service, we should be as generous in relation to those who were incarcerated on our behalf.

POST SEMINAR REFLECTIONS

Redress: Survivors’ Perspectives on the way forward.

*Margaret McGuckin: Survivors and Victims of Institutional Abuse (SAVIA)*

After the worldwide media coverage in the late 90’s of Clerical and Institutional Abuse in the South of Ireland, and the aftermath of general public outrage and condemnation of State, Religious and Clerical Institutions, for turning their backs on the most vulnerable children of Ireland. Survivors here in the North began to wonder “What about us?”

Having met up with ex-residents of Nazareth House in Belfast, we decided to start up a petition calling for "Justice for Survivors/Victims of Institutional Abuse in the North of Ireland". I spent many months gathering signatures (6,000) and boldly brought them to Parliament Buildings at Stormont, demanding we too be listened to.

Having successfully campaigned for an inquiry into Historical Institutional Abuse, in the North of Ireland, we are determined and resolute as part of our long journey for justice that compensation is a key part of redress for survivors.

Many of our people were supposed to be brought up and "cared" for in a loving stable environment; but sadly we were not. Many from a very young age were neglected, physically, mentally, and sexually abused; many are now emotionally scarred. This has prevented many survivors from leading a normal healthy lifestyle.

There are so many that I have come into contact with over the 7 years of campaigning that have set very low standards for themselves because of the humiliation and degrading treatment and belittlement they experienced while in “care” (including myself). We have always felt and assumed that we are not a part of society and therefore do not tend to fit in. The effect of this ill treatment has carried on into adulthood; and more disturbingly it has carried on down the generations and is inter-generational.

Importantly, no decision on redress is to be considered by the Executive until after the Inquiry reports. This is likely to mean that no consideration of reparation, including compensation, would be given by the Executive until at least mid-2017. Victims are being asked to wait for a significant – and unknown – length of time, before they may be able to
receive redress, should any ultimately be forthcoming.

This is an issue of concern to many victims, some of whom are now of advanced age, and who fear that they will not live long enough to enjoy redress or receive any compensation to pass on to their families, who have also suffered as a result of the abuse experienced.

Victims and survivors are asking the question, why is there apparently reluctance to produce an Interim Inquiry Progress Report and early Interim Payment Scheme?

The State, Church and Religious Orders failed in their Duty of Care, and must now begin to set up an immediate redress scheme in order to compensate survivors and to redress the wrongs perpetrated upon us whilst in their care.

**Jon Mc Court**

**Chairperson**

**Survivors (North West)**

There always expectations when you attend a seminar, unlike many previous events I have attended at least this was not filled with the conference circuit. The seminar on “Redressing Historical Institutional Abuse” drew a specific and invited audience many of whom had suffered abuse while in care in Institutions in the North of Ireland. Many of them have already given evidence to the Historical Institutional Abuse Inquiry (HIAI) which was set up at the insistence and as a result of pressure from many of the survivors in the audience. The HIAI wasn’t perfect we knew that, but it was a locally accountable inquiry established with the unanimous support of the Northern Ireland Assembly and at the time the support of the majority of those who had sought it.

It was clear from the presentations that there were huge differences in the way other inquiries worked and how other societies had approached the issue of redress.

The CICA (The Ryan Inquiry) in the Republic of Ireland delivered its report in 2009; over five years later the Irish Government has still to deliver fully on its recommendations. The Catholic Church is still attempting to renegotiate its financial contribution to the redress fund. As part of the settlement, a land for cash deal was struck with the Religious Orders who now blame the property crash for not being able to meet their financial obligation of over €680 million as part of the 50/50 share of the settlement agreement.

