

SPOTLIGHT ON CLERICAL SEX ABUSE IN IRELAND: HUMAN RIGHTS AND CHILD PROTECTION

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The clerical sexual abuse cases in the Republic of Ireland over a period of more than four decades highlighted abuse of children in religious and educational environments. As a result, the Catholic Church and the Irish State have been subjected to unprecedented scrutiny and held accountable for the systematic cruelty that children endured. Government enquiries culminating in The Ferns (2005), Ryan (2009), Murphy (2009), and Cloyne Reports (2011), placed the experience of abuse on public record helping to vindicate the account of children now adults. Children in these institutions were often invisible; the concept of children having rights was not recognized and/or ignored and in some instances other adults colluded as silent witnesses to the offenses.

Methodologically, this paper explores the issue of clerical sex abuse of minors through transcript analysis of government inquiries, and jurisprudence from the European Convention on Human Rights in Strasbourg. The paper highlights abuse elsewhere within and beyond religious communities, and ends with recent development in Ireland for child protection and practical mechanisms to prevent similar mistreatment of children.

1 INTRODUCTION

Children's rights and child protection feature as central to children's well-being and the issue of clerical abuse has been placed within the public domain in the Republic of Ireland as a result of government inquiries. The reports revealed evidence of systematic and widespread abuse and led to a number of recommendations to provide child protection in educational and training contexts. Churches must be free to disseminate the tenets of their faith but, as human-rights documents make clear, this is subject to laws necessary in a democratic state to protect public interests, and the rights and freedoms of others. The idea that spiritual office can provide immunity from human rights violations has been seriously challenged in Ireland, evident in the government inquiries.

This paper highlights the rights of children not to be mistreated by adults in whose care they are entrusted and examines the issue of clerical child sexual abuse. Discussion provides:

- A brief historical perspective of education in the Republic of Ireland;
- The evidence of clerical sex abuse of minors as revealed in a content analysis of key government inquiries conducted in Ireland between 2005-2011; and
- The significance of European human rights law for child protection and the implications for professional practice.

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II EDUCATION IN THE REPUBLIC OF IRELAND

The involvement of the Irish Catholic Church in education goes back several centuries with increasing provision needed for ‘the masses’ that is for those unable to pay for educational instruction. This was in keeping with common practice whereby the clergy was instrumental in providing education.¹ Coolahan provides useful background of the history of education in Ireland, the development of teacher education along denominational lines and the extension of provision to post-primary and secondary/high school level education. For the purpose of this discussion, his work on denominational education is particularly useful as faith-based education has been a feature of Irish education as elsewhere.²

The majority provider for education has been the Catholic Church with strong influence over children growing up in the country. For many, the Church and the State have been inextricably linked and this institution has been significant in the shaping of religious and spiritual identity and the fostering of nationhood after independence from the United Kingdom in 1922.³ The presence of Catholicism and its ‘moral monopoly’ has recently undergone challenge as Ireland and the population of approximately four and a half million⁴ has become more multi-faith and secular.⁵

A range of institutions has traditionally been governed by the Catholic Church in the form of national or public schools at primary and secondary/high school. These were increasingly funded by the government, providing academic education with religious instruction.⁶ Industrial schools, that is, educational institutions with an emphasis on vocational training were also within the remit of the Catholic Church,⁷ as were reformatories for moral correctness,⁸ and residential or boarding schools.⁹ In addition, Catholic communities ran orphanages, homes for disabled children with residential care,¹⁰ and the ‘Magdalene homes’ for young girls who were homeless, pregnant, single mothers or females perceived to be potentially promiscuous.¹¹ Generally, the Catholic Church was the dominant patron of educational institutions in the country and it was resistant to losing this influence.

Whilst there have been allegations of clerical abuse across these establishments, it is the national schools at primary and secondary level that is the focus of this discussion, as detailed in government inquiries¹² of *Ferns* (2005),¹³ *Murphy* (2009),¹⁴ *Ryan* (2009)¹⁵ and *Cloyne* (2011),¹⁶ because of the scope of coverage over four decades and the management of complaints by senior members of the educational organisation. Further, these inquiries concerned adults acting under the traditional doctrine of *in loco parentis*, thereby assuming the role and responsibilities of the parent. This focus informed the analysis of the four inquiries, discussed later, and the identification of common themes and findings.

