



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Inquiry into Historical Institutional Abuse Bill:
Amnesty International UK Briefing

12 September 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Colum Eastwood
Miss Megan Fearon
Mr William Humphrey
Mr Danny Kinahan
Mr Alex Maskey
Ms Bronwyn McGahan
Mr George Robinson

Witnesses:

Mr Patrick Corrigan Amnesty International UK

The Chairperson: We are joined by Patrick Corrigan from Amnesty International UK. Committee members have a written submission from Amnesty International dated July 2012. Patrick, you are very welcome. I offer you the opportunity to set out your stall and then make yourself amenable to members' questions.

Mr Patrick Corrigan (Amnesty International UK): Thank you very much, members of the Committee and Mr Chairman, for inviting me to add some flesh to the bones of the submission that we have already made in written form. Thank you for the invitation to give oral evidence.

To set out our credentials specifically on this issue, I must say that Amnesty International has campaigned alongside the victims and survivors of institutional abuse since February 2010, specifically in pursuit of an inquiry that can deliver a measure of truth and justice for victims of institutional child abuse. We want to take the opportunity to commend all those victims who have courageously come forward to tell their story and campaign for this inquiry. I also commend the Ministers and officials from the Office of the First Minister and deputy First Minister (OFMDFM) for the work that they have done in bringing forward the proposals for the inquiry. We really want to acknowledge that they have done a very good job and committed to engaging with us on a number of occasions via meetings and correspondence over the past couple of years. We welcome the publication of the Bill and the inquiry's terms of reference. We think that they represent significant moves in the right direction. The concerns that I will, from this point onwards, focus on are the

outstanding concerns that we have with the proposals. However, I do not want that to detract from the good work that we think has been done and that we acknowledge.

I will run through a few of our main points that I want to focus on. One is around the independence of the inquiry. I know that the Committee heard at length from the Human Rights Commission (HRC) last week on some of the points, so I will not go over that issue at length. However, I will say that the Bill as framed gives the First and deputy First Ministers' office significant powers potentially to intervene in the running of the inquiry. Those powers, taken either individually or collectively, amount to a degree of potential control over the inquiry. Again, that has the potential to undermine its independence, to risk public confidence in its effectiveness or actually to risk its effectiveness. We note that the HRC says that the Bill as framed would put the Northern Ireland Government in breach of the Jordan principles, and that that could be in breach of our international human rights commitments. I have to say that Amnesty International shares those concerns.

Again, we know that you have already heard that there are some concerns about the historical scope of the inquiry, and I want to underline our concerns, too. First, victims of institutional child abuse in the years pre-1945 or post-1995 effectively face exclusion from the inquiry. We consider those cut-off dates at both ends to be arbitrary and as potentially amounting to discrimination on the basis of age. We note in the legislation that the Ministers have given the panel on the acknowledgement forum the discretion to look at pre-1945 cases. We welcome that direction of travel, but it falls far short of what we think the Bill needs to do. We think that the approach as framed is problematic because it provides a second-class form of inclusion by the acknowledgement forum, granted at its discretion rather than as a right that the victims can assert.

Secondly, it is worth noting that neither the Bill nor the terms of reference grants a similar degree of discretion to the other two components of the inquiry — the research and investigation team, and the investigation and inquiry panel — to take direct evidence and consider cases of abuse outside the 1945 to 1995 time frame, beyond receiving a report from the acknowledgement forum. Therefore, again, there is a secondary status being granted to those victims affected pre-1945 or post-1995. The Bill at the moment is stating that we will allow those individuals who suffered abuse as children in institutions to have their abuse acknowledged but not researched, investigated or enquired into. We think that that is a significant shortcoming of the Bill. We recommend that the Bill be amended to address that.

I want to touch again on the lifespan of the inquiry. The two years and six months period following the commencement of the legislation may be a reasonable time frame within which the inquiry can complete its work. Equally, it is possible that the scale of evidence presented for consideration or the number of witnesses that come forward may mean that additional time is necessary for the inquiry to do its job. Therefore, we would say that the 30-month time limit should be open to revision should the chair decide that that is necessary in the interests of completing a thorough and effective investigation. I note, in passing, the precedent of the Smithwick tribunal, which is investigating allegations of state collusion in the Republic of Ireland, where the chair of the inquiry has twice sought and been granted extensions to the period of investigation. I think that those extensions have been roundly welcomed as necessary.