While in Scotland the voices of some of those “abused in care” had a pilot forum, through “Time to be heard”. This fell well short of a national inquiry. It commenced in May 2010 and the report was issued in February 2011. It heard evidence from 98 former residents of one care institution. No recommendations for redress came from the report. The views of former “residents in care” on the form of the intended National Inquiry and their expectations of its Chair and Panel have been sought.
The Swedish example offered more in what it failed to achieve than in what it achieved. The timeframe of their investigation was 1920-1980. State acceptance of responsibility for any abuse was guarded and limited. Many claims were rejected because they were deemed not to have been as a result of abuse in care or to have met the standard set by the Inquiry. Although 53% of those who came to the Inquiry claimed to have been sexually abused and 76% claimed to have been physically abused, less than half (48.5%) of those who came forward had their claims validated. The maximum award of compensation was €28,000, irrespective of the level of damage and accepted claims.

One of the most interesting presentations was by Professor Kathleen Mahoney from the University of Calgary, who was the Chief Negotiator on behalf of former residents of the Indian Schools in Canada. The Boarding Schools have been described by some as being responsible for cultural genocide. What initially brought the institutions to the table was the threat of massive class action lawsuits. In 2006 the Canadian Government conceded to the demand for a negotiated settlement agreement. While not denying the right of anyone to make an individual claim by formally opting out of the agreement, the settlement was eventually negotiated on behalf of over 86,000 former residents of the Indian Schools worth over $3 billion.

The lessons from the seminar are that a single unified campaign gets the best results. And every legal avenue needs to be explored. It was interesting to note that in both the Canadian and Irish cases the threat of mass legal action either individually or through a class action lawsuit forced the governments and the institutions to concede an eventual resolution process. There is no equivalent of a Class Action Lawsuit here although in England, Civil Procedure Rules (CPR Part 19) allow something similar. The “Time Barred Statute” should be challenged with the Assembly, the Justice Minister and the courts under the ECHR; opening the possibility for civil actions.

The redress process in Sweden rejected claims for many who should have been entitled because its criteria was so restrictive and the cap on payments was set too low. It is important that any redress process in the North of Ireland must be flexible in the criteria and there should be generosity in setting the tariff table. Redress in the form of financial compensation for damage caused is a right under international law; and any redress scheme implemented here must be fully compatible with ECHR. The government does not have a right to exchange that for services in lieu of financial redress. Nor will it be acceptable to offer an enhanced pension package in lieu of financial redress. They can offer support and money management advice through an independent third party if survivors want to avail of such a service. They have no right to assume that victims and survivors would be incapable of managing their own affairs; though they can
make reasonable efforts to ensure that information, expertise and guidance are available.

A lot of victims and survivors do not use support services. More relevant information about the process, accessibility, role and advantages of them needs to be available. Support Services should offer an information day so that their role and their services are explained.

On a final note, the Common Experience Payment negotiated on behalf of the Assembly of First Nations in Canada was innovative and ground-breaking. Such a payment here may well satisfy the demand for an interim payment and show good faith on behalf of the institutions without being interpreted as “predetermining the outcome of the Inquiry”.

**Gerry McCann**
**Rosetta Trust**

The Seminar Redressing Historical Institutional Abuse: International Lessons, hosted by Ulster University, has undoubtedly highlighted the huge importance of redress within the Historical Institutional Abuse Inquiry. Indeed the seminar itself undertaken at Belfast Campus on 28th March 2015 was a very interesting project from a survivor perspective insofar as it raised questions about the possibility of interim redress. As a direct response it has also equally raised many fundamental questions pertaining to whether there is desirability or a genuine onus on the part of the HIA Inquiry but more crucially the State to address the redress issues in its entirety.

Many survivors and support groups are struggling to understand if redress is potentially realistic such is the confusion and anxiety surrounding its implementation. Therefore one can understand survivors eagerly waiting with interest for the inquiry’s Findings and Recommendations in January 2017. The report goes back to the State (OFMDFM) and this could be seen as a conflict of interest. In light of the seminar putting redress into the public arena, and the invaluable contributions, particularly from the floor, clearly identified redress must be part of the healing process. Therefore like many interested parties, I cannot see how the Northern Ireland Executive can continue to ignore such an important component into historical institutional abuse; and be seriously considered as positively dealing with the past.