III EVIDENCE OF ABUSE

It is important to note at the outset that the occurrence of child abuse is not a new phenomenon. Under Catholic canon law, for example, it has been considered a sin in religious terms as well as a crime in the law of the State.¹⁷ Robertson notes that the church experienced ‘its first child sex scandal as long ago as 153 AD, leading to its first law against the abuse of boys by its clergy’.¹⁸ Further, over the centuries strong condemnation of clerical child sexual abuse came from Church councils and other Church sources. These denunciations placed particular emphasis on ‘offences against nature, and offences committed with or against juveniles’.¹⁹ Similarly, the 1917 code of Canon law provided for loss of office and/or benefits, or expulsion from the Church for such offences, and ‘the abuse of children under 16 (now 18) was specifically outlawed as a sin’.²⁰

This legislation was followed in 1922 by penalties and punishments; reaffirmed in 1962 through the *Crimen Sollicitationis* document, and the *New Norms* for grave offences in 2010.²¹ There have also been publications on the issue by the Church itself.²² Interestingly the government inquiries, examined later in this paper, revealed that Church respondents claimed they were on a learning curve about sex abuse of children as if the offence was a 21st Century phenomenon.²³ Awareness of the issue was raised particularly in the 1990s by litigation involving Father Brendan Smyth who sexually abused children over a 40 year period in parishes in Dublin, Belfast and USA.²⁴ Robertson (2010) suggests this was probable the first time the general public in Ireland became aware of the issue of clerical child sexual abuse.

A *The Ferns Report (2005)*

The first major inquiry following this case was The *Ferns* Report (2005), which involved child sex abuse allegations covering over 40 years in the Roman Catholic Diocese of Ferns in County Wexford. The enquiry identified over 100 allegations of abuse made between 1962 and 2002 against 21 religious brothers operating within the Diocese of Ferns.²⁵ Significantly, it was found that between 1960 and 1980, the then Bishop of the Diocese treated child sexual abuse by priests of his diocese as ‘a moral problem’, penalising the priest by transferring him to a different church or parish for a period of time but then returning him to his former position.²⁶ In so doing, children remained vulnerable to further abuse by the perpetrator. The *Ferns* Report found it was:

wholly inappropriate and totally inexplicable for the decision [of the senior clergy] to appoint to curacies priests against whom allegations had been made and in respect of whom a respected clerical psychologist had expressed his concerns in unambiguous terms as to their suitability to interact with young people.²⁷

Similarly, the decision to ordain ‘clearly unsuitable men’ into the priesthood with the knowledge that they had a propensity to abuse children was condemned. In the view of the *Ferns* Inquiry it was found that, where a credible allegation of child sexual abuse was made against an employee, or other person acting within the Church’s jurisdiction, it was the responsibility of the employer or senior clergy to require the employee to withdraw immediately from any post or position in which he has access to children.²⁸ Instead, the inquiry found that in almost every case, significant periods of time elapsed before the bishop of the Diocese could persuade the priest in question to vacate his position and undergo the assessment and treatment suggested, and in no case did the Bishop compel the priest concerned to stand aside from his position.²⁹

Following the appointment of a new bishop to this diocese in 2002, more effective steps were taken to ensure the protection of children. In particular all outstanding allegations of child sexual abuse were reviewed by a new Advisory Panel. Members of the public were invited to come forward with information, as well as the Gardaí or Police, and the Health Board, concerning any allegation or suspicion of child sexual abuse not previously made known or satisfactorily investigated or dealt with. As a result, there was a significant response: for example, in April 2002, allegations involving eleven priests were investigated.³⁰

It was noted that the Diocese of Ferns introduced a high level of child protection by 2005, providing a model not just for other dioceses but for other organisations facing allegations of child sexual abuse by their members.³¹ Further, it was made clear that the clergy alone were not held culpable in the response to allegations of child abuse, and other adults and professionals could have done more on behalf of children. For example, members of the Gardaí (police) prior to