I also want to touch on reparation and redress. At the moment, a decision on reparation, including compensation, has been deferred for consideration by the Executive until after the inquiry reports. Effectively, we are looking at 2016 and beyond before anything might happen on that front. We know that that is of deep concern to quite a number of victims who have spoken to us. We suggest that decisions on aspects of the right to reparation and redress need not necessarily be dependent on the final outcome of the whole inquiry process. Instead, the inquiry could be tasked with making an interim report on those matters, with recommendations for the Executive based on specific inquiry into the issue of redress and what the panel might recommend. The Bill as framed already makes provision for the publication of an interim report by the inquiry. We suggest that an interim report focused on the issue of reparation would mean that recommendations on redress are actually based on evidence presented to the inquiry but does not mean that there is a delay until the whole work of the inquiry is completed.

The terms of reference are crucial, yet they are currently not contained in the Bill itself but form part of a wider written ministerial statement to the Assembly. I want to make a few points about the terms of reference. We consider them to be quite narrow, confining the inquiry to investigate and report on whether there were systemic failings; recommendations as to a possible apology; a tribute or memorial to victims; and the possibility of redress. We think that the terms of reference could prove restrictive

and that the inquiry may need to request a redefinition or widening of those terms of reference as it goes about its work and uncovers evidence.

The terms of reference do not provide for the inquiry to make recommendations around changes to current law, policy and practice so that we can ensure that there is no repetition of the type of abuse that the victims who have been the subject of this inquiry experienced. At the moment, the inquiry's hands are tied in pointing us towards any lessons that we can learn as a society. Neither the terms of reference nor the Bill offers us a definition of abuse. We think that those are all omissions that need to be addressed between the Bill and the terms of reference.

We think that the terms of reference should be amended to have more flexibility so that the inquiry can determine in more detail the matters that come within its scope. We also argue that the terms of reference should be brought within the legislation, with an enabling clause to give Ministers the power to amend them with the prior agreement of the inquiry chair, should that prove to be necessary. We think that that would fulfil the twin objectives of ensuring proper Assembly scrutiny of this crucial aspect of the architecture of the inquiry and ensuring improved scope for amending the terms of reference, should that prove to be necessary.

Finally, I will make the point that the inquiry is obviously not addressing clerical abuse in non-institutional settings. We regularly receive calls to our office from victims of clerical child abuse who ask, "What about us? Why will this inquiry not deal with our experiences of abuse?" We are not particularly calling for the scope of the inquiry to be amended to address that. However, we take this opportunity to request that the Committee make recommendations to the Executive that they address that abuse as well. We think that it is an issue that requires political attention.

I thank you for your time, and I thank the Ministers for their work to date. I am happy to answer any questions that you have.

The Chairperson: Thanks, Patrick. Let me press you a little bit on that last point. You said that you are not particularly minded to call for change. I think that I am right in saying that, last week, the Human Rights Commission was very definite in telling us not to attempt to broaden the scope of the inquiry but to be mindful of the fact that this process is leaving people behind and that this is not the complete picture. Is that what you are saying?

Mr Corrigan: We are happy to echo that sentiment. We are saying that if this is not the mechanism for addressing those cases, and we are happy to accept that it is not because the inquiry's framing has gone so far, another mechanism needs to be investigated to do that. We have lots of cases of clerical abuse in Northern Ireland, and none has yet been investigated by this inquiry methodology.

Mr Eastwood: You have made quite a number of points. I suppose that we will go through those as we go through the Bill. I will ask you specifically about the 1945 and 1995 limits. There are a number of different ways that we could resolve it, but have you any particular solution in mind for how you would frame the Bill?

Mr Corrigan: We think that the limiting dates could be done away with altogether so that it will look into cases of historical abuse up until last year or whenever and so that we essentially run from the formation of the state up to a recent date. I understand that the 1995 date has been stipulated because of the passing of the Children (Northern Ireland) Order in 1995 and a sense that the rules of the game changed at that point. I know from looking at the submission from the Children's Law Centre and the work that it has done on children's rights that it does not consider the problem of institutional child abuse to have ended in 1995 and that there are many recorded instances of its being an ongoing problem. I think that it would be remiss of the inquiry to miss out those cases. We would look to bring the date closer to the present day so that the inquiry can tell us about current and recent experience as well as about purely historical experience in the pre-1995 sense.

As for pre-1945, we see no compelling reason why the starting date cannot be from the formation of the state. We already understand that the number of cases from between 1921 and 1945 will be relatively limited simply because of the advanced age of the victims concerned. Therefore, we do not think that it would be adding to that workload unduly. It would be a fairer way of proceeding. I think I pointed out in our submission that the Ryan commission was given discretion, for its two main components of inquiry, to amend either earlier than its stipulated start date of 1940 or later than its stipulated end date of 1999. That discretion was used in the investigation and confidential committee work. So, there are two different ways that this issue can be approached. The fairest, most open

way, where we are not designating some victims as second class, and who may be admitted to the inquiry only at the discretion of the inquiry panel, would be to simply widen the dates from, let us say, 1921 up to 2011, when the legislation was framed.

