In Plain Sight

Responding to the Ferns, Ryan, Murphy and Cloyne Reports

Carole Holohan

Sincere thanks to the Scottish Human Rights Commission. The analysis in Chapter 1 was informed and guided by its report co-published with Susan Kemp in February 2010. Entitled *A review of international human rights law relevant to the proposed Acknowledegment and Accountability Forum for adult survivors of childhood abuse*, it provides an important human rights framework for this area, and especially for the assessment of historic human rights abuses.

In Plain Sight:
Responding to the Ferns, Ryan, Murphy and Cloyne Reports

Commissioned by Amnesty International Ireland

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Published September 2011

Seán MacBride House
48 Fleet Street
Dublin 2
Ireland

ISBN
978-0-9555600-4-0

Photography from 'The Echo of a Silent Cry' by Dianne Whyte.

Typeset in Trade Gothic
Design by swollen.ie
Printed by Colorman

“All human beings are born free and equal in dignity and rights”.

Article 1, Universal Declaration of Human Rights (1948)

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Preface

There is an obvious, clear and compelling reason why Amnesty International Ireland might commission research such as *In Plain Sight*. The issue central to this research, the abuse and exploitation of tens of thousands of Irish children in State funded institutions as detailed in the report of the Commission to Inquire into Child Abuse (the Ryan Report) and the abuse detailed in the Ferns, Murphy (Dublin) and Cloyne Reports, constitute arguably the gravest and most systemic human rights violations in the history of this State. Therefore, it is vital that these violations, and the State's responses to them, be assessed against the standards dictated by international human rights law. For those children who experienced rape and sexual abuse, physical abuse and economic exploitation it is vital that their experiences be recognised as grave human rights violations and breaches of law. Even post the publication of the Ryan Report there were those who sought to minimise the horrific reality of the abuse inflicted upon so many of our most marginalised and vulnerable children. There have been voices that have sought to dismiss systemic and barbaric cruelty as the norm in the Ireland of the time. Such voices must not be permitted to rewrite or diminish this history, neither now nor in the future, and for that reason it is vital that Amnesty International use the language of international law to clearly name the violations inflicted upon children for what they were. Systemic and repeated rape isn't just child sexual abuse and systemic and ritualised beatings are not merely corporal punishment; they amount to torture in certain circumstances and the degree to which that

applies in the context of the Ryan Report particularly must be properly named.

But the focus cannot be purely on the past, as if this history has no relevance for our society now. We must consider the degree to which this history reveals vital truths about the nature of our society today. The past only becomes history once we have addressed it, learnt from it and made the changes necessary to ensure that we do not repeat mistakes and wrongdoing.

It is widely accepted that the widespread abuse of children documented in the various reports considered by this research was made possible because the State adopted a deferential attitude to the Hierarchy of the Roman Catholic Church. The State failed to honour its obligations to children and vulnerable adults it placed in the 'care' of church run, State funded institutions. It failed to investigate and prosecute allegations of child sexual abuse made against priests and religious with the same rigour that it investigated and prosecuted others accused of the same crimes. It failed to protect and support the most vulnerable children in our society, those living on the margins in some way due to poverty, family status, ethnicity or because of some arbitrary judgement that they were morally suspect. Instead it pushed them further to the edge of the margins, effectively 'othering' them, deeming them unworthy of social inclusion and rightful legal protection. They were made invisible, turned into outsiders by their own society, and abandoned to multiple abuses and experiences of exploitation.

As such the State deferred to unaccountable and powerful interests and failed to protect the rights and needs of its people. It often responded to allegations and concerns of criminal activity not by investigating the wrongdoer but by diminishing and dismissing the victim. The law was applied, or indeed ignored, to protect the powerful not the powerless.

Accountability has become something of a buzzword in Ireland over the past few years. After the collapse of many of the supposed pillars of our society we have begun to look, albeit somewhat belatedly, at the concept of accountability. But our focus seems not to be on the broad application and value of the principle of accountability as an essential tool to guide good decision-making and governance, but rather on accountability as a means to apportion blame for past failings and to impose sanctions upon those who have failed or wronged us. This approach is in my view symptomatic of a deeper problem: a culturally systemic failure to appreciate the value of both responsibility and accountability as something other than a burden to be borne or something to be dodged so as to avoid sanction.

Our approach to accountability is not one that encourages an honest and frank exploration of failure or error in an effort to properly analyse why or how mistakes have been made, but one that seems to seek scapegoats as a first reflex. That's not to say of course that accountability does not require an acceptance of responsibility for wrongdoing and the passing of an appropriate sanction where required; but real, meaningful accountability must be about more than that. Accountability is not simply a means through which we react to or repair failure or wrongdoing. It is a vital tool for those charged with making complex and difficult decisions; one that can guide and strengthen decision making and the development of law, policy and practice. Real accountability requires for instance that those in positions of authority who make decisions which impact significantly on the lives of others should consult with and be accountable to those same people in making such decisions and in implementing them. In this way accountability becomes a vital tool to inform good decision-making and ensure that policy decisions serve the very people they most affect.

Essentially accountability demands that power be answerable to those that it is intended to serve. In a republican democracy such as Ireland the power exercised by the various organs of the State is power conferred upon the State by its citizens. In that context the need for accountability becomes even

clearer. The State is the people, and those charged with acting for the general good of society should be clearly and meaningfully accountable to the people in whose name they act.

There is no doubt that there have been enormous failures in the application of the principle of accountability in Ireland. For example, there is a general perception that the law does not apply to everyone equally. The letters pages of our national newspapers have been littered with letters highlighting how a different standard of accountability seems to apply to the transgressions of those in positions of power than to, for example, a person on the poverty line who cannot pay their television licence. The fact that a person living on the poverty line can be sent to prison for non-payment of their television licence whilst those responsible for catastrophic failures in the governance of our banking system appear to be above the law, is often flagged as proof that this is the case.

Accountability must first and foremost be concerned with an honest and courageous openness to learning what went wrong in any given context in order to ensure that we address the deficiencies at the individual or systemic level that either tolerated or caused the error or wrongdoing. Once in place accountability mechanisms serve as a preventative tool, preventing wrongdoing and informing better practice and not simply reacting after the fact to mistakes and wrongdoing.

But the Ryan, Ferns, Murphy (Dublin) and Cloyne Reports reveal a deep seated failure to appreciate and incorporate effective accountability into our society and systems. This is true at the level of the State, but also I believe at the level of the individual. It has become a cultural phenomenon.

When such a culture is revealed it is vital that it is considered in the broadest possible context. If we work to identify how power operated in the context of the Ryan, Ferns, Murphy (Dublin) and Cloyne Reports we will undoubtedly gain insights of critical importance as we work to strengthen child protection and children's rights; but such insights will also have a broader application. Put simply, if in this area power operated to protect the powerful

to the cost of wider society it is likely that this dynamic was repeated in other spheres, be it in banking and business, politics or other sectors of society controlled by powerful interests.

I have believed for some time that the Reports, and the resulting public focus on the issues they reveal, offer a unique opportunity to better understand some of the fundamental flaws in our society. It is important to acknowledge the courage and determination shown by Irish people in recent years in our efforts to get to the root of the various abuse scandals. The fact that the various inquiries and investigations took place is due not just to the courage and determination of those who were victims in this context, but also to the high levels of public support that built as more and more histories emerged which spoke to the truth of what happened in industrial schools, children's homes and reformatories, as well as in day schools and parishes all over Ireland.

For it is not the case that the emergence of these truths is a modern phenomenon, not by a long stretch. For decades people right across Irish society and at various levels of power and influence knew about the abuse perpetrated by some of those in positions of unquestioned authority, concealed by their organisational leadership and at times with the complicity of agents of the State itself. As this research documents, many voices were raised, and many letters written and ignored, before wider society chose to listen and to demand action.

In many ways there is nothing quite so defensive as a system under threat, especially when that system penetrates an entire society. So often it appears easier to ignore the harm done to others than to work to force change, exposing ourselves as in opposition to the established order. In a society that punished 'others' by criminalising them and denying them the comfort and protection of the rule of law it is undoubtedly easier to stay silent, conform and not become an 'other' oneself.

Our silence in this context makes us at least in some part complicit. However, it is vital that this complicity not be overstated. Power is not equally shared in our society and the fear of marginalisation is a powerful deterrent to

prevent the less powerful from speaking out. But such an application of power, and acceptance of powerlessness, has a deeply corrosive effect upon society. The Ryan, Ferns, Murphy (Dublin) and Cloyne Reports most graphically expose this corrosive impact. By using them as a lens to explore issues such as power, accountability and the role of wider society in holding power to account we can identify, and I hope address, some critical deficiencies in our society. There is no shame or dishonour in naming and taking responsibility for our own failures, no matter how serious they might be. Looking at ourselves with courage and real honesty never diminishes us. Rather it offers unique learnings and opportunities to act with both courage and compassion to become a stronger and more just society.

As such this research should be viewed not as a critical eye cast backwards in time in an effort to identify those whom we might blame for undoubtedly terrible violations, but as a call to understand and take ownership of the various levels of failures of responsibility which allowed them to happen, to ensure that we have done all we can to make proper reparations to those harmed and to ensure that we repair the flaws in how our society works to ensure that all of us are guaranteed the full and equal protection of the law and the full and equal enjoyment of our human rights.

The genesis for this research was my belief that many Irish people did indeed understand that we all, at the level of the individual and as members of wider society, bear some responsibility for ensuring that such violations are not permitted or tolerated. This belief was based upon many conversations I had with people around the country following the publication of the Ryan Report in 2009. Women and men spoke to me of their sense of sorrow and shame at the society that we had allowed ourselves to become and expressed a real desire for change. I was struck by how this kind of insight and honesty was not reflected in much of the political or media discourse that followed and became convinced that we all must play a role in working to both identify and work for change where it is most needed.

This research is Amnesty International Ireland's initial contribution to

that process. Whether or not it succeeds in promoting such an essential public conversation is dependent upon the willingness of organisations and people across our country being prepared to participate in that process. Such a profound and vital discourse can neither be owned nor defined by any one organisation or individual. It depends upon all of us.

Polling conducted as part of this research suggests that an overwhelming majority of Irish people feel a clear sense of responsibility for this dark part of our history. It suggests that we believe that we each as individuals have a responsibility to respect and defend the human rights of other people in Ireland. It suggests that a significant majority of us believe that Government acts when society demands that it acts.

Put simply, it appears that we understand that we have a responsibility to effect change where it is most needed and we know that we have the power to do so.

I'm up for it. What about you?

Colm O'Gorman
Executive Director, Amnesty International Ireland

The Independent Advisory Group

The research for this project was informed and reviewed by an independent advisory group. Over the course of a year information and ideas were exchanged which guided the research. Individual members assisted the author throughout the process, sharing research and answering queries.

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Acknowledgements

Sincere thanks to everyone who lent time and expertise to this project. Particular thanks to Des O'Malley, Barry Desmond and Frank Crummey for giving interviews and to Andrew Madden, Bernadette Fahy, Marie Collins, Catherine Joyce, Alistair Hodgett, Lisa Collins, Ineke Durville, Lara Kelly and Ella Goold for their assistance and insights.

A special thanks goes to those who contributed essays to the report:

Elaine Byrne • Lisa Collins • Seán Cottrell • Martina Deasy • Thomas Patrick Doyle • Norah Gibbons • Colin Gordon • Deirdre Kenny • Emily Logan Rosaleen McDonagh • Andrew Madden • Pearse Mehigan • Eddie Molloy Jackie Murphy • Gerard Quinn • Kevin Rafter • James M. Smith.

Sincere gratitude is extended to The Atlantic Philanthropies and the One Foundation for financial support.

Introduction

The Ferns[1] , Ryan[2] , Murphy (Dublin)[3] and Cloyne[4] Reports were the results of inquiries into the abuse of children who resided in residential institutions[5] managed by religious orders[6] on behalf of the State, and into the handling of allegations and complaints of sexual abuse in two Catholic dioceses[7] and one archdiocese. They examine the nature, causes and extent of this abuse, and responses of authorities to this and to allegations of abuse. The Reports reveal lessons that can be learned from the documented events as well as shortcomings in relevant laws and regulations, whilst making recommendations as to how these shortcomings can be remedied. These inquiries examine acts of abuse not just as actions of individuals but also as the direct result of the activity or dereliction of duty of particular bodies and authorities.

The overarching aim of this report is to identify issues of power, accountability, responsibility, and identity within the Irish political system, executive and society that enabled this abuse to occur. While the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports documented abuse and responses to abuse and to allegations, they did not identify the experiences of these children as violations of international human rights law, nor determine the human rights violations committed by the State, or the non-State actors involved. Furthermore, they did not analyse the accountability, identity and attitudinal dynamics that allowed this abuse to happen. This report will address these issues whilst also identifying the degree to which these dynamics still

exist.

The issues raised in these Reports are not ones consigned to history. The Cloyne Report reveals the failure of Church authorities in that diocese to report allegations of child abuse to the Gardaí as late as 2005. In June 2011 the UN Committee Against Torture expressed its concern that many of the recommendations that followed the Ryan Report have not been implemented. It also expressed grave concern that despite the nature and scale of the abuse documented, State authorities had only forwarded 11 cases for prosecution, eight of which were rejected. The committee recommended that the State indicate how it proposed to implement the recommendations that followed the Ryan Report and a time frame for achieving them, as well as a thorough investigation of cases of abuse found in the report, and, if appropriate, prosecutions of perpetrators. This is one of the issues the State must provide follow-up information on within one year.

