

Non-recent Institutional Abuses and Inquiries: Truth, Acknowledgement, Accountability and Procedural Justice

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Background

Over the last two decades, historical abuse in state and religiously-operated institutions and some civil society groups and organisations has come under scrutiny around the world. The island of Ireland, comprising Northern Ireland and the Republic of Ireland, has had a large number of investigations, redress schemes or apologies regarding non-recent institutional abuse against women and children, some of which are ongoing. Many of these efforts have been criticised by victims/survivors, academic activists and advocates for deficient processes or inadequate recommendations or outcomes.

Despite widespread acknowledgement that recent official responses to non-recent institutional abuse are lacking in terms of their capacity to deliver truth, acknowledgement, accountability, and procedural justice, discourses are rarely informed by detailed empirical assessment of the views of key stakeholders including victims/survivors, victim-advocates/representatives, lawyers and human rights advocates, judges/commissioners, politicians, policymakers and members of churches and religious orders. This is an important moment, therefore, to stand back and assess justice responses to non-recent institutional abuse across the island of Ireland and how they compare to efforts across the world.

Our research project - [Transforming Justice Responses to Historical Institutional Abuse Project](#) – explores the range of justice responses to historical or non-recent institutional abuse including apologies and redress, prosecution and civil suits, as well as inquiries and commissions of investigation. This project is a two-year initiative funded by the Higher Education Authority’s North-South Research Programme. It brings together researchers based at University College Dublin; Queen’s University Belfast; and Dublin City University and represents a major, wide-ranging, cross-disciplinary study focusing on Ireland (North and South). Using the island of Ireland, North and South, as a case-study, the project explores a range of wider themes concerning non-recent institutional abuse including historical and cultural contexts, the Church-State relationship, legal and ideological barriers to justice, and

the meaning of ‘truth’, ‘justice’ and ‘accountability’ for victims/survivors. This research will provide a guiding standard to improve social and public understanding to redress non-recent institutional abuse across Ireland and elsewhere.

This paper (and the full report that it is based on [here](#)) focuses on one particular justice mechanism – *inquiries and commissions of investigation*. This paper compares how state responses to non-recent institutional abuse address the justice requirements of victims/survivorsⁱ. This paper outlines the emergence of non-recent institutional abuse as a matter of public concern in western nations and focuses on government responses, particularly through truth-finding inquiry mechanisms and redress or reparations.

Non-recent institutional abuse and inquiries

From the 1990s to the present day, non-recent institutional abuse has emerged as a major social problem. Across Europe, Scandinavia, North America and Australasia, state and church institutions have been grappling with how to respond to past abuses of women and children including, among others, in residential care and medical settings, by members of religious and other non-religious organisations, and via forced removal of children from their families where many suffered abuse and neglect whilst in and out of institutional care. While global responses have included a combination of inquiries, compensation schemes, criminal prosecutions, public apologies, and memorialisation, the success of these measures has varied across mechanisms and jurisdictions regarding their ability to meet the specific needs of victims/survivors.

“Inquiry” is used as the umbrella term in this paper and the report for different types of investigations used “to establish facts, to learn lessons so that mistakes are not repeated, to restore public confidence and to determine accountability.”ⁱⁱ As set out in full in the [report](#), there are a range of strengths and weaknesses to the inquiry model.ⁱⁱⁱ Inquiries can engage publicly and politically with the state’s commitment to acknowledge and address systemic wrongdoing. Additionally, public awareness can be raised to contribute to policy, practice and legislative reform. However, inquiries do not necessarily meet the needs of victims/survivors. One core issue is the failure to empower victims through the process, as well as the close relationship between the inquiry frameworks and the state. This may have the effect of preserving institutional or political interests rather than prioritising addressing the issues and promoting reform for non-recurrence.

Key Principles

Within the literature on global responses to non-recent institutional abuse, a number of key principles have been identified to address the needs of victims/survivors in redress processes. These include:

- **Truth** - and answers to important questions for victims/survivors entails knowing what happened, why it happened, who was responsible and their explanations for what they did and for the policy wrongs.