1988 did not appear to have recorded the complaints, ‘demonstrating reluctance ... to investigate allegations of wrongdoing by members of the Catholic clergy.’³²

Nor were the Health Board and other state authorities apparently aware of existing statutory powers available to intervene for the protection of minors. As such, it was held that:

The Church authorities, the medical profession and society generally failed to appreciate the damage caused to children.³³

The Inquiry noted also the hurt still borne by ‘mature and fair minded victims who gave evidence’.³⁴ Emerging from this Inquiry, the suggested remedies were a public education programme, and regulatory and legislative changes to provide protection for children abused by third parties.³⁵

B *The Ryan and Murphy Reports (2009)*

Following this inquiry, the *Ryan* Report (2009) reviewed allegation of abuse involving over 800 priests and brothers with nuns and lay people also being implicated. Sixty residential reformatories and industrial schools funded by the Department of Education formed part of the Inquiry. It was noted that,

This Report should give rise to a debate and reflection. Although institutional care homes belong to a different era, many of the lessons learned from what happened have contemporary application for the protection of vulnerable people in society.³⁶

Importantly, this Inquiry provided useful definition of ‘abuse’ in general, and with reference to the focus of this discussion on ‘sexual abuse’, the concept was confirmed, as in *Ferns*, to be ‘the use of the child by a person for sexual arousal or sexual gratification of that person or another person.’³⁷

At the same time as this Inquiry was being held, the *Murphy* Commission (2009) which dealt with allegations concerning the Diocese of Dublin analyzed evidence concerning 46 priests and 320 children, mostly boys, from 1975 to 2004 (chapter 1.1, p. 1). A key aspect here was not just the management of complaints, but the arrangements made for insurance cover and financial costs involved in clerical child sexual abuse. The Dublin Archdiocese Commission of Investigation (*Murphy*) report was completed shortly after the publication of the *Ryan* Report.³⁸ Because of this, and because the abuse of children by clerics and religious communities was the underlying reason for both reports, there has been a tendency to assimilate the two reports, i.e. *Murphy* and *Ryan*, in public and journalistic commentary although they were different in focus.³⁹ Here, aspects relevant to this discussion on the reporting and management of clerical sex abuse are examined.

The subject, scale and nature of abuse examined in the *Ryan* Inquiry were primarily:

An investigation of the treatment of many thousands of children, over many decades, in residential institutions, including industrial schools, run by various religious orders and congregations.⁴⁰

The *Ryan* Commission had no remit to establish whether or not abuse occurred although it was found to be ‘abundantly clear’ (1.7, p. 2), that child sexual abuse by clerics was widespread throughout the period under review 1975-2004 (1.6, p. 2). Rather the focus was on the ways in which complaints were dealt with by Church and State authorities, secrecy and the avoidance of scandal. Of those priests investigated, one cleric admitted to sexually abusing over 100 children, while another accepted that he had abused on a fortnightly basis during the time of his ministry

which lasted for over 25 years (1.9, p. 2). The total number of documented complaints recorded against those two priests was just over 70.⁴¹ Substantially more of the complaints related to boys: the ratio was 2.3 boys to 1 girl, which reflected a significant finding in the *Ryan Inquiry* that ‘sexual abuse was endemic in boys’ institutions’ (Executive Summary p. 21; 1.10, p. 3). Of the 46 priests examined, 11 pleaded guilty to, or were convicted in the criminal courts of, sexual assaults on children (1.13, p. 3). There was also one case of a false accusation of child sexual abuse and two cases where there were suspicions or concerns but no actual complaint of child sexual abuse (1.12, p. 3).

Significantly, during the *Ryan Inquiry*, the scale of revelations of child sexual abuse by clergy during the previous 35 years was described by a Church respondent as a ‘tsunami’ of sexual abuse (1.14, p. 3). The implication of that statement was that the Church, in common with the general public, was taken by surprise at the volume of the revelations,⁴² and in many ways the *Ryan Report* signified validation of the extent of the problem and the credibility of the complainants.