In 1919, the Democratic Programme for government was read at the convening of the first Dáil. The Programme promised that future Irish governments would "secure that no child shall suffer hunger or cold, from lack of food, clothing, or shelter, but that all shall be provided with the means and facilities requisite for their proper education and training".[8] Furthermore it vowed that the Poor Law System, which provided for workhouses as a response to poverty, would be abolished and instead there would be "a sympathetic native scheme".[9] Despite these proposals, this report details how the absence of clear systems for social provision, with accountability mechanisms within and between State and non-State bodies, allowed for the abuse of large numbers of Irish children. The absence of clear systems reflects the historical and continued problem of the lack of a clear public/private divide in Irish political discourse, which resulted in the haphazard development of many social services.[10] The failure to draw clear lines of public and private responsibility, combined with attitudes towards children, in particular children whose identity lent them low status, resulted in a society that allowed for the large scale abuse of children. The report will also describe how children often

fell victim to the criminal justice system while perpetrators often benefited by not being held to account by that same system.

Veins of knowledge about this abuse have always existed. Knowledge passed between networks of people connected to those abused and abusers, while literature and memoir served as a further source of information. Mannix Flynn's *Nothing to Say: A Novel* was first published in 1983. Though ostensibly fiction the book was strongly autobiographical and detailed his experience of abuse in Letterfrack. Six years later in *The God Squad*, Paddy Doyle described his experience of abuse in a series of institutions. Many of those abused were invariably denied justice in the courts, as in the 1980s a delay in reporting of as little as a year might be considered to be a bar to prosecution.[11]

General public awareness of the experiences of these children was confirmed in the 1990s. Andrew Madden went public about his abuse by a priest in the archdiocese of Dublin in 1995, while public awareness was heightened by television documentaries. Two documentaries broadcast on RTÉ, *States of Fear*[12] (1999) and *Prime Time: Cardinal Secrets*[13] (2002), led to the establishment of the Commission to Inquire into Child Abuse and the Murphy (Dublin) Commission, while in the interim an investigation into the handling of allegations and complaints of child sexual abuse in the diocese of Ferns was established in the wake of the broadcast of the BBC television documentary, *Suing the Pope*[14] (2002). Despite the grave nature of the abuses described in these programmes, each of these inquiries faced difficulties, as all parties did not demonstrate full cooperation. In both the Ferns and Murphy (Dublin) investigations, there were delays and difficulties in getting access to all of the relevant material in the diocesan archives, while the Commission to Inquire into Child Abuse was beset with difficulties in its early years.[15] Many religious orders adopted an adversarial and legalistic approach to the Commission, while the first chairman, Justice Mary Laffoy, expressed her exasperation at the Department of Education and Science for their excessive delays and failure to provide archival material and sufficient resources.[16] Given that this Department had legal responsibility for residential institutions, many pointed out the

inappropriateness of such a body essentially overseeing the investigation of itself.

Despite these problems, the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports serve as official testimony that acknowledges events in the past that the official record had previously denied. While personal experiences in Ireland had for many been "at odds with the official stories which were sanctioned permitted and encouraged by the State and the Catholic Church"[17], the official record now reinforces the testimony of those who experienced abuse, rather than contradicting or denying it.

Inquiries into both the abuse of children in institutions and the abuse of children by Catholic priests have also taken place in Canada, the UK, Australia and the United State of America. However, what may be unique to Ireland is the limited nature and impact of the national conversation and debate that followed these inquiries. The Ryan Report asserted that the report "should give rise to debate and reflection", noting that "although institutional care belongs to a different era, many of the lessons to be learned from what happened have contemporary applications for the protection of vulnerable people in our society".[18] Inquires can increase public awareness, and have the authority to make recommendations about "the design of institutions" and the implementation of procedures to ensure that abuse is prevented in the future.[19] This report asks if the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports have been successful in this regard.

Whilst investigating past abuses, the Commission of Inquiry into Abuse of Children in Queensland Institutions (1999), more commonly known as the Forde Inquiry, was also concerned with children currently in residential care, and sought the views of those children in order to highlight the continued risks of abuse. While this Commission investigated both State-run and denominational institutions, it readily accepted that all these children were in the care of successive Australian governments,[20] and concludes that

although it was individuals who perpetrated each

> **act of abuse, they alone cannot shoulder the whole responsibility. Some measure of responsibility must be taken by those to whom the abuses were reported and who did not act, those members of religious organisations who turned a blind eye, the staff and the management of the Department of Children's Services who did not adequately monitor the children in their care … and society, which ignored or accepted what happened to children in the care of the State. As a State, we must face up to past wrongs and make proper redress, and ensure that when children are in our care we do them no harm.**[21]

Similarly, the Murphy (Dublin) Report affirms that the primary responsibility for child protection must rest with the State, and that in enforcing child protection rules and practices, voluntary and private organisations cannot be equal partners with State institutions such as the Gardaí and health authorities.[22]

Therefore, this report examines not just the role of non-State actors in allowing the abuse of children but the role of the State and wider society. It concludes by highlighting ongoing human rights concerns in Ireland by identifying how we have not learned all the lessons these Reports teach us.

1 See *The Ferns Report,* Presented to the Minister for Health and Children October 2005, Government Publications, Dublin, 2005, hereafter referenced as the Ferns Report. Page numbers refer to the pagination in the 2005 version of the report, which is available at http://www.bishop-accountability.org/ferns.htm .

2 See *Commission to Inquire into Child Abuse, Report, Vols. I-V*, Government Publications, Dublin, 2009, hereafter referred to as the Ryan Report Vols I-V. The Report and the Executive Summary are available on line at http://www.childabusecommission.com/rpt/pdfs/. While most of the material in the report has corresponding number references (for example, 7.23-7.25, where the number seven refers to chapter seven) a small number of chapters are not enumerated in this way and in these cases page numbers are used.

3 See *Commission of Investigation, Report into the Catholic Archdiocese of Dublin*, July 2009, Government Publications, Dublin, 2009 hereafter referred to as the Murphy (Dublin) Report. The Report is available at http://www.dacoi.ie/.

4 See *Commission of Investigation, Report into the Catholic Diocese of Cloyne*, Government Publication, Dublin, 2010, hereafter referred to as the Cloyne Report. This report is available at http://www.justice.ie/en/JELR/Cloyne_Rpt_Intro.pdf/Files/Cloyne_Rpt_Intro.pdf. When referred to collectively, the Ferns, Ryan, Murphy and Cloyne Reports will be referred to as "the Reports".

5 The Commission to Inquire into Child Abuse was comprised of two committees, the Confidential Committee and the Investigation Committee. The former gave people who suffered abuse in childhood institutions "an opportunity to recount the abuse, and to make submissions, in confidence to the Committee". It had a mandate to hear the evidence of those who experienced institutional abuse in a private setting and 1090 witnesses gave oral evidence. Abuse was reported to the Committee in relation to 216 schools and residential settings including industrial schools and reformatories, children's homes, hospitals, national and secondary schools, day and residential special needs schools, foster care and a small number of other residential institutions, including laundries and hostels. The Investigation Committee also gave people an opportunity to recount abuse but it was further charged to inquire into the manner in which children were placed in, and the circumstance in which they continued to be resident in, institutions during the relevant period; to inquire into the abuse of children in institutions; to determine the causes, nature, circumstances and extent of such abuse; to determine, without prejudice to the generality of any of the foregoing, the extent to which the institutions themselves, the systems of management, administration, operation, supervision and regulation of such institutions, and the manner in which these systems were carried out, contributed to the occurrence of incidence of such abuse; and to prepare and furnish reports. Investigations were conducted into all institutions where the number of complainants was more than twenty. The vast majority of these were residential institutions, chiefly industrial schools, reformatories and residential schools for children with disabilities. For convenience, the sites of abuse detailed in the Ryan Report will predominantly be referred to as "residential institutions" or "institutions" in this report. However, the Ryan Report often uses the terms "schools" and "Schools", and this is reflected in this report. See The Ryan Report, Vol. I, 1.07-1.20; The Ryan Report, 'Executive Summary', p. 2.

6 While the terms "religious congregations" and "religious orders" are often used interchangeably this report will use the term "religious orders". References to "religious orders" refer to Catholic organisations. The Ryan Report refers to "religious orders".

7 This refers to the Roman Catholic Church. Throughout the report it will be referred to as both "the Catholic Church" and "the Church". References to "priests" refer to Roman Catholic priests. References to "bishops" refer to Roman Catholic bishops.

8 'Democratic Programme', Dáil Debates, vol. 1-21, 19 January 1919.

9 Ibid.

10 Prof Gerard Quinn, Memo, 19 January 2011.

11 The Murphy (Dublin) Report, 5.46.

12 Produced and directed by Mary Raftery, this three part series documented abuse in Ireland's industrial schools and reformatories.

13 Produced by Mary Raftery and Colm Magee this programme documented the mismanagement of abuse complaints in the archdiocese of Dublin.

14 Produced by Sarah MacDonald, this documentary told the story of a group of abuse victims, led by Colm O'Gorman, who were abused by Father Seán Fortune, and the failure of the church authorities to acknowledge and address this abuse. It led directly to the resignation of Bishop Comiskey.

15 *The Irish Times*, 6 June 2004.

16 *The Irish Times*, 6 September 2003.

17 Caitríona Crowe, 'On the Ferns Report', *Dublin Review*, no. 22, Spring, 2006 cited in 'Ferriter Report: Report by Dr Diarmaid Ferriter, St. Patrick's College, DCU' in the Ryan Report Vol. V, pp 3-4.

18 The Ryan Report, 'Executive Summary', p. 1.

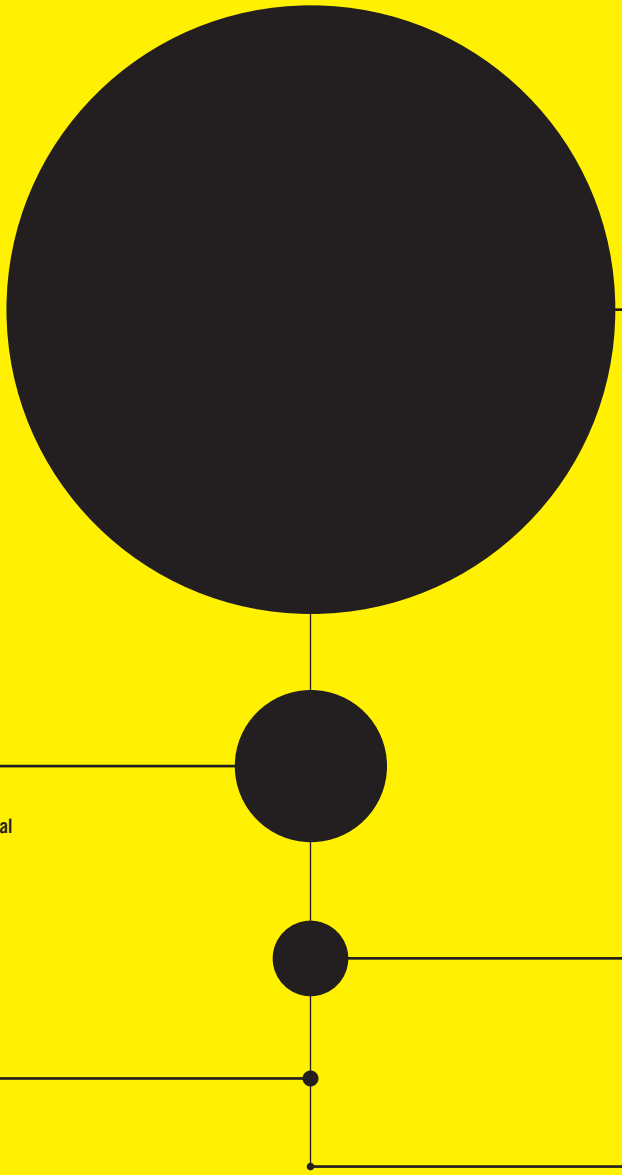
19 *Law Commission of Canada, Restoring Dignity, Responding to Child Abuse in Canadian Institutions*, Minister of Public Works and Government Services, Ottawa, 2000, p. 257.

20 *Committee of Inquiry into the Abuse of Children in Queensland Institutions, 1999*,'Executive Summary', ii.

21 Ibid., xiii.

22 The Murphy (Dublin) Report, 1.100.

The Ryan Report: What the numbers mean ...



173,000: the number of children that entered industrial schools and reformatories in the period 1936-1970.
(See *The Ryan Report Vol.1*, 3.01; 3.04)

14,448: the number of applications to the Residential Institutions Redress Board.

3,000 approx.: the number of people who came forward to the Commission to Inquire into Child Abuse.
(See *The Ryan Report Vol. 1*, 1.26; *Vol. III*, 2.09)

11: the number of cases forwarded to the Director of Public Prosecutions

3: the number of cases where the decision to prosecute was made.