- **Acknowledgement** – involves explicit articulation or ‘spelling out’ of the offence, harm and wrongdoing, together with clear recognition and validation of victims’/survivors’ experiences through processes that centralise their voices and allow their perspectives to directly influence official responses.
- **Accountability** – requires holding to account the individuals who perpetrated the harms, as well as the institutions of church and state and civil society which enabled the abuses (such as diocese, religious order, governmental department, sporting or recreational organisation).
- **Procedural Justice** – in the operation of responses to the wrongdoing means ensuring that there are fair decision-making *processes* as well as outcomes.
- **Follow-through on Redress** – can take the form of monetary reparations, symbolic reparations such as apologies and memorialisation, and measures with therapeutic and healing benefits.
- **Non-recurrence** – implies that justice processes must not only look backwards towards addressing past abuse, but also forwards in terms of supporting and requiring offenders to commit to its non-repetition and institutions to transform their culture and operations to ensure non-recurrence in the future.

These principles have been adopted with varying degrees of success in different inquiry models across the globe.

National and international inquiries

Inquiries have taken place globally to address non-recent abuse in different contexts. In the Republic of Ireland, a piecemeal approach has been adopted with a large number of targeted inquiries for different instances and types of abuse such as the Ferns Inquiry^{iv} and the Ryan Commission.^v The different inquiries have been subject to criticism due to issues with the terms of reference, the methodology, victims/survivors experience, and the implementation of recommendations following the reports. Northern Ireland has also begun to carry out inquiries, however, due to the dominance of “the Troubles” in social and political discourse, these are at a less advanced stage than in the Republic of Ireland. The inquiries faced some of the same challenges with victims/survivors feeling retraumatised due to the adversarial nature of the inquiry proceedings. In response to some of the concerns raised and in consultation with victims and their advocates, Northern Ireland established an Independent Panel to help shape and feed into the investigation into Mother and Baby Institutions, Magdalene Laundries and Workhouses in Northern Ireland. This innovative approach is one of the alternative models to justice which are considered below.

Internationally, investigations have taken place in jurisdictions such as Australia, Canada, Norway, and the Netherlands which have used different approaches to help support victims through the process and try to address victims’/survivors’ needs.^{vi}

Alternative Models

Given the challenges experienced in achieving justice through traditional inquiry models, a “better” justice model has been tested in certain jurisdictions and discussed in the literature. These include Truth and Reconciliation Commissions; the National Inquiry Model in Canada; the Restorative Justice Inquiry in Canada; a proposed hybrid conventional-restorative/transitional model; and the Northern Irish Truth Recovery Design Panel.^{vii}

The Truth and Reconciliation Commission model (TRC) can be established on a statutory or non-statutory basis. Its core focus is on truth-telling processes tasked with reporting on the causes and context of past wrongdoing and offering victims/survivors and perpetrators public and private space in which to relate their individual experiences.^{viii} The model has been adopted in various contexts such as the South African Truth and Reconciliation Commission (1995 - 2002). Research has found that public perceptions of fairness regarding the TRC’s procedures and amnesty provisions increased if it was felt that victims/survivors were given a ‘voice’.^{ix} Processes were regarded as procedurally fair if victims/survivors had the opportunity and time to tell their story.^x This model was also adopted in Canada to examine the legacy of residential schools involving the removal of Indigenous children from their family.^{xi}

Canada has also carried out a National Inquiry into Missing and Murdered Indigenous Women and Girls to look into and report on systemic causes of all forms of violence against women and girls.^{xii} This inquiry adopted a broad remit to include social, economic, cultural, institutional and historical causes which contributed to the violence and vulnerability experienced by women and girls. In preparation for the inquiry, widespread consultations took place with stakeholders which included direct engagement with Elders and Grandmothers Circle. The final report centred the victims’/survivors’ testimonies, reflecting their main concerns and real-life impacts of particular issues upon individuals, families and communities. This holistic approach, through meaningful participation and broad consultation, is important to address the needs of those affected by the past abuse and to develop recommendations which understand the root causes of the abuse.