As well as ignorance of canon and civil law and/or the scale of abuse, officials of the Archdiocese and other Church authorities repeatedly claimed to have been on ‘a learning curve’ in relation to the matter, prior to the late 1990s, (1.14, p. 4). We see this theme again later with reference to the *Cloyne Report* (2011). The *Ryan Inquiry* (2009) expressed difficulty in accepting that ignorance of either the canon law or the civil law could be a defence for officials of the Church. As noted earlier, Canon law condemns sexual abuse with minors, and in the 20th century two separate documents on dealing with child sexual abuse were produced by Vatican authorities. Similarly the *Murphy Inquiry* was unpersuaded by claims of ignorance:

The Dublin Archdiocese preoccupations in dealing with cases of child sexual abuse, at least until the mid 1990s, were the maintenance of secrecy, the avoidance of scandal, the protection of the reputation of the Church, and the preservation of its assets. All other considerations, including the welfare of children and justice for victims, were subordinated to these priorities. The Archdiocese did not implement its own canon law rules and did its best to avoid any application of the law of the State’ (1.15, p. 3).

In 1981, for example, the incumbent Archbishop demonstrated an understanding of both the recidivist nature of child sexual abusers and the effects on children by referring certain clergy to therapeutic care in the UK. Also, the Archdiocese first made inquiries about insurance cover for compensation claims in the mid 1980s and such cover was put in place in 1987 (1.20, p. 6). *The Irish Times* (2011) commented on this point:

Catholic authorities took out insurance against anticipated claims of child abuse by paedophile priests 23 years ago. Since then, as scandal has been piled on scandal, archbishops and cardinals – supported by the Vatican – have engaged in systematic cover-up and relied on canon law and the concept of ‘mental reservation’ to minimise issues and to flout the State’s laws.⁴³

The taking out of insurance was seen as a key point in the *Ryan Inquiry*, proving the knowledge and scale of child sexual abuse and the potential financial cost to the Archdiocese. It was also inconsistent with the view that Archdiocesan officials were, until a much later date, lacking in an appreciation of the phenomenon of clerical child sex abuse (1, 21, p. 6). In addition to clerical education, many of those in authority in the Archdiocese occupied prestigious appointments in third level education with ownership of degrees in both canon and civil law, but it was not until late 1995 that officials of the Archdiocese first began to notify the civil authorities of complaints of clerical child sexual abuse (1.17).

In this context the *Ryan* Commission noted the issue of clerical secrecy: every bishop's primary loyalty was, and is, to the Church itself. This is because, at his consecration every bishop, as well as making a profession of faith, must take an oath of fidelity to the Apostolic See and it is this entrenched mindset, whereby loyalty to the Church may be privileged above the rights of child parishioners, which contributed to secrecy and cover-up (1.33, p. 9).

An implementation of new measures for child protection in 1996 were not fully implemented until the establishment of the Child Protection Service within the Archdiocese in 2003. (1.96, p. 25). The *Ryan* Commission noted the 'extraordinary delay in introducing child protection legislation even though evident in the 1970s (1.99, p. 25).

It should be noted that a few 'courageous priests' brought complaints to the attention of their superiors, but the vast majority of the religious community engaged in 'a culture of silence'.⁴⁴ This was also highlighted in the work of Father Fagan (2008). Several instances of suspicion were never acted upon even though some priest witnesses admitted to the *Ryan* Commission that they knew informally of various allegations of abuse (1.26, p. 8) and the Church authorities failed to implement most of their own canon law rules on dealing with clerical child sexual abuse. For example: only two canonical trials took place over a 30-year period despite very extensive knowledge of cases involving allegations of child sexual abuse. Further, the moving around of offending clerics with little or no disclosure of their past was indicative of the failure to recognize children's rights and their need for protection.