EXIT
CAUTION
RUNNING AND JUMPING
ON STAIRWAY IS
DANGEROUS AND IS
STRICTLY PROHIBITED

Summary and Key Findings

This report examines the systemic failures that enabled the abuse of children by agents of the Catholic Church in residential institutions and in the community. The overarching aim of the report is to identify issues of power, accountability, responsibility and identity within the Irish political system, executive and society that contributed to these failures. In examining these issues the report will identify not only dynamics that endangered human rights in the past but those that still exist today.

Issues of responsibility and accountability are at the heart of the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports and are integral to our understanding of why this abuse happened. The State, non-State actors and wider society all have responsibility for upholding human rights.

Responsibility

Responsibility can be implied, designated or self assigned and is invariably linked to power and authority. In terms of human rights, the critical relationship is between the State and the individual. Under its human rights obligations the State is responsible for ensuring that the human rights of its citizens are not impinged upon. In human rights law, the 'due diligence' principle maintains that when the State authorities know or ought to know about likely or actual violations of human rights,

and fail to take appropriate steps to prevent the violations or punish the violator, then the State bears responsibility for the violation. This does not excuse the person who commits the violation from individual civil or criminal liability. For example, the abuser of a child is the person liable under criminal law for this act and should be brought to justice. However, the State is also guilty of violating human rights if it failed to take reasonable steps to prevent, investigate or punish the act.

Accountability

A necessary corollary of responsibility is accountability. Accountability refers to the standards and systems used to examine the actions of those who hold power and responsibility. Only those considered responsible can be held accountable. Effective accountability mechanisms imply both an ability and willingness to report and explain one's actions and consequences for failing to carry out one's responsibilities. Furthermore, such mechanisms inform, support and protect those who hold responsibility. In order to exercise due diligence, the State has an obligation to ensure accountability from State actors and non-State actors.

Chapter one describes how the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports clearly demonstrate mass violations of international human rights law. The Ryan Report in particular describes how children in residential institutions were subject to physical, sexual and emotional abuse and gross neglect at the hands of both religious and lay staff. While some of the international human rights treaties under which Ireland now has a legal obligation may not have existed at the time, there were analogous human rights standards of acceptable conduct at the time of the violations. The abuse and neglect

which children suffered can be categorised as torture and cruel, inhuman or degrading treatment, while the child's right to a private and family life, rights to health and education, and the right to be free from slavery and forced labour, were also violated. The due process rights of children were also ignored.

Much of this abuse is directly attributable to private individuals – Catholic priests and members of religious orders. The abuse is also both indirectly and directly attributable to the State on a number of counts. The State is directly responsible for its failure to adequately legislate and create policy regulating the management of residential institutions. It failed to carry out the statutory duties it did have; namely inspecting institutions and ensuring that the Rules and Regulations set down by the Department of Education were abided by. The State also failed in its duty to investigate complaints of abuse; in fact there was no official complaints mechanism governing residential institutions.

This chapter provides a human rights analysis of the abuses highlighted in the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports. The Republic of Ireland has human rights obligations on three levels: to respect, protect and fulfil the rights contained in treaties to which it is a party. In order to comply with its international obligations, the State must not only ensure that its agents do not conduct abuses, but the State must take positive action to protect people within its jurisdiction from violations that may be perpetrated by private actors. Where there are reasonable grounds to believe serious abuses have taken place it must investigate, identify liability and punish perpetrators as appropriate. The State also has a duty of 'non-repetition', to ensure that the same abuses do not recur. The State must also ensure that the victim's right to an effective remedy is upheld. Should it fail to take reasonable steps to prevent, investigate or punish the act of abuse, the State can be considered guilty of the abuse itself.

International and domestic human rights law increasingly recognise responsibilities of other actors, including public authorities, private institutions and individuals. While this area of law is somewhat in a state of flux, it is accepted that other institutions, to the extent that they are accountable, should

contribute to reparations for victims of abuse. The human rights responsibilities of ordinary individuals not directly linked with the non-State bodies or the State is also an emerging area of debate.

Chapter two addresses the question why did it happen? In other words, in the case of what was revealed in the Ryan, Ferns, Murphy (Dublin) and Cloyne Reports, what factors facilitated both the systemic abuse of children over many decades in residential institutions, and the sexual abuse of many children in the community. This chapter examines internal, political and public responses to evident failings in the system of residential institutions, and to incidents of abuse in both residential institutions and in the community. In examining these responses a framework of factors has been developed which will help analyse the question, why did this happen? These factors include: responsibility and accountability; identity and status; and attitudes to children.

Analysis of the Reports reveals that the absence of effective accountability mechanisms within the internal structures of religious orders and dioceses meant that complaints and allegations of child abuse were ignored or mishandled, allowing for the continued abuse of children. The low status attributed to and the unsuitability of some of the staff that worked in residential institutions, the high children to staff ratio, and a lack of resources, were also significant factors contributing to the abuse of children. The ignoring of complaints and the transfer of abusers was an entirely ineffective way of addressing child protection issues. Furthermore, it is apparent that Church authorities knew the recidivist nature of sexual abuse, while knowledge of its criminal nature was confirmed by the fact that lay offenders were generally reported to the Gardaí.

The actions of the diocesan, and Vatican, authorities facilitated rather than prevented the abuse of children by priests. The failure to investigate complaints, to notify relevant parties that a recently transferred priest had been the subject of complaints of child abuse, combined with the failure to use canon law to remove suspected abuser priests from ministry, a culture of secrecy, the use of mental reservation, and a disregard for internal child

protection guidelines reveal an organisation that went to extreme lengths to protect its priests and its reputation at the expense of children. The failure to notify the Gardaí of allegations of child abuse indicates that some of those in authority in the Catholic Church did not feel their members should be accountable to civil authorities.

A historical legacy of voluntary provision, deference to agents of the Catholic Church, negative attitudes toward the working class family, a failure to address the issue of sexual crime appropriately, and the low priority afforded children in the care of the State, are all factors that affected the responses of agents of the State to allegations and incidents of child abuse, and to failings in the system of residential institutions. The total failure to inspect some institutions at all demonstrates that these children were not a priority for government departments. Deference to Church authorities when complaints were made directly to a government department, and indeed the suppression of complaints, also signifies the deferential relationship between the two parties.

Although the State clearly had legal responsibility to approve, regulate, inspect and fund residential institutions, this relationship, combined with an unwillingness and inability to act as a direct service provider, prolonged this system of service provision. The deferential attitude of members of the Garda Síochána to agents of the Catholic Church, combined with the ineffectiveness of the HSE/Health Boards, given the lack of clarity around their responsibilities and legal powers in some areas, further served to minimise accountability and responsibility with respect to abused children. The failure of the State to deal effectively with cases of abuse, even when the Resident Manager of an institution presented them, highlights the complete absence of accountability mechanisms between the State and a service provider that had in its charge thousands of children.

This chapter also addresses the role played by wider society and describes how clericalism and deference to agents of the Catholic Church facilitated the continuation of abuse, while negative attitudes to children

housed in residential institutions had a further harmful impact. While it is impossible to quantify the 'veins of knowledge' that existed with regards to the abuse of children in residential institutions and in the community, they undoubtedly existed. Health care professionals, lay workers and members of the Gardaí had direct knowledge of abuse while the 'veins' also reached family members and those living close to the schools.

This chapter discusses identity and status and notes that the majority of children in industrial schools were placed there as a direct result of the poverty of their families. The low status of poor children in Irish society was reflected in the low status of those members of the religious orders who worked in the schools and the low status of the Reformatory and Industrial Schools Branch within the Department of Education. Long established negative attitudes towards poverty and members of the working class deprived these children of the rights afforded their middle class counterparts.

That children could be considered corrupted by virtue of their being born out of wedlock or having been sexually abused by an adult, demonstrates the further punishment rather than protection of already vulnerable children. Neither did the vulnerability of those with an intellectual or physical disability lead to protection. In fact the Department of Education and Science revealed to the Commission to Inquire into Child Abuse that there was no record of the number of children with disabilities within reformatories and industrial schools. When combined with the fact that institutions specifically for children with disabilities were often never inspected by a government official, this speaks volumes about the position of these children in Irish society.

The absence of the voice of the child in inspection reports and in court combined with negative attitudes towards at risk and abused children, reveals how attitudes to children shaped responses to abuse. This chapter also notes that the perception of children as liars and as individuals whose voices could not be trusted was most acutely felt by children themselves, who were often afraid to tell adults of the abuse they suffered.

Having identified power and societal dynamics which allowed for the

continued abuse of children, **chapter three** identifies the ways in which these dynamics continue to exist and examines them under the following headings: Children Today; Institutional Settings Today; the Catholic Church and Child Protection; Other Allegations of Past Abuses; and the Role of the Public.

This chapter assesses some of the manifestations of these dynamics that continue to affect the human rights of children in Ireland, under the following headings: implementing commitments made; accountability for decisions; government accountability in Dáil Éireann; making perpetrators accountable; the rights of the child in law; the need for legal clarity regarding child protection; the need to review sexual offences and legal procedures to protect child victims of sexual abuse; the need to place children's rights in the Constitution; involving children in decisions that affect them; deference to a non-State actor; attitudes to children; and lack of human rights education. The following children are amongst the most vulnerable in society today: children living in poverty; children seeking asylum; children in the criminal justice system; children experiencing homelessness; children in care; children of same sex couples; children with special educational needs; Traveller children; and children with mental health problems. Furthermore, children do not feature in the Constitution as rights holders in themselves, but rather as members of the marital family.

Many people in institutional settings are still without safeguards. The absence of statutory inspections of residential facilities for people with disabilities and reports of high levels of seclusion and restraint within in-patient mental health services are on-going causes of concern. While improvements in mental health services have been carried out since the introduction of *A Vision for Change*, community services are still inadequate and progress could be potentially undermined by cuts in financial resources. The Government has committed itself to introducing independent inspections by the Health Information and Quality Authority of residential centres for people with an intellectual disability and this is welcome, although long overdue. Prisons represent an institutional setting which has seen few improvements, and

successive governments have failed to address the inadequate and degrading conditions experienced by many prisoners. Furthermore, there is also no independent complaints mechanism that prisoners can appeal to.

This chapter also addresses ongoing child protection issues. The Cloyne Report differs from the Ferns and Murphy (Dublin) Reports in that it dealt only with allegations, concerns and suspicions of child sexual abuse made to Church authorities in the period 1996 to 2009. This meant that the Church's own procedures were supposed to be in place, and the so-called 'learning curve' which Church authorities had previously used to explain very poor handling of complaints in other dioceses had no relevance in these cases. The Cloyne Report describes the failure to report all complaints to the Gardaí as the greatest failing on behalf of the diocesan authorities. Those who held responsibility for overseeing child protection guidelines in the diocese did not believe it was always appropriate to report to the civil authorities. The Cloyne Report reveals that it is necessary that child protection guidelines and practices be embedded in each diocese rather than be dependent on individual personalities. It demonstrates how the conflicts between canon and civil law created problems for some members of the clergy and resulted in guidelines being ignored. The Cloyne Report also raises questions about the primacy of domestic law in Ireland in the eyes of Catholic Church authorities, and highlights the necessity of effective HSE practices to audit and examine the child protection practices of non-State organisations. Welcome developments include the establishment of a Minister for and Department of Children and Youth Affairs, and the important commitments in relation to children in the 2011 Programme for Government.

Public outrage, such as has been seen in response to abuses and dangerous practices, often revealed by the media, can lead to government action in improving services and accountability mechanisms. However, public attitudes can also have a negative effect. The Ferns, Ryan, Murphy (Dublin) and Cloyne Reports reveal how fear, an unwillingness and an inability to question agents of the Church, and disbelief in the testimony of victims

until recent times indicate that wider societal attitudes had a significant role to play in allowing abuse to continue. Public attitudes can reinforce rather than ease problems faced by marginalised groups and individuals in Ireland. Discrimination and prejudice make it more difficult for some people to speak about their situation and to access services.

Finally, this chapter outlines how many human rights abuses outside those addressed in the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports still have to be tackled. Former residents of Magdalene Laundries and Bethany Home were excluded from the workings of the Redress Scheme and while an interdepartmental committee has been established to "to clarify any State interaction with the Magdalene Laundries and to produce a narrative detailing such interaction", these institutions have not been the subject of an independent inquiry. No investigation into the significant number of bodies, for which no death certificates existed, at High Park, Drumcondra has been initiated. Concerns surrounding the use of children from a variety of mother and baby homes, residential institutions run by religious orders, and State run children's homes in vaccine trials persist, as a high court order held that an inquiry into these trials by the Commission to Inquire into Child Abuse was invalid, halting the Commission's work in this area. This chapter also highlights the issues surrounding the practice of symphysiotomy and pubiotomy, which are the subject of a recently established inquiry, and the recent calls for an investigation into historic conditions and practices in psychiatric hospitals.

The State has an obligation to uphold people's right to an effective remedy when their human rights have been abused. The extent to which the Commission to Inquire into Child Abuse and the Residential Institutions Redress Board can be deemed an effective remedy is also considered.

Key Findings

This report has five key findings. They are discussed further in chapter 4.