In 2019, Canada carried out an inquiry which was underpinned by restorative justice principles, the Nova Scotia Home for Coloured Children Restorative Justice Inquiry.^{xiii} The Inquiry had three interrelated stages: gathering knowledge, analysing (making sense of) knowledge, and outcome in terms of acting on knowledge. It comprised many different processes, with much of the design and implementation work taking place in restorative circles where participants (both members of the Council of Parties who led the process and other participants who gave testimony) were brought together by a facilitator to reflect on and discuss a series of focused questions. Circles are a helpful model of restorative justice which focus on connections and interrelationships of the parties involved in the process, thereby creating a space to talk and deliberate on what has happened and what needs to happen next. Different types of Circles were used throughout the Inquiry to obtain knowledge and address the relationships between different parties.

A Hybrid Conventional-Restorative/ Transitional Model has been proposed by McAlinden and Naylor that incorporates restorative justice principles and elements of the formal inquiry model as a more effective route to achieving justice for victims/survivors and offenders in situations of non-recent institutional abuse.^{xiv} This model would both increase the usefulness and legitimacy of inquiries or commissions of investigation as a core element of the overall response to past harms and enhance the standing of victims/survivors within the inquiry process. It would maintain the important inquiry function of publicly and politically engaging with the state's commitment to confront systemic wrongdoing, while simultaneously addressing procedural justice problems around meaningful victim participation and offender accountability. As such, a hybrid model holds the prospect of promoting individual justice and institutional accountability, and of restoring public trust and credibility in the institutions implicated in the harm.

The final model considered in the report is the Truth Recovery Design Panel. This model was proposed following extensive consultation with victims/survivors and is underpinned by a human rights framework. A core component of the recommended process is the establishment of an 'Integrated Truth Investigation' involving an expert non-statutory Independent Panel to feed into a statutory public inquiry. The Independent Panel element of the integrated process is described as a non-adversarial, truth-telling phase. Its main terms of reference are to record the testimonies of victims/survivors and their families on their own terms in a safe and supportive environment, and to gather documentary and other primary evidence to record the harms and violations suffered and their longer-term impacts and consequences.

Key Principles and Recommendations

Providing justice to victims of institutional abuse is complex and faces many challenges. In order to ensure that inquiries are meeting the needs of victims, a number of key principles are important:

- **PROCEDURAL JUSTICE** – for victims/survivors based on the understanding that the lived experiences of justice processes for victims/survivors are just as important and impactful as any eventual outcomes; and for all participants, in an effort to engage affected and responsible parties in a mode of inquiry informed by truth-telling, finding answers to questions and developing meaningful and intelligible explanations.
- **A VICTIM-CENTRIC APPROACH** – there is a fundamental need to recognise the wide-ranging interests and views among a diverse group of victims/survivors and prioritise taking account of the range of individual experiences and needs recognising victims/survivors as the experts in their own experiences.

- **COMPOSITION OF THE COMMISSION** – Victims/survivors, representatives of other parties with primary interest in the topic being investigated, as well as those with legal, social science and other relevant expertise should comprise the panel of commissioners, appointed by open competition.
- **INFORMING VICTIM/SURVIVOR EXPECTATIONS** – governments and other actors involved in providing justice responses must reflect on the rhetoric and claims they make about their proposals to inquire into non-recent institutional abuse. Most justice initiatives are inherently inadequate, and it is only in narrow circumstances that claims to be healing (therapeutic, or comprehensive regarding the truth) can be validated. It is better to avoid over-promising and under-delivering.
- **MODULAR APPROACH** – addressing wide-ranging issues of non-recent institutional abuse can result in a multi-year investigation or inquiry with delayed outcomes. The Australian Royal Commission and other inquiries demonstrate the ability to design an inquiry to address immediate and narrow institutional contexts, and to issue specific interim reports on these topics which also feed into and extend to a broader and more systemic analysis of non-recent abuse issues that offer a more holistic and systemic examination of the issues, causes and contexts.
- **EFFECTIVE INDEPENDENCE** – in light of significant victim/survivor distrust of state-led mechanisms to address the past, and ongoing criticisms of prior approaches, there is a need to demonstrate the effective independence of any further mechanisms. This involves independent staffing, beyond the appointment of any commissioners for the inquiry, rather than seconding staff from a Department that may be under investigation or from other parts of the civil service. An open competition for hiring, and the recruitment of staff with training in trauma sensitivity, human rights law and restorative thinking as well as other relevant disciplines will significantly enhance the credibility and effectiveness of future inquiries.
- **INDEPENDENT OVERSIGHT** – an independent oversight body should be appointed to review the processes and mechanisms in place for any inquiry, irrespective of the mode.
- **‘COLLABORATIVE REDRESS’** – every effort should be made to consult as widely as possible with victims/survivors and to ensure their full and meaningful participation in the design and operation of responses. Such approaches should avoid the limitations of the existing ex gratia approaches that fail to engage in effective acknowledgement of past abuses as legal wrongs.
- **TRAUMA AND CARE-INFORMED APPROACHES** – there is a need to develop new forms of truth-telling which offer supportive, trauma-informed, person-centred spaces to hear victim/survivor voices. This also means recognising the need for ‘equality of arms’ between victims/survivors and the state/church in terms of the provision of tailored support and legal and other resources.