The Chairperson: Patrick, you made the point that the word "abuse" could be better defined. You reference the UN Convention on the Rights of the Child. Does that constrain the panel when it is looking at abuse? Should we be saying that there is a really rigid definition that the panel must work to, or is it OK for the panel to say what it thinks abuse is when it hears from victims and survivors? Abuse is what it is.

Mr Corrigan: It needs to be defined in some sense, because it is specific to the context of institutional abuse during the time period involved. However, it can be informed by the Convention on the Rights of the Child. I think that there are lessons to be learned from how some of the other inquiries that have come before this one addressed that point. At the moment, it seems to be an omission that this is not to be defined in law. Obviously, it can be a matter that is left to the inquiry. Perhaps that is the intention of the Department.

The Chairperson: Is there not the inevitable implication that it might exclude somebody? I am speaking from the experience of working on the Victims' Commission. The worst thing you can ever have to do is sit down with a victim or survivor and say: "I am sorry, but you do not meet the criterion or criteria."

Mr Corrigan: It is a matter of getting the framing right. We are not offering a specific form of words. We are saying that the issue should be informed by the international children's rights standards.

The Chairperson: We hear that redress is important. We also hear the use of other words, such as "reparation". Do you think that there is a common understanding of what those words mean? Do you think that, over the course of the inquiry, we will reach a common understanding among those who come forward as to what they want and need?

Mr Corrigan: From the victims that I have spoken to, I know that different people would like different things from the process. For some, there is the desire for an acknowledgement of the pain and disadvantage they suffered throughout their lives through the form of financial compensation. We think that people have a right to that where, for instance, such loss of earnings can be classified in financial terms. For others, it is about addressing the other elements of their life that have been harmed or that they have missed out on. That may be through employment or educational opportunities, if they are of a younger age. For others, it is about an apology and a proper acknowledgment, a point already addressed.

There is confusion. There are a number of components. Again, I bring us back to the point of non-repetition. One component of redress is non-repetition. It is important that the inquiry is allowed to come up with recommendations that will ensure that we do not have future victims and that as much as possible is done to prevent a recurrence of the abuse.

The Chairperson: We have to recognise that those lost opportunities, if we can define them broadly like that, are intergenerational. It is not just about the person who was abused and who is impacted. It may impact on their children, and possibly grandchildren, too.

Mr Corrigan: Indeed. That concern has been raised with me, particularly by people of significantly advanced age. If the issue is postponed or deferred until 2016 or 2017, they may not be around to receive compensation to pass on to their children or grandchildren. That is a very human fear.

Mr Maskey: Thanks, Patrick, for your presentation. In fairness, we dealt quite extensively last week and in previous discussions with most of what you raised. Most people around the table, if not all, share a lot of what you have said. I am happy to leave the situation as it was last week. I make that point primarily because last week, the Committee agreed, unanimously if I recall, to tell OFMDFM — and most members, if not all, acknowledged that OFMDFM is clearly well-intended in the matter — that we want the issue dealt with as quickly as possible and to get the best Bill possible passed. I left the meeting last week encouraged that everybody around the table was saying exactly the same thing. Then, over the next few days, I read that people were having a go at it. It is fair for people to say whatever they want publicly, but when we agreed a course of action unanimously last week, that

should have been reflected in what they said publicly. However, it is for people to say whatever they wish.

On that basis — and I am saying this because people may now want to run to the media, which is fine; but they may leave themselves open to be challenged — Patrick, you used the language of people who may not be included in the legislation as perhaps being second class. I want to make sure that that is your language. It is not acknowledged or accepted in any shape or form by me or my colleagues. I want to put on record that I do not accept that there is any inference to be drawn from the Bill that anybody who is a victim of sexual abuse is being treated as second class, certainly not by anybody connected to me and my party. I presume that that stands for all the parties. You used that language. All I am saying, because people are choosing to run to the media, is that I want to make it very clear that we disassociate ourselves from that language.

The Chairperson: Patrick may want to come back on that point.

Mr Corrigan: I welcome that, and the commitment from the Committee to seek amendments to make sure that there is no second-class or secondary status for any victim. In using that language, we are echoing the language used to us by victims and family members of those who do face exclusion. That is how they feel about the experience or prospect of their case not being dealt with adequately. The secondary, second-class, or lesser treatment that those victims are set to receive, if the Bill stays as it is, is a comment on the reality of the draft Bill.