1. No clear lines of responsibility make true accountability impossible.

This report demonstrates how the absence of clear lines of public and private responsibility in the provision of services, along with the absence of effective accountability mechanisms, allowed the abuse of children to continue unchecked. In the case of residential institutions, it wasn't that the system didn't work but rather that there was no system. While both the perpetrators of crimes against children, and the institutional Church within which they operated, hold responsibility for this abuse, State authorities also failed in their duty to monitor residential institutions effectively, to act appropriately when abuses by agents of the Catholic Church in communities came to light, and to take action to prevent the continuation of abuse.

2. The law must protect and apply to all members of society equally.

The Reports on child abuse highlight how the law did not serve or apply to all members of Irish society equally. The most obvious example of this is how children who were placed in residential institutions were branded as criminals as a result of the court committal process, while the majority of perpetrators of abuse have not been held to account by that same criminal justice system. Despite the severity of the crimes revealed in

the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports, which range from physical assault to rape, very few perpetrators have been convicted. Furthermore, no criminal charge has been laid against those in positions of authority in the Catholic Church who concealed crimes against children and allowed known sex abusers to continue to have access to children and to continue to abuse with near impunity. The Reports raise serious questions about the rule of law, given the evidence of deferential treatment shown to priests and bishops by members of the Gardaí.

3. Recognition of children's human rights must be strengthened.

This report includes a human rights analysis of the abuses detailed in the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports. The sexual abuse in the diocesan reports, and the sexual, physical and emotional abuse, the living conditions, and the neglect described in the Ryan Report, can be categorised as torture, and cruel, inhuman and degrading treatment under human rights law. The Reports also demonstrate that children's rights to private and family life, the right to a fair trial and the right to be free from slavery and forced labour were contravened, as was their right to education and to physical and mental health. The invisibility of children in law, policy and public debate is directly related to the fact that children do not have express constitutional rights. It is essential that the rights of the child be made explicit in the Irish Constitution and that the paramount importance of the rights of the child be explicitly enshrined in law.

Children do not represent a homogenous social category and children from different subsections of society have very

different experiences. The majority of children in industrial schools were placed there as a direct result of the poverty of their families. We must not 'other' any groups of children. Particularly vulnerable groups of children today include children in care, Traveller children, children in the criminal justice system, children with mental health problems, children experiencing homelessness, children living in poverty, and asylum-seeking children.

4. Public attitudes matter. Individual attitudes matter.

The Reports identify the impact of deference to the Catholic Church on how people responded to abuse and suspicions of abuse. Fear, an unwillingness and an inability to question agents of the Church, and disbelief of the testimony of victims until recent times indicate that wider societal attitudes had a significant role to play in allowing abuse to continue. The end of deference to powerful institutions and the taking of personal responsibility on behalf of all members of society will initiate some of the changes that are necessary to prevent the occurrence of human rights abuses.

Wider societal attitudes to children who experienced residential institutions were often negative and hostile. The prejudice and discrimination they experienced led many to emigrate, leading to the further disintegration of families who had already been divided when the children were placed in institutions. We must be aware of the impact of prejudice and negative attitudes towards marginalised groups in our society. Negative attitudes towards children in the criminal justice system, people with disabilities, asylum seekers and people with mental health problems makes life more difficult for

members of our society who may already be vulnerable.

5. The State must operate on behalf of the people, not on behalf of interest groups.

The Reports demonstrate how the State had a deferential relationship with the Catholic Church. The complaints of parents, children and lay workers about problems and abuses in residential institutions were dismissed by Department of Education officials, while the reputation of religious orders was defended by Ministers and TDs in the Dáil. While Taoiseach Enda Kenny's recent criticism of the Vatican suggests a less deferential attitude to the Catholic Church, transparency in the operations of all arms of the State is necessary to prevent interest groups from exerting undue influence. In all spheres, political actions must have at their core the best interests of the wider population and not sectional interests.

Chapter 1

The Human Rights Abuses

In 1948, the United Nations General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) for all people and all nations. In the UDHR, the United Nations stated in clear and simple terms the rights that belong equally to every person. The first international written declaration of human rights, the UDHR placed the primary duty on States to respect, protect and fulfil all the rights it contained.

During the period in which the abuses described in the Ryan Report unfolded (1930s to 1990s), the international human rights framework of law also emerged. The International Bill of Rights, comprising the UDHR and two legally binding conventions adopted in 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)[1] , laid the foundation for human rights law. This international framework was quite firmly developed across the time span covered by the Murphy (Dublin), Ferns and Cloyne Reports, the latter addressing the abuse of children and investigatory failures by the Church authorities right up to the present day. It has now become accepted that States are under an obligation on at least three levels as regards international human rights: to respect, protect and fulfil the rights contained in treaties to which they are a State Party.[2]

obligation to respect

The obligation to respect (not to interfere with the exercise of) human rights requires States, including their agents, to refrain from interfering directly or indirectly with people's enjoyment of human rights. This is an immediate obligation.

obligation to protect

The obligation to protect human rights (to ensure others do not interfere with the exercise of a right, primarily through effective

regulation and remedies) requires States to prevent, investigate, punish and ensure redress for the harm caused by abuses of human rights by non-State actors – e.g. private individuals or commercial enterprises. This is an immediate obligation.

obligation to fulfil

The obligation to fulfil human rights (to promote rights, facilitate access to rights, and provide for those unable to provide for themselves) requires States to take proactive measures to progressively achieve the full realisation of human rights, including legislative, administrative, budgetary and judicial steps.

These obligations apply universally to all rights (civil, political, social, economic and cultural)[3] and entail a combination of negative and positive duties.[4]

To comply with its international obligations, the State must ensure that its agents do not conduct human rights violations. In addition, the duty to protect requires the State to also take positive action to protect people within its jurisdiction from violations that may be perpetrated by private actors.

The State must exercise due diligence and take effective measures to prevent abuses of human rights and protect individuals from abuses that it knows or ought to have known of. Where there are reasonable grounds to believe serious abuses have taken place it must investigate, identify liability and punish perpetrators as appropriate. In response to abuses, the State should ensure the victim's right to an effective remedy is upheld. Should the State not meet any of these

requirements, it is guilty of the human rights violations that arise from the abuse.

International and domestic human rights law also increasingly recognise responsibilities of other actors, including public authorities, private institutions and individuals. While this area of law is somewhat in a state of flux, it is accepted that other institutions, to the extent that they are accountable, should contribute to reparations for people who experienced abuse. The human rights responsibilities of ordinary individuals not directly linked with the institutions or the State is an emerging area of debate.

The Ferns, Ryan, Murphy (Dublin) and Cloyne Reports clearly demonstrate mass violations of international human rights law. The Ryan Report in particular describes how children in residential institutions were subject to physical, sexual and emotional abuse and gross neglect at the hands of both religious and lay staff. While many international human rights standards applicable today may not have been legally binding at the time, they describe analogous standards of acceptable conduct at the time of the violations.[5] This chapter does not set out a precise case-by-case elaboration of the law applicable at the time of each instance of abuse and the 'real-time' human rights violation that flowed from it. Rather, it sets out generally how the treatment of children outlined in the Ryan Report can be categorised in human rights terms, and how the State discharged its human rights obligations in this regard.

Children's Rights

Although the 1989 Convention on the Rights of the Child (CRC) was the first comprehensive, internationally binding treaty to give full recognition to the rights of children, children's rights are mentioned in a number of early general human rights treaties.[6] The adoption of standards protecting the rights of the child in fact preceded the adoption of international standards codifying universally recognised human rights.[7] In addition, more general human rights treaties, such as the UDHR and the European Convention on Human Rights (ECHR), have played a crucial role in setting out States' obligations at the time. General Comments of the UN Committee on the Rights of the Child have explained more precisely the nature of the State's obligations under the CRC, as have those from other UN treaty bodies including the UN Human Rights Committee and the UN Committee Against Torture. These are authoritative interpretations of binding international obligations and an important guide to the meaning and scope of treaties. The evolution of the body of international law applicable to children's human rights across the period covered by the Ryan, Murphy (Dublin), Ferns and Cloyne Reports is described further in Annex 1.

Modern Standards of Children's Rights

The CRC adopted by the UN General Assembly in 1989, is the most comprehensive document on the rights of children, and has been ratified by

almost every single UN member State in the world.[8] Generally speaking, the CRC is concerned with the four 4 P's: the participation of children in decisions affecting their own destiny; the protection of children against discrimination and all forms of neglect and exploitation; the prevention of harm to children; and the provision of assistance for their basic needs.[9] Of particular relevance in this context, the CRC provides that member States have positive duties to ensure the protection of children, and to ensure that all institutions responsible for the care of children conform with health and national safety standards as well as those on the suitability of staff and supervision in such institutions.[10] In addition, the CRC requires that States abolish traditional practices prejudicial to children's health as well as obliging them to provide for rehabilitative measures for victims of neglect, abuse, and exploitation.[11] It provides explicitly for the protection of the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation[12]; for special protection for children who cannot in their own best interests be permitted to remain in the care of their families[13]; and protection of the child from sexual exploitation and abuse.[14] States parties are under a duty not to discriminate against children in their enjoyment of the CRC's rights[15] and the best interests of the child are to be a primary consideration in all actions concerning children.[16]

The CRC lacks a system of enforcement to allow for adjudication of complaints of individual children, and thus its success depends largely on the degree to which its provisions are reflected in the domestic legal order, and the willingness of national governments to take the Committee's recommendations and criticisms seriously.[17] However, the CRC does represent the most comprehensive and legally binding document on the treatment of children and its near universal ratification gives it a certain moral force.[18] Whether or not the CRC now also constitutes customary international law that binds even non-party countries is open to debate.[19] In addition, the European Court of Human Rights (ECtHR) use of the Convention in its interpretation of ECHR principles has proved invaluable in the protection of children from abuse and neglect, as

well as in areas of juvenile justice and detention.

The CRC is further supplemented by the UN Guidelines on the Prevention of Juvenile Delinquency (The Riyadh Guidelines)[20], UN Standards Minimum Rules on the Administration of Juvenile Justice (Beijing Rules)[21], UN Rules for Protection of Juveniles Deprived of their Liberty (the Havana Rules)[22], and the UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) which provide benchmarks of an adequate State response to crime, abuse of power, gross violations of human rights and the rights of juveniles deprived of their liberty.[23] While these rules are not binding per se, they do have the authority of a resolution of the General Assembly and reference to them in the Preamble of the CRC confirms their importance in interpreting the CRC provisions. Thus Thomas Hammerberg, Council of Europe Commissioner for Human Rights, submits that these guidelines and rules usefully "flesh out" the provisions of the CRC and these documents should be read together.[24] The UN Committee on the Rights of the Child also adopted a General Comment in 2006 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment under the CRC[25] and in 2007 a General Comment by the Committee of Rights of the Child[26] included, among other things, a clear pronouncement on States' due diligence obligations.

The 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the UN Convention against Torture) is also of relevance in this context. While Ireland did not ratify this treaty until 2002, the Committee has ruled that although "a State party's obligations under the Convention apply from the date of its entry into force for that State party", the Committee "can examine alleged violations of the Convention which occurred before a State party's recognition of the Committee's competence to receive and consider individual communications alleging violations of the Convention … if the effects of these violations continued after the declaration under article 22 became effective, and if the effects constitute in themselves a violation of the Convention".[27] Even if one takes into account that the Committee's comments are of a non-binding

nature only[28], one cannot overlook the fact that "an increasing number of commentators, as well as the State-Parties themselves, seem to consider the Committee's comments as Covenant jurisprudence"[29] (soft law) which at the least is most authoritative for clarifying the content and scope of the Covenant's rights and duties. Thus the Convention may have some relevance as regards State obligations to now investigate, prosecute and to provide an effective remedy to victims of torture, degrading or inhuman treatment or punishment.

Specific Rights Abuses

For the purposes of determining State responsibility and for an objective standard for assessing abuses at the time they occurred, determination of whether conduct amounted to a human rights violation should be made according to the standards applicable at the time.[30] Thus standards used to determine State liability should at least be the European Court of Human Rights (ECtHR) standard applied at the date of violation, and may include other relevant international standards to which Ireland was a party at the time. In addition, customary law, consisting of "rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way"[31] and peremptory norms (that are implicitly binding on all States) may have a role to play in determining State culpability for human rights atrocities at the time. In this regard, various declarations and soft law recommendations, although not binding, demonstrate an awareness of international best practice and a moral obligation upon the State to abide by their provisions. However, as stated above, the intention here is not to enter into a case-by-case human rights assessment, but to set out generally the sort of human rights violations revealed in the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports.