With regards to the Church and the aspect of redress, I think it would be expected that they also must take part in any redress settlement. They have a duty of to make a genuine gesture and place a proportion of funding towards the overall redress pot. Therefore, like the State, the Church must also part take in any proposed settlement.

I was encouraged that the seminar brought many important guest speakers from various countries that have had similar inquiries into historic abuse. Each speaker extraordinarily expressed and
highlighted how it dealt with redress in each of their respective jurisdictions and the models they had implemented. In addition it was clear from having listened very intently to the speakers, redress was fundamental to the inquiry in moving forward in a positive approach. However I sense there was to a degree some repetition among the speakers. Nonetheless it was good that contributors reinforced the huge importance of redress in their countries, endorsed by their respective governments.

Of the many speakers in the seminar, all added various dimensions in dealing with a toxic and global disease; however I couldn’t help but be very intrigued by the presentation given by Professor Kathleen Mahoney, of University of Calgary, Canada. Professor Mahoney the chief negotiator for the Assembly of First Nations was undoubtedly a huge task. Professor Mahoney had clearly established from the outset it was inconceivable that without introducing redress there was no solution.

Professor Mahoney’s presentation was full of passion but also based directly on a realistic approach in dealing with redress. An interim redress was advocated without prejudice colour or creed; as recognition by the Canadian government to deal with survivors of child abuse. Ultimately this was essential and the model undertaken and recommended by Professor Mahoney was endorsed by the Canadian Government. I firmly believe this model is one that ought to be seriously considered by our government.

What struck me and many who attended the seminar, although some wish to ignore, is the issue of accountability which ultimately goes to the very heart of the matter. It was conceded collectively, that institutions and authorities within the remit of HIA must also share responsibility for what occurred under their care.

From a survivors’ perspective, the various abuse inquiry models used in other countries, in particular Shelagh McCall from Scotland and Pearse Mehigan from Republic of Ireland, had lessons that should be learnt. In particular, in the Republic of Ireland where clearly many survivors had engaged with legal representatives in respect to individuals making claims; but sadly that brought further complications and added hardships. What stems from the process is that a huge proportion of funding was contributed to the legal fraternity, which in most cases resulted in survivors being worse off, not just in financial terms but psychologically and emotionally.

The HIA Inquiry and OFMDFM together ought to consider putting in place appropriate mechanisms and in doing so, consider seriously the various suggestions made by the survivors themselves. Naturally there is emotional attachment by survivors who have strong views which may cloud their judgement but nonetheless their concerns and needs must be taken on board. Equally, the Terms of Reference
highlight redress in a broad sense. However there is no definitive assurance of the desirability of such a scheme by OFMDFM. This underpins whether the redress issue is part of an overall solution. Having attended many meetings with OFMDFM, Ministers and Senior Civil Servants over a number of years, the redress issue is somewhat discoloured. Thankfully through the seminar it has very much brought the redress issue to the forefront and hence many interested parties including survivors were relieved that it is now beginning to be taken very seriously. And as a survivor the inquiry and the state should not discount some-form of interim redress. It should be an objective rather than an aspiration. Whether there is an appetite particularly by the state to deal in real terms is somewhat uncertain but support groups will continue to make representation. With that being said it was comforting to see people with huge influences including the inquiry chairman Sir Anthony Hart and Junior Minister Jennifer McCann and other notable interested parties had attended the seminar.

Speaking to fellow survivors the seminar has given them tremendous hope as well as recognition that their voices are now being heard. It will however remain to be seen whether there is a genuine effort by the state to uphold the Terms of Reference in their entirety. And whether the redress becomes a reality; even an interim one would be a step in the right direction. Like some of my fellow survivors we very much recommend that some sort of enhancement pension be put in place. As you would expect we are very mindful that many survivors would not be able to deal with this aspect. Therefore there is a collective responsibility on all who have a vested interest to ensure that in whatever financial support derives from the state that the survivors come first.