Mr Maskey: That is fair enough. I am just making it very clear that you can say whatever you want, but we disassociate ourselves from any suggestion that anybody will be treated as second class.

Mr Corrigan: That is very welcome.

Mr Humphrey: Thank you very much for your presentation. Unfortunately, due to difficulties in north Belfast, I could not be here last week. However, I spoke to colleagues about the presentation.

Let me make it very clear from the outset, as Alex did on behalf of his party, that my party is determined — given the day that it is today and what we have just heard from the Commons about the disaster at Hillsborough — to ensure that in a democracy any inquiry should be fully independent, open and transparent. Therefore, the bona fides of my party in its sincerity in trying to get a resolution to this matter for all the victims concerned are, I assure you, without question.

You mentioned people coming to your office to make representations to you and that you are speaking on behalf of those people today. What are you advising them to do when the inquiry is actually up and running?

Mr Corrigan: If they fall within the scope of the inquiry, we are recommending that they come forward and participate in it as fully as they feel able to. That may be through one element, such as the acknowledgement forum; that may be through multiple elements, such as the inquiry investigation panel as well. We recommend that people participate in the inquiry. Meanwhile, we try to work with victims to ensure that it is the best inquiry possible. That was our objective at the outset, some years ago.

Mr Humphrey: A number of months ago, Sir Anthony Hart was in front of the Committee with some of his colleagues, including a lady whose name I have forgotten and who served on the Smithwick inquiry. I think that she was deliberately selected by the Department to ensure that the mistakes made there, or shortcomings, can be ironed out and will not happen in this inquiry. That is obviously very important.

You mentioned OFMDFM having ministerial control over the inquiry. I listened to Sir Anthony Hart. Having done so, and given his evidence here, I cannot imagine that someone such as Sir Anthony Hart would, in any way, be controlled by any Minister or departmental official. I have confidence in him. Equally, I have to say that I do not believe that it would happen, nor should it.

The life span of the inquiry will be two years and six months. It is very important that people get closure. That is an often-used American term that seems to have crept into our language, so I really should not use it. People need to get as quickly as possible to the bottom of these heinous crimes committed against them personally or against members of their families who are no longer with us. It

is about trying to get a balance in having the inquiry, taking the time to do it thoroughly and delivering it to people quickly, which is equally important. Do you agree?

Mr Corrigan: Yes, and that is the basis for our not suggesting or asking that the period be extended to some other arbitrary period of, say, three years, three-and-a-half years or four years. We are saying that two years and six months is perfectly reasonable guidance. However, none of us around this table, Sir Anthony Hart, nor anyone else, knows what evidence, how many victims or what obstacles may come his way in the next few years. It is important that should he encounter a scale of evidence or obstacles, he has the discretion to request an extension of that time period. It is only fair should it be deemed necessary by the inquiry panel that an extension should be possible. We drew the parallel with the Smithwick tribunal in the Republic, where the Government set down guidance for how long they should have. They sought an extension because they felt the need to do so, and it was acknowledged that they truly did need that extension to complete their work.

Mr Humphrey: Instead of seeing Reds under the bed, could it be that the reason why Ministers have control — as you put it — is to deal with that very point, namely that if extra time needs to be given, it can be given. Ministers can reach that decision very quickly.

Mr Corrigan: As this is set out, the inquiry chair is not being given the power to specifically request an extension. We think that he should have that power: that would be the best way of doing it.

Mr Humphrey: Surely, that is because people do not want these things to be long and protracted. You made the point that the people who need answers need to get them as quickly as possible, and that is why this has been done. I listened to Sir Anthony Hart when he was in front of the Committee. I think that all parties agreed with him at that time when he said that he was confident that there would be no interference, and nor should there be. I believe that Ministers have the power to deal with the point you raised. In my opinion, that should allay your concerns.

Mr Corrigan: Our concerns are not fully allayed. I want to put on record that we fully respect the integrity and capability of Sir Anthony Hart, Ms Norah Gibbons and the others who have been appointed by Ministers to date. It is not about their integrity, and I do not think that that should be put in question. It is about framing in law around where the respective powers sit between the Executive and an independent tribunal of inquiry. It is important to get that right, not just for this issue — and it is very important that it be got right for this issue — but for the precedent that it may set in law for other inquiries that this Assembly may wish to establish in future years to address other aspects of our past. It is important that we get the separation and balance of powers right; it is how we present it.

The Chairperson: Members, if you are all content, I will say that we have exhausted Patrick's input. Thank you very much, Patrick.

Mr Corrigan: Thank you for your time.