Torture, Cruel, Inhuman and Degrading Treatment

Torture

The prohibition on torture, cruel, inhuman and degrading treatment or

punishment was first articulated in the Universal Declaration of Human Rights in 1948 and has since been enshrined in a wide variety of global and regional human rights instruments.[32] Since the ECHR came into force in 1953, Ireland has been bound by Article 3 prohibiting torture, inhuman or degrading treatment or punishment. In addition, the existing prohibitions in treaty law are strengthened by international customary laws[33] and its prohibition is a part of those rules which have attained the status of jus cogens, and are therefore binding on States regardless of their treaty commitments.[34]

However, despite international consensus on prohibition of torture, cruel inhuman and degrading treatment from an early date, the exact meaning and scope of these terms has been unclear. In 1969, torture was described as an elevated form of inhuman treatment that has a purpose, such as the obtaining of information or confessions, or the infliction of punishment.[35] The key elements identified by the ECtHR would appear to be: the infliction of severe mental or physical pain or suffering; the intentional or deliberate infliction of the pain[36]; and the pursuit of a specific purpose, such as gaining information, punishment or intimidation.[37] The prohibition is absolute and not subject to any national security exception, express or implied. It is noteworthy that the intention or motivation of the agent is irrelevant[38] and that an order from a superior officer or public authority may not be invoked as justification.[39]

Prior to its first finding of torture in 1996[40], the ECtHR standard may well have proven too high a threshold for even the most severe treatment described by the Reports, such as rape and grave physical violence, to reach. In the case of *Cyprus v Turkey*, for example, the court dismissed the suggestion of torture despite evidence of mass rape by security forces due to the failure to prove ostensible purpose.[41] However, since then the court has appeared to be more open to finding States guilty of torture and has even ruled that since the Convention is a "living instrument", treatment which it had previously characterised as inhuman or degrading treatment might in future be regarded as torture.[42] In this regard, the court may well refer to judgements of the Inter-American Courts. Thus some treatment such as applying electric shocks to

a half-naked and wet person, beating him, putting a hood over his head and burning him with lit cigarettes[43], holding a person's head in water until the point of drowning[44], and rape[45] would all come within the conduct classed as torture today.[46]

In addition, the UN Special Rapporteur on Torture now takes the view that "the decisive criteria for distinguishing torture from cruel, inhuman or degrading treatment, may best be understood to be the purpose of the conduct and the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted".[47] Thus much of the conduct outlined in the Ryan, Ferns, Murphy (Dublin) and Cloyne Reports, such as rape or the threat of rape[48], and the severe physical abuse documented in Ryan, could well be brought within the ambit of torture by today's standards.

Cruel or Inhuman Treatment or Punishment

The difference between torture and inhuman (or cruel, as per the ICCPR's prohibition) treatment or punishment derives principally from a difference in the intensity of the suffering inflicted, with torture considered the more serious. It is argued that no distinction need be made between inhuman and cruel treatment as human rights violations.[49] While the normative status of inhuman or cruel treatment or punishment is arguably not as clear cut[50], the UDHR in 1948 stated: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment". In addition, the ICCPR in Article 7 prohibits cruel, inhuman or degrading treatment or punishment[51] and the 1984 UN Convention against Torture (UNCAT) requires States to prevent it.[52]

By 1969, the European Commission of Human Rights had described inhuman treatment as that which "deliberately causes severe suffering, mental or physical which in the particular situation is unjustifiable".[53] International human rights bodies have found violations of the prohibition of inhuman treatment in cases of active maltreatment but also in cases of very poor conditions of detention[54], as well as in cases of solitary confinement.[55] Lack of

adequate food, water or inappropriate/insufficient medical care for detained persons has also been found to amount to inhuman treatment.[56] It is noteworthy that in recent times, the detention of children has attracted special attention and scrutiny.[57]

While most of the cases deal with physical mistreatment such as blows by hand, foot, or implements[58], mental harm such as anguish and distress has also qualified as inhuman.[59] The UN Human Rights Committee in its General Comment in 1982[60] specifically stated that "Article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim" and that the prohibition extended to chastisement or disciplining of children, and to individuals in educational and medical institutions, as well as arrested or imprisoned persons. Also of particular relevance to the Reports, human rights bodies have found instances of ill-treatment where relatives of disappeared persons have been told that their loved ones were dead when this was not the case.[61]

It has been noted that a particular treatment or punishment may not be prohibited when imposed on adults, but may amount to cruel and degrading treatment when perpetrated against children.[62] While the severity and intensity required in relation to physical mistreatment is reduced for vulnerable victims such as children, some injurious consequences were still required in the cases of the 1990s - significant effect on physical or mental health is generally required.[63] The test applied by the ECtHR focuses on the specific nature and circumstances of each case; even if the severity of punishment does not render it inhuman, the circumstances may[64]: "the assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and in some cases, the sex, age and state of health of the victim".[65]

Degrading Treatment or Punishment[66]

As previously noted, a variety of international human rights documents prohibit degrading treatment but do not define it.[67] The most detailed definitions of this form of ill-treatment have come from the ECtHR which has established that degrading treatment is that which is said to "arouse in its victims feelings of fear, anguish and inferiority, capable of humiliating and debasing them".[68] It is not necessary that the purpose of the treatment was to humiliate or debase the victim.[69] This has also been described as involving treatment such as would lead to breaking down the physical or moral resistance of the victim[70] ,or as driving the victim to act against his/her will or conscience.[71] Whether the conduct reaches this level is determined by reference to the nature and context of the treatment, its manner and method, and the circumstances of the particular case. Relative factors such as age and sex of the victim can have a greater impact in assessing whether treatment is degrading, in contrast to whether treatment is inhuman or torture, as the assessment of whether an individual has been subjected to degrading treatment is more subjective. In this context, the ECtHR has held that it may well suffice that the victim is humiliated in his/her own eyes, even if not in the eyes of others.[72] The treatment does not have to have long lasting effects[73] but feelings of apprehension or disquiet are not necessarily sufficient to bring the punishment within the sphere of degrading.[74]

Specific Examples of Cruel and Inhuman or Degrading Treatment

Corporal punishment and treatment

The Ryan Report describes daily, ritual and frequent physical abuse which included smacking, beating, punching, flogging with or without implements, the deliberate throwing of objects at children and various levels of assault and

bodily attacks.[75] These attacks may have been in response to bed-wetting, rule breaking, 'stealing' food, perceived failure at work or educational tasks, soiled or torn clothing, disclosing abuse to others, talking, untidiness, answering back, running away, left-handedness, indiscipline, being cheeky, or simply for no reason at all.[76]

Firstly, it is significant that both the UDHR and the ICCPR have been authoritatively construed to ban corporal punishment of children.[77] In addition, the ECtHR, in a series of judgements, has progressively condemned corporal punishment of children, first in the penal system, then in schools, including private schools, and in the home.[78]

In the 1972 case of *Tyrer*, the European court found that the punishment "whereby he was treated as an object in the power of the authorities" constituted an assault on precisely that which is one of the main purposes of Article 3 of the ECHR, namely to protect a person's dignity and physical integrity.[79] The court deemed the punishment as institutionalised violence[80], and found that the institutionalised character of the violence was further compounded by the removal of the victim's clothes[81], as well as the whole aura of official procedure attending the punishment and by the fact that those inflicting it were total strangers to the offender.[82] The court also considered significant the fact that the punishment may have had adverse psychological effects. Subsequently, the European Commission on Human Rights has found that despite the institutional nature of a school not being of the same order as that of the judicial setting, this did not preclude the finding that the punishment was sufficiently degrading to breach Article 3.[83]

The ban on physical abuse applies only to punishment that is of a minimum level of severity.[84] In *Costello-Roberts v UK*[85] the court found that the punishment of a boy in a UK private school, who was hit with a soft-soled shoe on his clothed buttocks, did not reach the level of severity to breach Article 3 of the Convention – although this judgment was by five votes to four, and the court emphasised that the treatment of the boy was at or near the

borderline.[86] This suggests that much of the abuse detailed in the Ryan Report would come within the scope of Article 3.

Further guidance can be found in the case of *Y v United Kingdom*.[87] This case involved a headmaster's caning of the 15 year old applicant which had left weals across the boy's buttocks and resulted in the ECtHR finding a breach of the boy's rights under Article 3. The European Commission on Human Rights was of the opinion that the punishment inflicted on the applicant caused him significant physical injury and humiliation, which attained such a level of seriousness that it constituted degrading treatment and punishment within the meaning of Article 3 of the Convention, regardless of who administered it and what pedagogical reasons were given. Evidence of many injuries described in the Ryan Report, which included breaks to ribs, noses, wrists, arms and legs, injuries to head, genitalia, back, mouth, eye, ear, hand, jaw, face and kidney, as well as lacerations, broken teeth, dislocated shoulders and injuries to the soles of feet would thus appear to satisfy the requirement of minimum severity by today's standards.[88] Importantly, in *Y v United Kingdom*, the Commission considered that the State was responsible for this ill-treatment in so far as the English legal system authorised it and provided no effective redress.[89] It is noteworthy that, in today's standards, both the UN Committee Human Rights and the UN Committee against Torture have stated that the prohibition on torture or other cruel, inhuman, or degrading treatment or punishment, a provision included in both treaties, requires a ban on corporal punishment of children in all contexts.[90]

Physical Abuse in the Ryan Report

Abuse

Smacking; slapping; kicking; pushing; pinching; burning; biting; punching; flogging; ear pulling; hair pulling; head shaving; beating on the soles of the feet; burning; scalding; stabbing; severe beatings with or without clothes; being made to kneel and stand in fixed positions for lengthy periods; made to sleep outside overnight; being forced into cold or excessively hot baths and showers; hosed down with cold water before being beaten; beaten while hanging from hooks on the wall; being set upon by dogs; being restrained in order to be beaten; physical assaults by more than one person.

Implements

The leather; the leather containing metal or coins; cat o'nine tails; canes; ash plants; blackthorn sticks; hurleys; broom handles; rulers; pointers; sally rods; bamboo canes; towel rollers; rosary beads; crucifixes; hair brushes; sweeping brushes hand brushes; wooden spoons; pointers; batons; chair rungs; yard brushes; hoes; hay forks; pikes; pieces of wood with leather thongs attached; canes; bunches of keys; belt buckles; drain rods; rubber pram tyres; golf clubs; tyre rims; electric flexes; fan belts; horse tackle; hammers; metal rulers; butts of rifles; t-squares; gun pellets and hay ropes.

Injuries

Breaks to ribs, noses, wrists, arms and legs. Injuries to head, genitalia, back, mouth, eye, ear, hand, jaw, face and kidney. Burns, dog bites, lacerations, broken teeth, dislocated shoulders, and burst chilblains.

Why?

Bed-wetting and soiling; inattention in the classroom; left-handedness; stammering; not knowing lessons; disclosing physical and/or sexual abuse; absconding; 'stealing' food; talking in line; delay in obeying an instruction; "looking the wrong way" at a staff member; attending the infirmary; complaining of feeling unwell; general wear and tear on clothing and footwear; talking at meals or in bed; talking to girls; talking to boys; appearing to engage male attention; having fun; playing soccer; losing a game against an outside team; perceived sexual thoughts or actions; not being able to carry out work tasks quickly and properly; and for no reason at all.

See The Ryan Report, Vol. III.

The verbal abuse, ridicule and denigration that children suffered on a regular basis, as well as the exposure of the child to fearful situations, the anticipation of being beaten and the sight of others being abused would also come within the term cruel, inhuman and degrading treatment.[91] Guidance from more modern standards would definitely broaden the scope of cruel, inhuman or degrading treatment to encompass all of the physical and non-physical abuse suffered in residential institutions. Regard must now be had to Article 19 of the

Convention of the Rights of the Child.[92] In its General Comment the Committee on the Rights of the Child rejected any justification for violence or humiliation as forms of punishment and provided detailed and expansive definitions of corporal or physical punishment of children.[93] In the Committee's view, any "deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation"[94] as well as non-physical forms of punishment (for example, that which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child[95]) would come within cruel and degrading and thus be incompatible with the CRC.

Sexual abuse

The Ryan Report describes incidences of child sexual abuse, including "inspection of genitalia, kissing, fondling, forced masturbation of, and by, an abuser, digital penetration, penetration by objects, vaginal, oral and anal rape and attempted rape, by individuals and groups" as well as several forms of non-contact sexual abuse, such as enforced nakedness and voyeurism.[96] The Ferns, Murphy (Dublin) and Cloyne Reports also describe sexual abuse and allegations of grooming. The Ryan Report notes:

> **The predatory nature of sexual abuse including the selection and grooming of socially disadvantaged and vulnerable children was a feature of the witness reports in relation to special needs services, Children's homes, hospitals and primary and second-level schools.[97]**

Although sexual abuse is clearly a violation of human rights, international human rights law referring to sexual abuse has generally been very limited. However, in 2002 the ECtHR clarified that sexual abuse may also amount to inhuman and degrading treatment.[98] In particular, Article 19 of the CRC now

specifically refers to sexual abuse under prohibited violence against children, and the Committee on the Rights of the Child frequently considers child sexual abuse as cruel, inhuman or degrading treatment.[99]

Sexual Abuse in the Reports

Oral, vaginal and anal rape; digital penetration; inspection of genitalia; kissing; fondling of genitalia; forced masturbation of and by an abuser; penetration by objects; detailed interrogation about sexual activity; indecent exposure; inappropriate sexual talk; voyeurism; forced public nudity; inappropriate fondling.

See The Ferns Report, The Ryan Report Vol. III; The Murphy (Dublin) Report; The Cloyne Report.