- **A HOLISTIC APPROACH** – it is important that redress is comprehensive and incorporates both material (e.g. compensation; access to medical and other support services) and symbolic forms of reparation (e.g. apology). This also entails designing truth-finding measures to examine the causes, consequences and contexts of abuses as well as provide acknowledgement and accountability to victims/survivors.
- **REMOVING LEGAL BARRIERS** – prior literature recognises that the design of inquiries (including tribunals, commissions of investigation and public inquiries) can be limited in their legal impacts. In addition, non-recent abuses pose particular challenges for the use of ordinary criminal and civil law. Other jurisdictions have engaged in more extensive reform of the statute of limitations, protective cost orders, class actions, funding for civil legal aid, and victim/survivor access to archives. Further reforms and provision of resources should be considered to enable greater victim/survivor access to justice.
- **HUMAN RIGHTS OBLIGATIONS** – there is a need for a response based on Ireland’s national and international legal human rights obligations which recognises and addresses the abuses involved as gross violations of human rights.
- **CONSISTENCY AND FOLLOW-THROUGH** – this is required in relation to the enactment of the recommendations of inquiries or investigatory commissions such as the timely provision of monetary redress and access to personal records. It also necessitates ‘joined-up’ approaches taken locally, regionally and nationally.

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ⁱ Note, that while the broader project initially adopted the term ‘historical institutional abuse’ in keeping with the literature on transitional justice, this report adopts the term ‘non-recent institutional abuse’ to better reflect in particular the possible life-long or intergenerational impacts of abuse which, for many victims/survivors, may continue into the present.

ⁱⁱ Graeme Cowie, ‘Statutory public inquiries: the Inquiries Act 2005’, House of Commons Library (2002), Number SN06410.

ⁱⁱⁱ P. 17 and 18 of the report provide an overview of the key features of different types on inquiries.

^{iv} Mr Justice Francis Murphy, *The Ferns Report* (Presented to the Minister for Health and Children, October 2005).

^v Commission to Inquire into Child Abuse, *Report of the Commission to Inquire into Child Abuse* (Dublin: The Stationery Office, May 2009).

^{vi} Royal Commission into Institutional Responses to Child Sexual Abuse (Australia), Final Report (December 2017); Deetman Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church (2011) between 1945 and 1985.

^{vii} See p. 41 of the report for an overview of the different alternative models of justice.

^{viii} Beth K Dougherty, 'Searching for Answers: Sierra Leone's Truth and Reconciliation Commission' (2004) 8(1) *African Studies Quarterly* 39.

^{ix} James L Gibson, 'Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa' (2002) 46 (3) *American Journal of Political Science* 540.

^x Brandon Hamber, *Transforming Societies after Political Violence: Truth, Reconciliation, and Mental Health* (Springer 2009).

^{xi} Truth and Reconciliation Commission of Canada, *Honouring the Truth; Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (2015), Preface (unpaginated).

^{xii} National Inquiry into Missing and Murdered Indigenous Women and Girls, 'Our Mandate, Our Vision, Our Mission' <<https://www.mmiwg-ffada.ca/mandate/>> accessed 24 January 2023.

^{xiii} Province of Nova Scotia, *Journey to Light: A Different Way Forward: Final Report of the Restorative Inquiry – Nova Scotia Home for Coloured Children* (2019).

^{xiv} Anne-Marie McAlinden and Bronwyn Naylor, 'Reframing Public Inquiries as Procedural Justice for Victims of Institutional Child Abuse: Towards a Hybrid Model of Justice' (2016) 38(3) *Sydney Law Review* 277.