

Royal Commission into Institutional Responses to Child Sexual Abuse of Australia

Consultation Paper on Redress and Civil Litigation of January 2015

A response on the relevance of restorative justice

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Introduction

I herewith would like to reflect on the possible role of restorative justice and restorative approaches generally, based on the experiences we recently have in Belgium in this field. I therefore will briefly report on some of our findings in the officially established Centre for Arbitration regarding sexual abuse in the Catholic Church (<http://www.centre-arbitrage-abus.be/>). Although being one of the seven members of the central body of this procedure, namely the Permanent Arbitration Chamber, the reflections beneath are formulated in my personal name, on invitation by colleague and restorative justice scholar Rob Mackay from Edan Resolutions and the University of Sydney. No reference will be made to concrete cases. The report below remains limited, but more information can be obtained through reports of the Parliamentary Follow-up Commission and/or on personal request. No publications about the Belgian model in English are available so far.

The Belgian Arbitration procedure

On the basis of the recommendations of the Parliamentary Special Commission (March 2011) on sexual abuse in the Church, a Centre for Arbitration was created and a procedure established, in mutual agreement between representatives of the federal Parliament and Church authorities. This arbitration procedure was/is meant for cases for which criminal prosecution is no longer possible because of the death of the priest or the legal prescription of the case otherwise. Redress was the central focus of the procedure from the very beginning, and this was translated in financial terms.

The procedure consists of two phases: a so-called 'reconciliation' phase and a formal 'arbitration' phase. The initial expectation was that most files would proceed to the second phase, where both parties (victim on the one hand, and Church authorities on the other hand) appoint an arbiter from an official list of accredited candidates, and

then both arbiters chose a third one. The first phase ('reconciliation') consists of a meeting between the victim on the one hand, and Church authorities on the other hand, facilitated by members of the Permanent Arbitration Chamber (PAC). The work of the PAC is not to be confused with the role that the arbiters might play in the second phase. The members of the PAC are appointed to intervene in each dossier, while the formal arbiters (which are other persons than the PAC members) only intervene when the first phase of reconciliation does not lead to an agreement between both parties.

It was up to the victims to submit a written file (according to a template) to the secretariat of the Centre for Arbitration. They could do so until October 31, 2012. By that time, 628 victims had submitted a file, asking for redress, recognition, or expressing other needs, often adding supporting documents. The complete file of a victim is then sent over to the Church authorities, who have, for this procedure, created a special representative body with legal status; the name of this legal entity (a 'foundation of public interest') is 'Dignity' and as representative of all the Bishops and all the religious orders and congregations of the country, two delegates from Dignity will act during the whole procedure. At all phases of the procedure, both parties can be represented and/or assisted by a lawyer (this happens in a minority of the cases), and the victim can also bring a relative or a victim support worker (a relative is often present). Very rarely, however, the victim is not coming him/her self and is just sending a lawyer.

Some figures on 'reconciliation'