Added to the concern with secrecy and the avoidance of scandal was the failure of successive archbishops and bishops to report complaints to the Gardaí prior to 1996 and the named priests. As citizens of the State, it was asserted that they had the same obligations as all other citizens to uphold the law and report serious crimes to the authorities. One archbishop expressed his concerns to the Commission when allowing the Gardaí access to the archdiocesan files in 2002, as having 'created the greatest crisis in my position as Archbishop' and (1.33, p. 9). He explained:

Was I betraying my consecration oath in rendering the files accessible to the guards? ... confidentiality is absolutely essential to the working of the bishop.⁴⁵

Notwithstanding this need for secrecy within the religious community, the *Ryan* Report (2009) concluded that priests who abuse children are directly responsible for their actions, that this cannot be transferred to bishops or the heads of their orders or societies, and that superiors were responsible for ensuring that priests were not protected by a privileged status nor the recipients of special treatment. Complainants were often met with denial, cover-up and in some cases, incompetence (c1. 35, p. 10). Importantly, the religious superiors were also responsible for ensuring that offending priests were not only protected from the normal processes of civil law but that they were not facilitated in their privileged access to children and the possibility of re-offending (1.34, p. 9).

In summary, the *Ryan inquiry* concluded that:

The welfare of the children, which should have been the first priority, was not even a factor to be considered in the early stages. Instead the focus was on the avoidance of scandal, the preservation of the good name of, status and assets of the institution and of what the institution regarded as its most important members- the priests (1.113, p. 28).

The *Cloyne* Report which followed revealed similar findings about the propensity to maintain a high level of clerical secrecy, preservation of the Church's reputation and failure to enforce existing child protection mechanisms.

C *The Cloyne Report (2011)*

The Roman Catholic Diocese of *Cloyne* in Wexford (2011) was the location of an inquiry to report on the handling by Church and State authorities of allegations and suspicions of child sexual abuse against clerics within the diocese. During this investigation the Commission examined all complaints, allegations, concerns and suspicions of child sexual abuse by relevant clerics in the period 1996–2009 period.⁴⁶ Therefore the context of this report differed from previous inquiries, i.e. dealing with allegations made after 1996. This was the year the Catholic Church in Ireland put in place detailed procedures for dealing with child sexual abuse, and 16 years after the country had been shocked by the Father Brendan Smyth case, cited earlier. Importantly, this meant that the ‘learning curve’ which it was claimed excused ignorance and poor handling of complaints in the past, could not have basis.⁴⁷

It was not the function of the *Cloynes*’ Commission to establish whether or not child sexual abuse actually took place, as in the *Ryan* Inquiry, but to record the manner in which complaints were dealt with by Church and State authorities. Of the 32 named clerics and one unnamed cleric (section 1.7), the Commission determined that 19 of these clerics were within its remit, including the unnamed cleric. Of the 163 clerics listed in the Diocese of Cloyne Diocesan Directory for 1996, there were allegations made or concerns expressed about 12 (7.6%), and potentially 40 people were affected by clerical child sexual abuse in this religious community (section 1.7). All but two complaints came from people who were adults at the time of the complaint, referred to as ‘historical complaints’.

In the *Cloyne* findings (2011), it was noted that failures to protect children took place despite undertaking given by previous bishops and religious superiors to apply the Church’s own guidelines to help ensure child protection and procedures relating to cases of sexual abuse (1.17, 1.36). It was also held that the incumbent Bishop misled the government by claiming there was full compliance with existing guidelines of child protection and that clerical abuse cases were being reported to the Garda or police (1.18, 1.21, 1.22). The suggestion was that senior leadership in the diocese was still not responding to the messages from previous inquiries cited above, and instead were placing the interests of the Church and the perpetrators above that of the victims⁴⁸ Reference was made to the recording of complaints of child sexual abuse by the senior cleric who deliberately created

Two different accounts ... one for the diocesan files ... while the other was created for the Congregation ... of the Faith in Rome (1.48).

There was also a political dimension to the allegation of clerical sex abuse following the release of the *Cloyne* Report. The Taoiseach (Prime Minister of the Republic) registered his views of the findings in the Dáil Éireann or the Irish Parliament.⁴⁹ Noting the theme of cover up, secrecy and protecting the clergy rather than the victims, he claimed the Church attempted to ‘frustrate an inquiry in a sovereign, democratic republic as little as three years ago, not three decades ago’.⁵⁰ The Vatican denied this allegation but the judgement was upheld:

Among the most disturbing of the findings of the *Cloyne* report is that the Vatican authorities undermined the Irish Church’s own efforts to deal with clerical child sexual abuse by describing the framework document adopted by the Bishops’ Conference as a mere ‘study document’.⁵¹