Living conditions

The Ryan Report demonstrates prevalent inadequate provision and poor quality of food, "primitive and degrading" hygiene practices and inadequate sanitation and washing facilities. Residents complained of poor quality, dirty clothes and shoes which were not adequate for cold weather, as well as a lack of adequate blankets and clean bedding. In addition, residents described inadequate medical attention "including being ignored, punished or ridiculed when they complained of being unwell or injured", with injuries and illnesses reported but left untreated.[100]

As early as 1969, the European Commission on Human Rights concluded that conditions of detention which were overcrowded and had inadequate facilities for heating, sanitation, sleeping arrangements, food, recreation and contacts with the outside world were degrading.[101] In addition, the ECtHR found the UK responsible for degrading treatment or punishment, for conduct

between 1971 and 1974, including food and sleep deprivation.[102] ECtHR cases on prison conditions since the mid to late 1990s provide a useful analogy to life in the residential institutions. Similarities in particular exist in relation to control of most or all aspects of life and the lack of freedom to complain or to leave. As Article 3 permits no qualification, explanations to the effect that inadequate conditions are the result of economic or other inherited organisational or endemic factors will not justify failings.[103] The State must ensure that a person is detained under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured[104], including the provision of the requisite medical assistance and treatment.[105]

In particular, failure to make adequate provision for forms of disability during detention can also amount to treatment which violates Article 3.[106] This is particularly relevant given the significant number of children with intellectual and physical disabilities who were placed in institutions where there were no appropriate facilities to care for them and where there was general reluctance to recognise those disabilities.[107]

Furthermore, inadequate heating, food, and recreation such as that described by former residents in the Ryan Report have all been held to amount to inhuman treatment and degrading treatment.[108] The State is also responsible for the lack of sanitary facilities and filthy conditions, as well as exposure to severe temperatures and inadequate sleeping facilities for which it had or ought to have had notice.[109]

Neglect in the Ryan Report

Food	**constantly hungry; starving.**
Clothing	**poor quality; ill-fitting; skin irritation; abrasions; lack of underwear.**
Heat	**chilblains.**
Hygiene	**primitive; degrading; buckets; shared toothbrushes; no toothbrushes; no sanitary towels; overwhelming odour of urine.**
Bedding	**cold; uncomfortable; lumpy mattresses; insufficient blankets; smell of urine; rubber sheets.**
Healthcare	**injuries and illnesses untreated.**
Education	**poor literacy and numeracy skills; long-term literacy problems; discharged without Primary Certificate.**
Preparation for discharge	**displacement and bewilderment; without necessary life skills.**

See The Ryan Report Vol. III

Neglect and emotional abuse of children

As regards emotional abuse, the Ryan Report describes how children's experiences in the schools were dominated by fear, public humiliation, loneliness, and the absence of affection. Fear was strongly associated with the daily threat of being physically and otherwise abused and seeing co-residents being abused. The rigid and harsh structure of institutional life excluded the development of affectionate attachment or any close relationships. In particular, isolation from the "outside world" was frequently described by

residents, with many commenting on the fact that the institutions themselves were so isolated that they rarely ever saw anyone apart from their co-residents and staff members, while friendships and contact between siblings and co-residents were forbidden or discouraged.[110] In this regard, it is worth noting that the UN Human Rights Committee in its General Comment in 1982 specifically stated that "Article 7 (relating to cruel, inhuman and degrading treatment) relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim".[111]

In terms specifically of physical neglect and emotional abuse of children, the scope of Article 3 of the ECHR was clarified by the ECtHR in *Z and others v UK*.[112] The court concluded unanimously that the appalling neglect, physical and psychological injury suffered by the children in that case over a period of four and a half years reached the level of severity required to bring it inside the scope of Article 3. Specific conduct in that case included children being locked out in an unsanitary garden for long and repeated periods, living in a state of neglect with filthy bedrooms including soiled and broken beds, no lighting, no toys, and being deprived of affection.

Emotional Abuse in the Ryan Report

fear; humiliation; loneliness; denigration; rejection; hostility; criticism; isolation; deprivation of affection; personal ridicule; deprivation of family contact; denial of identity; guilt; constant apprehension; verbal abuse; pure terror; mental torture; distress; grief; anger; intimidation; bullying; loss.

See The Ryan Report Vol. III.

Indeterminate confinement

The Ryan Report notes that those who went to an industrial school were invariably there until they reached sixteen years and there did not appear to have been a system whereby a child's case or sentence was automatically reviewed to establish if any of the criteria for an early release were present. In his interim report to the UN General Assembly of 2000, Sir Nigel Rodley, then UN Special Rapporteur on Torture, found that neglect in residential care may amount to cruel and inhuman treatment, particularly among younger children.[113] He also considered the particular situation of children in many residential institutions without judicial oversight of the placement decision. His view is that "indeterminate confinement, particularly in institutions that severely restrict their freedom of movement, can in itself constitute cruel or inhuman treatment".[114]

Solitary confinement

As previously outlined, treatment which may not amount to cruel and degrading when imposed on adults, may amount to cruel and degrading behaviour when perpetrated against children.[115] It is arguable that all forms of solitary confinement, for example, regardless of conditions and duration, amount to cruel punishment or treatment when applied to children. Thus, the depiction of children being locked in animal sheds and outhouses as a form of punishment presents a likely violation of human rights law under the freedom from cruel, inhuman or degrading treatment.[116] The UN Human Rights Committee specifically mentions "prolonged solitary confinement" as a practice that may amount to a violation of Article 7 of the ICCPR.[117] Other regional human rights bodies have considered that the use of seclusion, particularly for people with mental disabilities, may amount to ill-treatment.[118]

Principle 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990) summarises and outlines a non-exhaustive list of forms of

punishment in detention which are considered to constitute cruel, inhuman or degrading treatment. It states:

> All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose.

Right to Private and Family Life

Article 8 of the ECHR protects the right to respect for private and family life, home and correspondence.[119] The right to respect for private and family life, home and correspondence is also protected in Articles 17 and 19 ICCPR[120] and by the UDHR.[121] The central purpose of Article 8 is protection against "arbitrary or unlawful interference with [an individual's] privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation".[122] According to the ECtHR, private life is a broad concept which is incapable of exhaustive definition.[123] The concept is clearly wider than the right to privacy, however, and it concerns a sphere within which everyone can freely pursue the development and fulfilment of his personality. The UN Human Rights Committee, for example, has left the definition of privacy itself rather open, stating in *Coeriel and Aurik v The Netherlands* that "the notion of privacy refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone". [124]

Committal

Under ECHR Article 8 para. 2, any interference with family life, including

taking a child into care must satisfy three conditions. It must firstly be in accordance with law, secondly pursue a legitimate aim and thirdly be necessary in a democratic society.[125] In contrast, the Ryan Report portrays very different impetus for committal to residential care - many children were committed by virtue of the mere fact of the poverty of their families or due to "other social circumstances such as illegitimacy."[126]

Physical attacks

The protection afforded under ECHR Article 8 is also now understood to include personal autonomy and physical and mental integrity. Thus, any physical attacks with a serious potential effect of mental harm would be prohibited under Article 8. While this would certainly encompass acts identified in the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports such as rape or grave sexual assault, any unwelcome attack by one individual on another is capable of infringing the private life of the latter. However, while some interference with the physical integrity of an individual may impinge on the private life of that person, not all such actions will do so.[127] In *Costello-Roberts v the United Kingdom* the ECtHR considered that the treatment complained of by the applicant did not entail adverse effects for his physical or moral integrity sufficient to bring it within the scope of the prohibition contained in Article 8.[128] In addition, the protection of children from violence has been held to both permit proactive measures by States under paragraph 2 of Article 8[129] and impose positive obligations on the State to effectively investigate any allegation of ill-treatment and to establish an effective criminal law system which punishes all forms of rape and sexual abuse.[130] In the case of the systematic child abuse endemic in residential institutions, the State may well be liable under this provision. Furthermore, the case of *X and Y v The Netherlands*, where the inability of a 16 year-old girl with a mental disability to institute criminal proceedings against the perpetrator of a sexual assault was found to be a breach under Article 8, may well have relevance in this context.[131]

Right to maintain contact with family

Today, Article 8 places a direct obligation on the authorities to fulfil children's needs for alternative care in a manner that allows them to maintain direct and frequent contact with other family members.[132] Kilkelly demonstrates that the interferences with family life of this kind are particularly difficult to justify as the possibility of reunification diminishes progressively and is eventually destroyed if the parents are not allowed sufficient contact with their children.[133] In *Andersson v Sweden* for example, the court held that the decision to curtail visits and communication between a mother and son went beyond what was necessary in the circumstances, despite the danger that a mother would help him abscond from the security facility where he was receiving medical treatment. In addition, a core element of the right is private correspondence, and arbitrary restrictions on the right to correspond with the outside world violate this right.[134]

Right to identity

Since Article 8 protections relate also to the right to identity and to develop relationships with other people and the outside world, acts which prevented children from maintaining contact, for example, with extended family or friends may fall into this category as may attempts to interfere with a child's communication to other staff, medical visitors or third persons.[135] For example, separation of siblings in care, where it is not shown to be reasonably justifiable, may amount to an Article 8 concern. In particular, reports of former residents whereby they were deprived of contact with their parents, brothers and sisters whilst in school and of being actively denied any information about their parents and siblings after leaving school would demonstrate a violation of their right to privacy.[136] In addition, children who were distanced from their parents by constant humiliation and denigration of their character would be likely to fall within Article 8. For example, the Ryan Report describes how

children of lone mothers, "orphans" or "conventers" were reported as particular targets for verbal abuse, being told that their mothers were "sinners", "slags" and "old whores" who did not want them or could not care for them. Others reported hearing their families described as "scum", "tramps" and "from the gutter".[137]

Numerous former residents reported that the experience of living in the regimented school system contributed to a sense of having no individual identity, the right to which is included in the right to privacy. The use of an allocated number instead of a name was reported by a number of former residents and many others stated that they were either not spoken to individually or were only ever referred to by their surname. Additional components of the deprivation of identity were a lack of recognition of residents' birthdays and the denial of sibling relationships, even when brothers or sisters were in the same institution. Former residents reported being discharged without any information regarding their date and place of birth and that the subsequent search for this information was not always fruitful.[138]

Right to access information

In *Gaskin v the United Kingdom*[139] the ECtHR held that because the files held on the applicant concerned highly personal aspects of his childhood, development and history and thus constituted his "principal source of information about his past and formative years", lack of access thereto raised issues under Article 8, concluding that there was a breach due to the lack of independent procedures for determining the merits of individual applications for access to such information.[140] The court declined to make a finding that a right of access to personal data and information is part of Article 8, but it concluded that the individual had a vital interest in the information and that

the State had not properly balanced the issue of access. In addition, in respect of young people deprived of their liberty, the UN Rules on Juveniles Deprived of their Liberty (1990) states in principle 19 that:

> All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

Due Process Rights for Children in Conflict with the Law

Right to a fair trial

The Ryan Report notes that for most children, placement in a certified school "involved committal by the District Court". According the Report:

> Historically, the reason for this seems to have been the simple, human rights point that, given the significant deprivation of liberty involved, it would have been inappropriate if this important decision had been vested in, for example, a local health authority.[141]

However, beyond the fact that many children had in fact not committed any crime, all children facing the equivalent to a conviction before the District Court had the right to a fair trial. While the notions of youth justice rights and

fair trial rights specific to children have really only developed in the last 25 years with the UN Convention on the Rights of the Child[142] , decisions based on the ECHR[143] and a range of soft law declarations and recommendations from both the UN and the Council of Europe indicate that the right to fair trial more generally is enshrined in numerous declarations and represents customary international law. The UDHR states that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".[144] In addition, the ICCPR makes specific reference to the right of juveniles to a private hearing, demonstrating that the fair trial rights of minors was clearly in contemplation by the year of its inception, 1966.[145]

Conversely, the Ryan Report describes how within the courts children and young people were almost always unrepresented and that their parent or guardian was "usually uneducated and, in an age of deference, dominated by the circumstances of the proceedings" and therefore "were unlikely to be able to make the best of any case against committal".[146] Thus the facts against the child were seldom contested and "the issue of whether they had to be proved beyond reasonable doubt scarcely arose".[147]

Deprivation of liberty

Guidance from a variety of soft law international documents demonstrates that the arrest, detention and imprisonment of a child offender should be a measure of last resort and for the shortest period of time.[148] As Van Beuren has pointed out, these standards are not only applicable to juvenile justice institutions but importantly apply to deprivations of liberty on the basis of children's welfare and health.[149] In addition, the UN Human Rights Committee has clarified that the right to humane treatment which accords with human dignity[150] applies to "all institutions where persons are lawfully held against their will, not only in prisons but also, for example, hospitals, detention camps or correctional institutions" and that the ultimate responsibility for ensuring

this principle is observed lies with the State.[151] Underpinning these standards is the belief that children and young people must be treated in a manner which takes into account their age and maturity[152] , and thus any treatment or punishment should promote their well being and be proportionate to the circumstances of the child. Failure of a State to meet these standards may result in a finding against them under Article 5 of the ECHR. Article 5 of the Convention provides for the right to liberty and the first paragraph specifies the limited circumstances in which detention is permitted.[153] Para. 1(d) is specifically dedicated to minors, and permits their detention "for the purpose of educational supervision" and "for the purpose of bringing him before the competent legal authority".