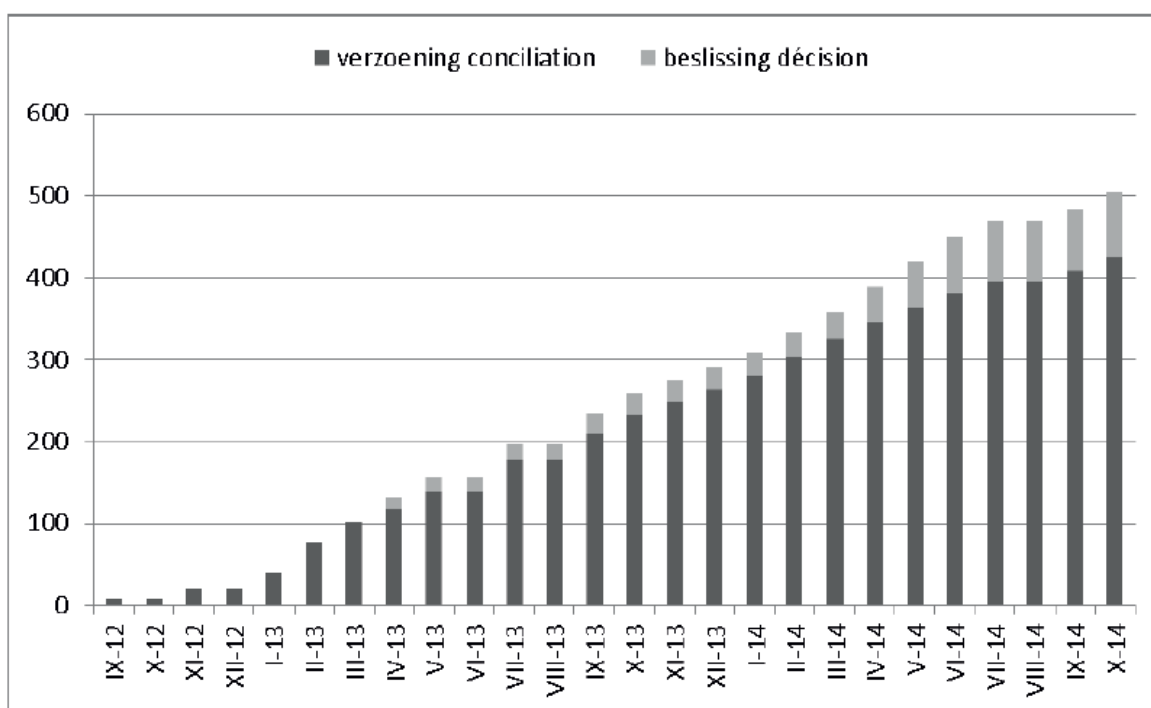
At present (1 March 2015), approximately 540 of the 628 cases have been dealt with. In complete contrast to what was expected originally, a large majority of cases has been concluded in the first phase with a 'reconciliation'. Only 2 cases have been referred to the second phase (formal arbitration) (state of affairs January 2015). It must be noted, however, that the second phase is only possible when the offender is still alive (which may have lead many victims to accept an agreement in the 'reconciliation' phase).

The table and figure below (Parliamentary Document 54-0767/001 of January 12, 2015) respectively show the percentages of meetings in the first phase where a reconciliation was reached (over the three years, split up by sex and language of victims) and the total number of cases where a final decision was made including the number of reconciliations met. As can be seen, in more than 80% of the cases a reconciliation has been reached.

XII. Ontmoetingen die leiden tot een verzoening / XIII. Rencontres qui aboutissent à une conciliation⁸

	2012		2013		2014	
	homme man	femme vrouw	homme man	femme vrouw	homme man	femme vrouw
Conciliation/verzoening	90,32%	100%	84,47%	87,50%	76,61%	73,68%

	2012		2013		2014	
	Français	Nederlands	Français	Nederlands	Français	Nederlands
Conciliation/verzoening	93,33%	88,89%	87,50%	83,23%	60,71%	78,33%



Victims' needs

No systematic, scientific research or evaluation so far has been done on the needs and experiences of victims participating in the procedure of reconciliation/arbitration. A few personal observations may suffice for now, all referring to the first phase of the process (the reconciliation):