Finally, I wish to thank and commend the organisers of the event for creating a platform through the seminar; and for this emphasising the importance of redress to the Historical Institutional Abuse Inquiry. We survivors are internally grateful for their help encouragement and support of what has been a very difficult taboo subject.

Amnesty International / Survivors and Victims of Institutional Abuse (SAVIA)

Historic institutional abuse – delivering a just settlement for victims

The decision of the Assembly to extend the HIA Inquiry by one year to allow adequate time for victims to be heard and for the panel to consider the evidence and make its report to the Executive, has inevitable adverse consequences for victims with respect to redress.

Given that many of the victims are elderly and/or infirm the prolonging of a decision on redress risks denying many victims the opportunity

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1 This proposal was submitted to OFMDFM March 2015
of personally receiving the just recognition of the abuse they suffered and risks breaking faith with victims who signed up to the original timetable.

Given the victims’ original, hopeful expectation of a final report in 2016, we propose that it is now fair, just and reasonable for Ministers to consider ways to mitigate the delay of at least a year in recommendations on redress in Sir Anthony Hart’s final report.

Victims had previously proposed that, in light of the extension, OFMDFM should ask Sir Anthony to make an interim report on the issue of redress. This proposal received widespread support across the Assembly during the debate which paved the way for the granting of the inquiry extension.

However, it is understood that Sir Anthony is not well disposed towards this proposal and that Ministers are not inclined to make such a request.

In light of this, Amnesty International and SAVIA propose two complementary courses of action which could address both the delay and the uncertain timetable in the implementation of the establishment of a final redress scheme.

1. Interim redress scheme

Without prejudice to the final report of the HIA Inquiry and recommendations regarding redress, OFMDFM should establish an interim scheme to provide modest financial support to victims of institutional child abuse.

In the Republic of Ireland, an interim scheme was established which could provide pay-outs of up to €10,000 to victims.

The scheme was established under the auspices of the Redress Board, which was set up under the Residential Institutions Redress Act, 2002 to make fair and reasonable awards to persons who, as children, were abused while resident in industrial schools, reformatories and other institutions subject to state regulation or inspection.

Where the Board made a preliminary decision that someone was entitled to an award, it could pay an interim award of not more than €10,000. This interim award was deducted from any final award.

The Redress Board did not seek to decide any question of civil or criminal liability on the part of persons involved in the running of these institutions.

In Northern Ireland, 528 individuals have made applications to the HIA Inquiry. We do not have figures for the number of these individuals who state they suffered abuse while a resident in one of the institutions covered, however we assume that most applicants fall into this category.

Using the Irish interim scheme as a benchmark for an appropriate level of interim award and a figure of around 500 for the number of victims who have come forward to the inquiry, an interim compensation fund for Northern Ireland might be
established at a level of perhaps £4 million.

2. Preparatory work on a final redress scheme

The HIA Inquiry may submit its report to the Executive in early 2017. It is likely to offer findings and recommendations across a range of matters, each of which will require due consideration and a process of decision-making, consultation and implementation. With matters of such sensitivity and complexity, this could prove to be a lengthy process. Consideration of the way forward on implementing a redress scheme, perhaps alongside other forms of restitution, could therefore take some time, time which can be ill-afforded by some of the victims in advanced age and in ill-health.

We submit that Ministers could use the time before receipt of the report of the HIA Inquiry, and without prejudice to its findings and recommendations, to explore options and draft proposals for a possible redress scheme for victims of institutional child abuse. Thus, were the Executive to commit to establishing a redress scheme, it could be ready for action once the HIA Inquiry’s report is submitted in January 2017.

This process could examine all relevant considerations, including models of redress mechanisms employed in other jurisdictions, the application and adjudication process and the financial scale and make-up of the fund. Such a process should entail the advancement of discussions within and between responsible government departments and with bodies such as religious orders and other private operators of homes where abuse was perpetrated, about the funding of such a scheme.