Kilkelly highlights the significance of Article 5 in that it demonstrates an early awareness of the need to divert young suspects and offenders from the criminal process.[154] Evidence from the Ryan Report demonstrates the danger of stigmatisation and the labelling of children, with former residents asserting that much of the mistreatment they experienced emanated from the staff's perception of them as criminals.[155]

In addition, Article 5 has been interpreted dynamically by the ECtHR, which has found that, in certain circumstances, it may place a strict positive obligation on States to put in place appropriate facilities, which ensure the education and rehabilitation of young people.[156] Thus the State is responsible for the lack of adequate teaching and support for learning as well as the lack of attention to learning difficulties, which resulted in many children leaving institutions being illiterate and having poor numeracy and literacy skills.

Right to be Free from Slavery and Forced Labour

The right to be free from slavery is contained in Article 4 of the ECHR, which provides firstly that no one shall be held in slavery or servitude, and secondly that no one shall be subjected to forced or compulsory labour. To be a slave is to be owned by another person and to, effectively, be deprived of one's

autonomy. While slavery was abolished in the UK in the nineteenth century and it may seem inconceivable that the term has any ongoing relevance in modern Europe, there are still occasions when an individual is found to have been kept as a slave. Servitude is comparable to slavery but also covers the situation where an individual is completely in the power of another person but not actually owned by them.

Forced or compulsory labour covers any type of work, whether physical or otherwise, which an individual is compelled to do. The compulsion will usually be by the threat of punishment if the individual fails to comply. The Ryan Report outlines how, in male institutions, work in tailoring, shoemaking and on a farm was common, while male and female residents also worked in the schools' kitchens and in other houses belonging to the religious orders, where they would carry out domestic chores and heavy manual work.[157] Female residents worked in laundries and as carers for infants, while a significant number of residents reported being "directly involved in commercial enterprises for the school…".[158]

Work in the Ryan Report

Trades	**shoemaking; tailoring.**
Manual Work	**labouring; haymaking; saving turf; churning butter; sowing and picking potatoes; milking cows; feeding animals; weeding.**
Domestic Work	**washing and peeling potatoes; carrying heavy pots; scrubbing; sweeping; bed making; dormitory cleaning; housekeeping; foraging for firewood; lighting and stoking fires; lighting furnaces; lifting large pots of boiling water; unblocking and cleaning toilets; sewing; knitting; decorative needlework; cleaning and polishing corridors, staircases, chapels, classrooms, convents, boarding schools, hospitals, nursing homes.**
Commercial Enterprises	**rosary beads; scapulars; firewood; tailoring; furniture; labouring on farms and businesses; laundry; rug making; embroidery; knitting; sewing.**
Child care	**Feeding, dressing, washing and toileting babies and toddlers.**

See The Ryan Report, Vol. III.

Social and Economic Rights

Right to Education

The right to education has been universally recognised since the introduction of the Universal Declaration of Human Rights in 1948. Article 26 proclaims:

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory…education shall be directed to the full development of human personality and to the strengthening of respect for human rights and fundamental freedoms". It has since been enshrined in various international conventions including Article 13 of the ICESCR, and has been further developed in Article 28 of the CRC regarding the modern day expectations of States in meeting this right. The right to education is both a human right in itself and an indispensable means of realising other human rights - it is the primary way in which economically and socially marginalised adults and children can participate fully in their communities and so is crucial for their empowerment. Thus the Irish State was primarily responsible for the lack of adequate teaching and support for learning in residential institutions, as well as the lack of attention to learning difficulties that resulted in many children leaving institutions with little or no numeracy and literacy skills. A large proportion of residents were discharged from the residential institutions without sitting for their Primary Certificate.[159] Furthermore, boys and young men were taught trades, such as tailoring and shoemaking, that served the institution but were not particularly useful in the employment market. In evidence to the Commission to Inquire into Child Abuse Br. David Gibson, representing the Christian Brothers, noted that because the children weren't going through a regulated apprenticeship, the training they received was not accepted by the unions.[160] The Ryan Report notes that given that industrial training was a key objective of the industrial schools and reformatories, it should have provided it to a high standard. Instead it was merely a by-product of work that met the needs of the institution.[161]

Right to physical and mental health

Article 25 of the UDHR states:"Everyone has the right to a standard of living adequate for … health and well-being". Since its inception in 1946, the World

Health Organisation has also recognised the right to health: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition".[162] Article 12 of the ICESCR placed this right on a legally binding footing, providing at paragraph 1 that "States Parties … recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". This right has subsequently been set out in other human rights treaties, including the Convention on the Rights of the Child. This right requires that health services, goods and facilities, including the underlying determinants of physical and mental health, be available, accessible, acceptable and of good quality.[163] They must be accessible without discrimination on any prohibited grounds, and States must take affirmative action to ensure equality of access for all individuals and groups, such as children. It is clear from the Ryan Report that the living conditions, inadequate nutrition, and abuse experienced by the majority of children in these institutions did not meet this requirement, and that children were also denied access to health services. Evidence from the Ryan Report suggests that "accidental injuries and childhood illnesses were generally left untreated", with former residents in a number of institutions reporting that they never saw a doctor.[164]

Right to be Free from Discrimination

Combating discrimination[165] is at the core of the international human rights system. While a detailed legal framework has evolved over the past 60 years, at its most basic form the principle of non-discrimination is enshrined in Article 2 of the UDHR: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". This right has been reiterated in numerous other international human rights conventions adopted in the intervening period,

including the CRC. Today, the human rights framework recognises the duty of the State to go beyond simply refraining from discriminating, and to also prioritise groups experiencing discrimination and exclusion. It is clear from the Ryan Report that the vast majority of children who passed through industrial schools and reformatories were born into poverty. In today's terms, this could be viewed as discrimination on grounds of socio-economic status. Others were placed in institutions due to the status of their birth, i.e. they may have been born 'out of wedlock' and this could be viewed as discrimination on grounds of family status. Even after leaving this system, many of these children carried the experience of discrimination into and through their adult lives. The Ryan Report describes the effect the experience of residential institutions had on residents' subsequent work lives:

> **"Poor literacy, combined with the stigma of having been in a Reformatory or Industrial School, led to many residents 'keeping their heads down' to avoid criticism or the shame of being 'found out' as having been in an institution".**[166]

The poll conducted for this research also suggests that there remains in Irish society today a marked degree of prejudice against people who, as children, had spent time in the industrial school system.[167]

Accountability for Human Rights Violations

Who is accountable?

The State

In the Ryan Report, former residents reported being abused by various non-State actors - religious and lay staff, visiting clergy, members of the general public, "men in work and holiday placements", as well as Resident Mangers, teachers, foster carers, nurses, care and ancillary staff and co-residents.[168] However, international human rights conventions, such as the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights are treaties between States.[169] They were drafted by States, addressed to States, and intended to create obligations on the part of States. Therefore while the abuses inflicted on children were at the hands of private individuals, these individuals cannot be held guilty of human rights violations under these conventions.

However, actions or omissions by private persons or bodies can lead to States being responsible for the harm that they cause if they can be equated to agents of the organs of the State, if they were acting on behalf of the State or if the private person or body was acting on the instructions of, or under the control of, the State. If this is the case then any harm that they cause may be attributable to the State itself.[170] Given the State's role to "approve, regulate, inspect and fund" industrial schools and reformatories[171] , it is arguable that

the Department of Education could be held directly accountable for its failure to ensure a satisfactory level of care for children in institutions. While the State paid for the children rather than the institution, i.e. they made a grant for each child, this does not imply that the State had no part in the running of residential institutions. While, the Ryan Report summarises the Department's duties as ensuring that "the rules and regulations were observed, the finances were correctly utilised and that reasonable standards were maintained", it acknowledges that the minister for education had legal responsibility in respect of these institutions.[172] It is apparent from the Ryan Report that the Department of Education itself assumed a certain level of responsibility for the running or management of the residential institutions. The Report exposes consistent failures of the Department of Education to fulfil its statutory duties[173], to inspect and monitor industrial schools and reformatories, as well as failures in its supervisory role. It also illustrates how the State failed to provide a system for examining and investigating complaints.

It is clear that government departments were careful to maintain distance from the managing religious orders to ensure that the State did not become responsible for the direct provision of welfare services. Nevertheless, the obligations of the State extended beyond simply providing funding to third-party education providers. Under international law, the State had the duty to protect the human rights of these children. Even while the children remained in the care of private institutions, the State retained the primary duty to ensure that they received a certain minimum education[174], had their right to the highest attainable standard of health fulfilled, and the panoply of other rights guaranteed to them.

Acts or Omissions of State Agencies

Under international human rights law, all elements and all levels of the State, including public and local authorities can engage the responsibility of the State.[175] The State is thus responsible for acts and omissions of an agent of

the State, or of a person acting with the consent or acquiescence of a public official[176] , even if they were acting outside the powers they were given by national law[177], or directly contrary to instructions they had been given by the State.[178] These duties mean that the State is directly accountable, for example, for the acts/omissions of individual Gardaí who failed to investigate properly some cases of child sexual abuse that came to their attention[179] as well as the general failure of An Garda Síochána to keep adequate records of allegations of abuse.[180] Similarly, the State is also directly liable for the actions of the health boards and the Health Service Executive (HSE) for failing to record cases of abuse appropriately. The Murphy (Dublin) Report describes how the HSE had "insuperable difficulties in identifying relevant information in its files".[181]

Prevention

It is perhaps in failing to prevent abuses, where the State knew or ought to have known of a pattern of pervasive abuses, that the State was most egregiously in violation of its human rights obligation of 'due diligence'. Although many of these acts may not be directly attributed to the State, it is a well settled principle of international human rights law that "an illegal act which violates human rights and which is directly not imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it".[182] In *Z and Ors v UK*[183], having found that the abuse clearly contravened Article 3, the ECtHR stated that Article 3, read together with Article 1 of the ECHR, imposes a positive duty on States to take meaures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals. Importantly, the ECtHR noted that the local authority in that case was aware of this treatment and that it had both a statutory duty and a range of powers

available to them to protect the children - thus the court had no doubt that the system had failed to protect the children from serious and long term neglect and abuse. In this regard, the evidence of complaints made to the State, the first of which dates back as early as the 1940s,[184] is of utmost importance. In addition, it is noteworthy that the State had ample legal powers over the industrial schools and reformatories, which it failed to exercise in the interests of the children.

The obligation to control and regulate the acts or omissions of private actors applies to all civil, political, economic, social and cultural rights.[185] The duty to protect has a number of limbs, which are laid down in similar terms in all major human rights conventions[186] and interpreted with similar reasoning by human rights bodies.[187]

The Ryan Report asserts that the Department of Education produced little by way of policy regulating residential institutions and that such failure demonstrated a "tacit acknowledgement by the State of the ascendancy of the Congregations and their ownership of the system", effectively washing their hands of responsibility for the abuses.[188] Under international human rights law, the State may be held accountable where it is shown that it failed to take effective legal and practical measures to prevent and protect individuals from human rights violations, even when committed by private actors.[189] Thus evidence presented by the Ryan Report demonstrating State failure to provide uniform, objective standards of care applicable to all institutions not only indicates a breach of a States obligation to provide an effective remedy, but can be treated as acquiescence and will also be considered a violation of the right breached itself.[190]

Secondly, it is important to note that the duty to protect exists from the moment at which the State knew or ought to have known of the risk of abuse and in spite of this, failed to take reasonable measures that could have altered the outcome or mitigated the harm.[191] The Ryan Report demonstrates that complaints of physical abuse were frequent enough for the Department of Education to be aware that violence and beatings were endemic within the

residential institutions, and indeed, in many cases the State actually tolerated and condoned infringements of set rules and regulations.[192] This argument is supported by evidence of highly critical inspection reports as early as the 1940s, which demonstrated the appalling conditions existing in the majority of institutions.[193] The Ryan Report notes that despite these criticisms almost nothing changed in industrial schools and reformatories until the 1970s.[194] In this respect, it is noteworthy that in a Scottish case before the ECtHR involving child abuse in the 1970s and 1980s, the UK was rebuked for failing to conduct "proper and effective management of their responsibilities [which] might, judged reasonably, have been expected to avoid, or at least, minimise the risk of the damage suffered".[195] Evidence from the Ryan Report suggests that the State did indeed fail to minimise the risk of harm to children, for example, by knowingly allowing members of religious orders with histories of abuse to continue working with children.[196]

Investigation and Prosecution

Finally, in the event of the violations by private actors occurring, the State has a duty to react to them. This duty, in particular, calls for adequate and effective investigation of alleged violations where reasonable grounds exist. As the UN Committee against Torture has clarified,

> **where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be**

considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.[197]

The Ryan Report demonstrates in particular how the Department of Education sought to protect and defend the religious orders and the schools, dismissing or generally ignoring complaints of abuse. Note that even where an individual has been acquitted in a criminal trial, the State may still be liable in international law for the conduct itself.[198] The duty to investigate, prosecute and punish will also have repercussions for State responses today to allegations of historic child abuse. The UN Committee against Torture recently expressed its grave concern that despite the large scale and nature of the abuse documented in the Ryan Report, State authorities had only forwarded 11 cases for prosecution, eight of which were rejected.[199]

Right to a Remedy

The State is always directly responsible where an individual cannot exercise their right to a remedy for human rights abuses, whether those abuses originated by breach of State actors or private individuals.[200]