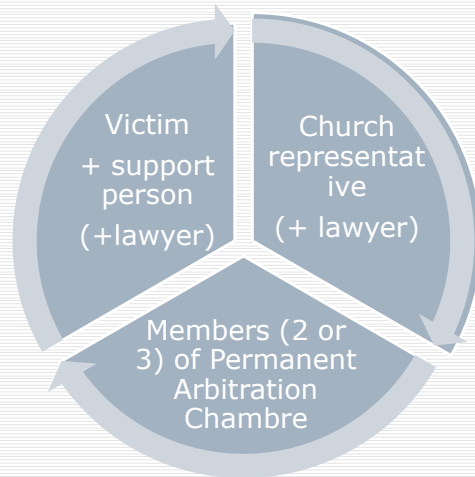
- For almost all victims, submitting a written file and attending the meeting with the PAC and the Church representatives, is extremely difficult and emotional. However, as mentioned above, almost all victims wish to attend personally.
- Again and again, the most central need, as always confirmed by the victims at the end of the meetings, is to be believed by the Church and to receive 'recognition'. During the months before the meeting, the representatives of the Church always undertake an investigation in order to find out or to reconstruct what might have happened in the given (boarding) school or local parish (often going back to the 1950s-1980s). Although in many cases no traces can be found, the victims are almost always taken seriously and believed by the representatives of Dignity (only in two cases there was a serious discussion on whether in reality the abuse might have happened effectively).
- The personal impact of what happened is usually considerable, although causal relations are hard to establish. The most intensive consequences relate to the psychological, relational and sexual consequences for the victims (as described in literature). Knowing the broader context in which the victims lived for many years during their childhood or later, is often necessary in order to understand the impact.
- Almost all victims witness that financial compensation is not the most important (as compared to be taken seriously and to be believed). For many of them, this is the first time that they talk to another person about the sexual abuse. They specially address the Church representatives, not to blame them personally (on the contrary - a lot of mutual respect is shown during the meetings), but in order to express themselves vis-à-vis the Church authorities. Many victims see it as their duty to inform the Church authorities, together with their personal need to receive more information about why the Congregation or the Bishop did not react during that period etc.

The reconciliation process

To understand what happened, how it could happen, why nobody intervened ... on the one hand, and to explain the impact, to express themselves and to be assured that it never will happen again to children on the other hand: these are certainly the most central needs for the victims. Here it is where the values, principles and practical models of restorative justice can be of great value.

What is happening in the first phase of reconciliation in the Belgian procedure, is that victims - in the best case after some personal preparation - find a safe place and peaceful environment where they can address and express their needs and expectations towards the Church. This communication with the Church is facilitated by the two or three members of the Permanent Arbitration Chamber who lead the meeting, as is visualised in the following figure:

The meeting of 'reconciliation'



In order to make the dialogue between the victim and the Church possible, a neutral third party is needed indeed. In the beginning of the meeting, first the positions of all present are clarified, and the members of the PAC will explain that they are not appointed by the Church or by another party or authority. They will also stress the strictly confidential character of the meeting. This all must offer a safe space where the victim can take the floor and start talking about what happened to him or her.

As mentioned before, in almost all cases the victim, after he/she has told his/her story, is believed by the Church representatives. The latter ones explain how they feel, and make clear how the Church disapproves what happened. Apologies are offered, and usually accepted.

At the end of the meeting a financial compensation can be agreed on, to be paid by the Church. The amount of financial compensation is fixed on the basis of categories of seriousness of the crime, as defined in the regulation of the arbitration procedure, with a maximum of 25.000 Euro. Most often, it are the members of the PAC who propose the sum, but it are both parties who have to agree upon. It must be said that - although a discussion on money has a totally different character than the forgoing part of the meeting - reaching an agreement also on this point goes relatively easy.

The fact that the Church is always represented by the same (two) persons, might have its advantages and disadvantages. An advantage is that these persons have been able to adopt an appropriate and effective attitude and right skills to listen and to talk to the victims. A disadvantage might be that some victims would have preferred to meet

with a representative of the Congregation or the Diocese where the abuse happened. The latter might have been ideal, since it would also make the local Church authorities much more involved and responsible. In this respect, reference must be made to a particular mediation model that has been established in the Netherlands, initiated by the Salesians (the Triptych mediation model).

As most cases come to a conclusion during the reconciliation phase and oftentimes strong emotions appear during the meeting, it is considered of utmost importance to have a channel to refer the victims for further assistance and therapy. To this end, an agreement has been made with the Services for Victim Support and the Centres for Mental Health throughout the country on how to refer victims appropriately.

To sum up, the work that is being done in the first phase of the process in order to reach 'reconciliation' between the victim and the Church authorities, is a mixture of (1) listening, emotional support and counselling, (2) mediation and (3) a small element of arbitration (on proposing the financial sum). I personally do not prefer the term 'reconciliation', but like to speak of reaching a kind of 'mutual understanding'. This seems to be possible and realistic, on the condition that an appropriate space and resources are created to facilitate this process. We should learn from experienced practitioners in the field of restorative justice to make this happen, while at the same time it is important to further developing such restorative processes and carefully evaluating their functioning.