Following this exchange there was a recall of the ‘Nuncio’ papal representative to Rome, signaling a serious weakening of church –state relations in the country, contrary to that which had historically prevailed.⁵²

Overall, the findings of the *Cloyne* Inquiry was that the Church’s response to the sex abuse allegations between 1998- 2008 was ‘inadequate [and] inappropriate’, leading to the response that senior clerics with responsibility for implementing child protection were still largely ‘ineffective [and] entirely unhelpful’.⁵³

Collectively, the Reports of *Ferns*, *Ryan*, *Murphy*, and *Cloyne* found significant failings in the Catholic Church with regard to its relationship with children, and that as an institution it had had decades to put in place appropriate child protection measures. The incumbent archbishop in *Cloyne* was found to have engaged in ‘false book-keeping’ whereby he produced one account of events for the Vatican and a version for diocesan file to ‘mislead the advisory committee’ (1.48), and as such there was ‘an uncommitted director of child protection and an ineffective bishop for the period 1996-2008’ (1.73). This failure to give a true account of clerical child abuse was played out in the media, suggesting that the leadership at the time was at least incompetent.⁵⁴ Further, the report issued by the *United Nations Committee on the Rights of the Child* (2014)⁵⁵ said that weighing up the evidence from across Europe; the Vatican protected the perpetrators of child abuse at the expense of the victims.⁵⁶ In response, there have been challenges to the validity of these findings by the Catholic Church, pointing to reforms that have taken place.⁵⁷

What we take from this analysis of the *Ferns*, *Ryan*, *Murphy* and *Cloyne* inquiries is that:

- Exploitation involved tens of thousands of children between 1962-2009;
- Clerical secrecy, avoidance of scandal and preservation of Church assets were paramount;
- Church authorities failed to implement canon law rules and aimed to avoid application of the law of the State;
- There was a lack of accountability from within the Church and inadequate responses from society;
- Mistreatment was often known at the highest level but there was a lack of responsibility; and
- Children served as ‘collateral’ for the reputation of the Church, ignoring and endangering their ‘human rights’.

In summary, this was ‘the most systematic human rights failure in the history of the state’,⁵⁸ and an *Amnesty International* review of these four clerical abuse inquiries concluded that the misuse and abuse of power was a key element.⁵⁹

IV DISCUSSION

The issue of child abuse can be analyzed from a number of different perspectives, but for the purpose of this discussion, the concept of human rights is useful in terms of placing the issue on an equality basis and within national and international contexts.

The European Convention on Human Rights (1947) has been particularly valuable in promoting children’s rights.⁶⁰ This treaty to which Ireland has been a party since 1953 states

No one shall be subjected to torture or inhuman or degrading treatment or punishment
(Article 3)

Much of the experiences suffered by the clerical abuse victims highlighted above falls within this concept of ‘inhuman or degrading treatment’. In the fallout from the clerical abuse inquiries,

some critics took the view that ‘abuse in institutions amounted to torture’.⁶¹ Aligning clerical sex abuse with human rights in the form of the ECHR legislation, provides scope for seeing the abuse as not only illegal, as stipulated within both canon and criminal law, but as an issue within a human rights context that can have consequences for the perpetrator and the state.

There has been important jurisprudence, with reliance on Article 3, concerning physical abuse or the threat of it by teachers.⁶² All of these cases involved school children and litigation which challenged physical punishment as constituting ‘degrading treatment and punishment’ Whilst this litigation focused on physical rather than sexual abuse, the nature, level and extent of abuse was found to constitute a breach of human rights, and that which would not be considered acceptable if perpetrated on adults.