Conclusion

The victims of institutional abuse have a pressing need for justice – of which financial reparations is an integral component – and that need becomes more urgent with each passing day. We urge that Ministers acknowledge this by taking the steps outlined above to demonstrate their continued commitment to delivering a just settlement for victims.
Speaker Biographies

Patrick Corrigan is Head of Nations & Regions at Amnesty International UK and its Northern Ireland Programme Director. He is responsible for AI campaigning on a range of human rights issues, including its work on dealing with the past in Northern Ireland. He is a Board member of the Human Rights Consortium. He has worked on issues relating to institutional child abuse since 2010 and organised the largest ever gathering of abuse victims at an Amnesty conference in October 2010 which focused on delivery of a human rights compliant inquiry for the victims of historical institutional child abuse in Northern Ireland. He continues to campaign for an inquiry for victims of clerical child abuse and for women who suffered abuse in Magdalene Laundry / Mother & Baby Home-type institutions in NI.

Pearse Mehigan qualified in 1981 and has been in practice now for 30 years having established the practice here in Dun Laoghaire in 1982. Primarily involved in litigation the Principal has acted for a number of the country’s leading insurers over the years and more recently, has been very much involved in representing victims of sexual abuse, both clerical and non-clerical and in addition to which, the firm has successfully completed over two hundred and fifty applications to The Residential Institutions Redress Board, on behalf of clients from all over the country. Pearse Mehigan is an accredited mediator having successfully completed the CEDR programme to which he is now accredited and which he has applied successfully to bring resolution to a number of difficult and challenging cases involving victims of childhood sexual abuse.

Shelagh McCall is a commissioner at the Scottish Human Rights Commission and has held that post since SHRC was founded in 2008. She is a lawyer by profession, practising at the Scottish Bar. She is a part time Sheriff and legal member of the Mental Health Tribunal of Scotland. She was formerly a prosecutor at the International Criminal Tribunal for the Former Yugoslavia in the Hague.

Kathleen Mahoney is Professor of Law in the University of Calgary, Canada and was the Chief Negotiator for the Assembly of First Nations achieving the historic Indian Residential School Settlement Agreement for the abuses perpetrated on Indian children for over 150 years. It is the largest financial settlement in Canadian history. She was the primary architect of the Truth and Reconciliation Commission and led the negotiations for the historic apology from the Canadian Parliament and from Pope Benedict XVI at the Vatican. She was counsel for Bosnia Herzegovina in their genocide action against Serbia in the International Court of Justice and
Chair of the Board of Directors of Canada’s International Centre for Human Rights & Democratic Development for 6 years.

Johanna Sköld is a PhD of economic history and is holding a position as a senior lecturer at Child Studies, department of Thematic Studies, Linköping University, Sweden. Previously, she was a member of the Swedish commission to Inquire into child abuse and neglect in institutions and foster homes that operated 2006-2011. Her research interests concern the history of children in out-of-home care and comparative studies of inquiries into historical institutional abuse.

Dr Catherine O’Rourke is Senior Lecturer in Human Rights and International Law and Gender Research Coordinator at the Transitional Justice Institute (TJI), Ulster University. She researches broadly in areas of gender, international law, human rights and transitional justice. Her monograph, *Gender Politics in Transitional Justice* (Routledge, 2013) examines women’s movement engagement with, and gendered outcomes of, transitional justice processes in Chile, Colombia and Northern Ireland. The underpinning doctoral work was awarded the Basil Chubb Prize by the Political Studies Association of Ireland (2010). In 2011, she was commissioned (with TJI colleagues Professor Fionnuala Ni Aolain and Dr Aisling Swaine) by UN Women and the UN Office of the High Commissioner for Human Rights to conduct a study of the international legal framework, UN policy framework, and state practice in the delivery of reparations for conflict-related sexual violence. In addition to her academic work, she has an ongoing role in gender and conflict policy for intergovernmental organisations (including UN Women) and national governments (Irish Department of Foreign Affairs, UK Department for International Development). She has core responsibility for delivering the TJI postgraduate LLM programme and Short Course in Gender, Conflict and Human Rights.