The landmark judgement in the case of *O’Keeffe vs Ireland*⁶³ reflects these rulings by the European Court of Human Rights which gives recognition to children’s rights and extends protection. *O’Keeffe* involved an eight- year -old girl who was systematically abused by a non-clerical head teacher in a Catholic school who also abused other pupils. O’Keeffe litigated for over 15 years to get the school management and the Republic of Ireland to accept liability. Consequently, the same legal provision that had been used in UK corporal punishment cases in the 1980s cited above, was applied successfully to include the *sexual abuse* of children. Although the O’Keeffe case dates back to the 1970s, it is an important message in terms of ‘duty of care’ and legal, as well as moral obligation, to not only protect minors against abuse but to put in place adequate safeguards and effective remedies. The invoking of Article 13 in this case which states that ‘everyone’s rights and freedoms ... shall have an effective remedy before a national authority’⁶⁴ was also successful. In this regard it was found that the State failed in its duties to the child and family. The implication is the need for a robust statutory framework to provide clarity about the government’s role in protecting children and to ensure redress.

The *O’Keeffe* ruling also signalled a cultural shift in Ireland concerning the status of children. Added to the findings in the *Murphy, Ryan, Murphy* and *Cloyne inquiries* into clerical abuse, there is now clear validation that children have a right to be taught in a safe environment and that their physical integrity must be respected by the clergy and non-clerical teachers. The implications of the O’Keeffe judicial review are also that as a signatory to the European Convention, the Irish State and particularly the Department of Education will need to ensure that the public feels confident that existing and future generations of children are protected within the educational system. Further, by placing the issue of sexual abuse within the context of human rights law, the status of the child is given prominence. With reference to Strasbourg, Fortin (2009) states that the work of the European Convention on Human Rights ‘has had considerable impact’ in producing ‘a practical rights-oriented consciousness amongst those dealing with legal problems affecting children on a day to day basis’, and that it is becoming increasingly common for domestic courts in Europe to justify their decisions on matters affecting minors by reference to children’s rights.

Discussion so far has been in the context of the Catholic Church in Ireland, but sexual abuse of children by adults has taken place elsewhere, within and beyond church settings. From a broader perspective, this has involved Catholic educational facilities in Scotland⁶⁵ Germany,⁶⁶ Australia⁶⁷ and Latin America.⁶⁸ Further, strong parallels can be drawn with *the Australian Royal Commission into Institutional Responses to Child Sexual Abuse* (2013) with an estimated ‘seven per cent of Australian Catholic priests accused of abuse’.⁶⁹ Priestly child abuse in the USA has also been noted (Russo 2012) and inappropriate behavior by clerics, as elsewhere, where there was inadequate response by church authorities who acted as enablers. Importantly in this study,

the distinction is made between offences which took place in schools and within the wider church community, and the development of policy guidance at local diocese level.

Nor have the cases only concerned Catholic dioceses. In the UK there have been investigations concerning alleged abuse in Anglican Church school communities;⁷⁰ and currently it is estimated that approximately 20 private preparatory schools are facing compensatory claims following the *Saville Inquiry*⁷¹ and Operation Yew tree (2012) which is dealing with historic sexual assault.

What is emerging from these inquiries, which was also evident in the Irish government reports, is that abuse was widespread but went unreported, and that the predominant theme was deference to the authority of the religious group and/or the educational institution with a desire to avoid reputational damage. Another important similarity is the neglect by government in ensuring adequate regulation concerning child welfare; a point particularly pertinent in boarding schools.⁷²

Further, sexual abuse has also been perpetrated by non-clergy, where adults were operating in the role of ‘in loco parentis’. For example, sex abuse cases have involved music teachers in the UK,⁷³ and sports coaches in the UK and America.⁷⁴ Again, what they all share is the violation of ‘bodily integrity’,⁷⁵ a key theme in the Irish inquiries, and the need for government to take seriously children’s entitlement to human rights as enjoyed by adults.

Going forward in Ireland the State has responded to calls for a Referendum on Children’s Rights (2013) in light of concern over child abuse. This was passed as the 31st Amendment.⁷⁶ Likewise, the *Teaching Council of Ireland* has stated the values of a teacher to include ‘care, trust, and integrity’ which has direct applicability to the issue of child welfare.⁷⁷ Current practice in Ireland requires schools to implement child protection guidelines, and part of the policy requires a ‘Designated Liaison Person’⁷⁸ although there has been concerns over the adequacy of policy implementation.⁷⁹

The public trust in the Catholic Church has been undermined and anger at this organisation is evidenced by the fall in attendance and closure of Catholic churches in Ireland.⁸⁰ This is beyond that which might have been expected due to a trend towards secularization.⁸¹ As part of its response, the Catholic Church has continued to revise and monitor child protection policy and procedures;⁸² and Pope Francis has arranged a Commission on abuse with representation from Irish survivors.⁸³ This is an important step as abuse can still prevail, as evidenced in a recent case of a priest jailed for ‘systematic abuse’ of minors between 2007– 2011.⁸⁴

As lobbying continues on behalf of children it is noteworthy that in the Republic of Ireland it has been calculated that ‘one in every four children’ has experienced sexual violence in both childhood and adulthood, perpetrated not only by those in religious institutions but by family members, neighbors and professionals.⁸⁵ Legislation in the form of the *Criminal Justice (Withholding of Information) Act* (2013), the *National Vetting Bureau (Children and Vulnerable Persons) Act* (2012) and the *Children First Bill* (2014) introducing mandatory reporting , all point to the seriousness in which the legislature has recently engaged with issues of child protection. Likewise, the Department of Education has been implementing recommendations of the *Ryan Report*, (2009), cited earlier, and this work is monitored on a regular basis by the *Children’s Rights Alliance*, and the new *Child and Family Agency* . Child welfare, sporting and cultural groups have called on the Irish Government to tighten legislation dealing with the vetting of adults working with children.⁸⁶ A groundswell of opinion has emerged that in future, child protection legislation must be robust in its enforcement⁸⁷ and a National Board for Safeguarding Children in the Catholic Church has been established to monitor professional practice.⁸⁸

From a practical perspective, a range of mechanisms for safeguarding children has been recommended and are worthy of consideration elsewhere. For example, *the Irish Sports Council and the Sports Council for Northern Ireland* published a joint *Code of Ethics and Good Practice for Children's Sport in 2000*.⁸⁹ This Code has been implemented by governing bodies of sports, clubs, local sports partnerships and community/voluntary groups on an on-going basis since 2000. A related publication recommended that children are entitled to 'be listened to, be believed, be safe and to feel safe',⁹⁰ adding:

avoid unnecessary physical contact. Any necessary contact should be in response to the needs of the child and not of the adult (p. 17).

Further, adults working with children and young people are expected to attend workshops to become familiar with relevant policy, such as reporting mechanisms, and the inappropriate use of children's images on websites and publications (p. 18). Importantly, what has also emerged is the practical role of parents in child protection, for example, in after school sports activities, 'ensuring they help supervise the changing rooms in pairs of appropriate gender', and that 'parents/guardians are present at the finishing time of sessions or events' (p. 16).

Finally, there is a need to consider the traditional position of clergy and non-clerical teachers acting *in loco parentis* and review the extent of this role today. The doctrine can be understood within a more democratic concept of the school, and 'Our Duty to Care'.⁹¹ In redefining the role of the teacher, this can shift to be that of 'activist scholars' (2011) supporting policy on children's rights. However, an adult survivor of clerical abuse, appointed to the Vatican commission maintains, 'there's no point in bringing in policies for child protection if there is no accountability'.⁹² Continual effort will need to be maintained for arguably there is

After two decades of media revelations and four landmark state inquiries [*Ferns, Ryan, Dublin and Cloynes*] ...abuse-fatigue in the media and a wider fatalistic sense that society has done enough'.⁹³

V CONCLUSION

The discussion in this paper has been about a single issue contained in a wider discourse about professional practice and accountability in educational institutions. Clerical sex abuse inquiries in Ireland revealed that there was wide-spread abuse for more than four decades with an intention to protect the reputation and interests of the institutional church above that of the child. Analysis of the government inquiries demonstrated a shielding and privileging of religious communities, dioceses and educational communities at the expense of the child. If it takes a community to raise a child it can take a community to abuse one and the collusion of police authorities, health service and lay people was also an important aspect of these enquiries. In Ireland, the issue is not now resolved because government enquiries have taken place: there is a need for on-going scrutiny by the Catholic Church to ensure practice consistent with Canon Law and its own pastoral care mission 'to protect the flock'; and along with the State and all educational providers, a need to ensure ongoing protection of children's rights.

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