Private Individuals

Religious orders / Diocesan and Vatican authorities

Actions by private individuals and organisations ('non-State actors') are not a matter of directly applicable international law in the same way as those of States. But, from the standpoint of individuals subjected to human rights abuses, such actions by non-State actors and institutions can amount to violations of the rights protected by international human rights law. In addition, the UDHR calls upon every individual and every organ of society - which includes religious bodies - to protect and promote human rights. The more

powerful the body, the more responsibility it should have for human rights protection. For example, there is increasing international acceptance of the need to hold private companies accountable for any detrimental impact of their activities on human rights, and a drive for global standards on businesses' mandatory compliance with human rights.[201]

It is therefore important that those who directly perpetrated the serious human rights abuses outlined in the Ryan, Murphy (Dublin), Ferns and Cloyne Reports, and those 'non-State actors' who covered up this abuse and failed to protect children, are identified as such. The agents primarily responsible for the human rights abuses highlighted in the Ryan Report were members of a variety of religious orders. With regard to the physical abuse of children the Ryan Report describes how "individual Brothers, priests or lay staff who were extreme in their punishments were tolerated by management", while in some institutions "a high level of ritualised beating was routine". The Report argues that abuse was "was systemic and not the result of individual breaches by persons who operated outside lawful and acceptable boundaries".[202] When action was taken in response to cases of physical or sexual abuse, it was usually to transfer the Brother or priest in question. On other occasions the offering of dispensations or complete inaction characterised responses.[203] In addition, the complaints of parents and former pupils were not investigated or handled appropriately by the religious orders. Many were simply dismissed.[204] The Ferns, Murphy (Dublin) and Cloyne Reports describe how diocesan authorities failed to investigate complaints and allegation of sexual abuse, to inform the Gardaí and to notify relevant parties that a recently transferred priest had experienced complaints of child abuse. Authorities failed to use canon law to remove abuser priests from ministry, while the culture of secrecy around this issue and the use of mental reservation reveal an organisation that went to extreme lengths to protect its priests and its reputation at the expense of children. A further issue, but not within the remit of this report, is the degree to which the Holy See may have undermined efforts to improve child protection practices in dioceses.

Civil Society

The Ryan Report also documents the actions and role of wider society. Clearly, various members of the public knew that children were being abused as a result of disclosures and their observation of marks and injuries. Parents, relatives, doctors, teachers, as well as local people who were employed in the residential facilities all had a role to play in relation to various aspects of children's welfare while they were in schools and institutions.[205] Of course a significant number of individuals alerted the Gardaí, the Department of Education, and the Department of Justice, to the abuses children were experiencing. However, often this information was not appropriately investigated.[206] As stated above, private individuals cannot be held directly accountable under international human rights law – only States are legally bound under these conventions. Therefore international human rights law cannot be said to have a horizontal effect and individual responsibility can only occur when a violation is also an international crime e.g. genocide.[207] But a narrow, legalistic approach to individual responsibility would fail to do justice to the letter and spirit of the UDHR. This idea was captured by Article 1 of the UDHR, which provides that "all human beings … should act towards one another in a spirit of brotherhood".

The UDHR refers to a common standard of achievement for every individual and every organ of society and calls on individuals to recognise rights and strive for observance.[208] So, in order to ensure that human rights are effectively enjoyed by all people equally, the values and principles of human rights should be respected by individuals in their relationships with one another.

In other words, society, as well as the State, has a moral if not legal

responsibility to respect the human rights of all of its members. It is interesting to note that the poll conducted for this report found a particularly high degree of public acceptance of this principle.[209]

1 Including its two Optional Protocols.

2 The Committee on Economic, Social and Cultural Rights (CESCR), monitoring body of the International Covenant on Economic, Social and Cultural Rights has used the implementation of the right to the highest attainable standard of health as an example to articulate States' obligations: "Human rights imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil contains obligations to facilitate, provide and promote. The obligation to respect requires States to refrain from interfering directly or indirectly with the right to health. The obligation to protect requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally the obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right".

3 For example, the Committee on Economic, Social and Cultural Rights has stated that a State's failure to regulate activities of individuals in the private business sector or civil society so as to prevent them from violating any rights set out within the Covenant amounts to a violation by States of that right. See CESCR, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights. See also General Comment 15: The Right to Water, UN ESCOR, 29th Sess, Agenda Item 3 [24] UN DOC E/C 12/2002/11 in which the CESCR stated that the State has an obligation to prevent third parties from "compromising equal, affordable and physical access to sufficient safe and acceptable water'.

4 International commitments may oblige States to repeal or to enact legislation, or to do both. In *X and Y v the Netherlands*, for example, the European Court of Human Rights found Netherlands' law ineffective protection for the private and family life secured under Article 8 of the ECHR. The Netherlands violated its obligation 'to respect' private life by its lack of criminal evidence provisions enabling the prosecution of an alleged rapist when testimony of the intellectually disabled victim was the sole evidence. The Court noted that Article 8 is primarily concerned with protecting individuals from aggressive State interference, but observed that "there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves".

5 Despite the lack of real agreement about the content of an international minimum treatment standard, the protections applied in the cases of State responsibility for injury to foreign nationals since the 1920s provide a useful benchmark of a desirable standard of treatment. By 1927, an international minimum standard of treatment of foreign nationals emerged as a benchmark by which to judge whether a State has failed to do due diligence and so violated international law (e.g. The Chattin Claim (1927) 4 RIAA 282). This would include a positive obligation to protect the foreign national from injury by third parties(The Janes Claim United States v Mexico (1926) 4 RIAA 82; The Noyes Claim US v Panama (1933) 6 RIAA 308); apprehend and punish those responsible (The Janes Claim United States v Mexico (1926) 4 RIAA 82; The Noyes Claim US v Panama (1933) 6 RIAA 308.) and provide compensation and ensure the protection of due process rights. (The Chattin Claim (1927) 4 RIAA 282.).

6 Art 23 and 24 International Covenant on Civil and Political Rights and Art 10 and 13 of the International Covenant on Economic, Social and Cultural Rights) and in other United Nations declaratory instruments such as the Geneva Declaration on Rights of the Child of 1924, and Declaration on Rights of the Child 1959.

7 Van Beuren, G., 2nd ed, *International Law on the Rights of the Child, Kluwer*, Amsterdam, 1998.

8 Almost universally ratified:- with the exception of Somalia and the United States of America. See details at www.unhcr.org. Webster describes the Convention as the "most quickly and widely ratified treaty in history". See Webster 'Babes in Arms, International Law and Child Soldiers', *Geo. Wash. Int'l L. Rev., 39*, 2007, 227 at 238.

9 G. Van Buren, op cit, p.15.

10 Article 3.

11 Articles 28(3) and 39.

12 Article 19.

13 Article 20.

14 Article 34.

15 Article 2 CRC provides that children have the right not to be discriminated against on the basis of their parents or their parents "race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".

16 Article 3.

17 U.Kilkelly, 'Rights and Youth Justice: Measuring Compliance with International Standards', *Youth Justice: An International Journal* , vol. 8, 3, 2008, p. 191.

18 U.Kilkelly, *Youth Justice in Ireland: Tough Lives, Rough Justice, Irish* Academic Press, Dublin, 2006, xviii.

19 Susan H. Bitensky, *Corporal Punishment Of Children: A Human Rights Violation*, New York, Transnational Publishers, 2006.

20 United Nations, Guidelines for the Prevention of Juvenile Delinquency, 'The Riyadh Guidelines', Office of the High Commissioner for Human Rights. Adopted by General Assembly resolution 45/112, 14 December.

21 United Nations (1985), Standard Minimum Rules for the Administration of Juvenile Justice. 'The Beijing Rules', Office of the High Commissioner for Human Rights. Adopted by General Assembly Resolution 40/33, 29 November.

22 United Nations, Rules for the Protection of Juveniles Deprived of their Liberty (1990) 'The Havana Rules', Office of the High Commissioner for Human Rights. Adopted by General Assembly

Resolution 45/113, 14 December.

23 Including Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN General Assembly resolution 55/89 Annex of 4 December 2000); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN General Assembly resolution 43/173 of 9 December 1988); Rules for the Protection of Juveniles Deprived of their Liberty (UN General Assembly resolution 45/113 of 14 December 1990).

24 T. Hammerberg, 'Children and Juvenile Justice: Proposals For Improvements', Issue Paper of Office of the Commissioner for Human Rights, October 2009 and available at www. commissioner. coe.int, at 9. Furthermore, according to Lynch, rather than seeing them as non binding, States appear to have accepted the application of these rules to youth justice. N. Lynch, 'Youth Justice in New Zealand: A Children's Rights Perspective', *Youth Justice*, 8, (3), 2008, pp. 215-228.

25 General Comment No. 8 (2006) : 02/03/2007. UN Doc. CRC/C/GC/8. (General Comments).

26 General Comment No. 10 (2007) Children's Rights in Juvenile Justice. CRC/C/GC/10, United Nations Committee on the Rights of the Child. The Commitee on the Rights of the Child is the monitoring body of CRC, established by Article 43 of the Convention.

27 *A.A. v Azerbaijan* [Communication No. 247/2004].

28 D. Harris, *Cases and materials on international law*, 6th ed., Sweet & Maxwell, London, 2004, p. 684.

29 M. Scharf,'The letter of the law: the scope of the international legal obligation to prosecute human rights crimes', *Law & Contempory Problems*, 59, 1996.

30 Article 7 of the ECHR provides that "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed".

31 S. Rosenne, *Practice and Methods of International Law*, Oceana, New York, 1984, p. 55.

32 Among general human rights instruments torture, inhuman and degrading treatment or punishment is prohibited by the UDHR Article 5 which states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Article 7 of the ICCPR states that, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subject without his free consent to medical or scientific experimentation" and by three regional human rights mechanisms. The right is reiterated in child-specific form in the CRC: "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment".(Art 37). In addition, the right is listed in Article 5 ACHR and Article 5 AFCHPR as well as Article 3 ECHR. In addition, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted on 10 December 1984.

33 Rehman argues that the substantial number of ratifications to the treaties concerned with absolute prohibition of torture provides persuasive evidence that the norm is binding in international law. Rehman, J., op cit at 410. Professor Nigel Rodley makes the valid point that "it is safe to conclude that the prohibition is one of general international law, regardless of whether a particular State is party to a treaty expressly containing the prohibition". Rodley, *The treatment of Prisoners in International Law*, 2nd edn, Clarendon Press, Oxford, 1999, p. 74.

34 The proscribing of torture as a peremptory norm of international law is illustrated by the judgment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Furundzija case.* Because of the importance of the values it protects, the prohibition on torture has evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules'. *Prosecutor v Furundzija*, Judgment of the International Criminal Tribunal for the Former Yugoslavia (ICTFY), at para. 153; 38 ILM 317 (1999).

35 No. 3321/67 *Denmark v Greece*; No. 3322/67 *Norway v Greece*; No. 3323/67, *Sweden v Greece*; No. 3344/67, *Netherlands v Greece*, (The Greek Case), Commission Report of 5 November 1969, Yearbook 12.

36 *Aksoy v Turkey* (1997) 23 EHRR 553 the first judicial determination that an individual had been tortured. The Court noted that "this treatment could only have been deliberately inflicted". The Court went on to say that in fact "a certain amount- of preparation and exertion would have been required to carry it out".

37 The UNCAT introduces a more specific but similar definition of torture: "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or co-ercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiesce of a public official or other person acting in an official capacity". This definition has assisted the ECtHR in interpreting the meaning of torture under Article 3 and has been cited in a number of cases, including *Aydin v Turkey* 25 Sept 1997 Report 1997-VI, *Soering v United Kingdom* 11 Eur. Ct. H.R. (ser. A) (1989), and *Selmouni v France*, (2000) 29 EHRR 403.

38 In *Velasquez-Rodriguez v Honduras* op cit the Inter-American Court determined that an illegal act that breaches human rights and is not directly imputable to the State, because it is an act of a private person or because the person responsible has not been identified, can lead to international responsibility of the State not because of the act itself, but because of the failure "to prevent the violation or to respond to it as required by the Convention". The Court also concluded that where human rights violations by private parties are not seriously investigated, the parties are in a sense aided by the government, which makes the State responsible on the international plane.

39 The European Court of Human Rights emphasized this point in 1978: "The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victims conduct.... Article 3 makes no provision for exceptions.... there can be no derogation there even in the event of a public emergency threatening the life of the nation". *Ireland v United Kingdom*, op cit. at para 167.

40 *Aksoy v Turkey* op. cit. This case involved a detainee who was suspended by his arms whilst his hands were tied behind his back in a process known as "Palestinian hanging".

41 More recently, however, the Court has not undertaken an evidential enquiry into whether or not the purpose has been met, making this assumption if the conduct took place in State custody. In *Aydin v Turkey*, op. cit. the Court, stated that "rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of feeling debased and violated both physically and emotionally." The Court went on to hold that the rape amounted to torture in breach of Article 3 of the Convention.

42 This means that certain acts which were classified in the past as "inhuman or degrading treatment" as opposed to "torture" could be classified differently in the future: "the increasingly high standard being required in the area of the protection of human rights. and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies". See *Elci and Others* v Turkey nos. 23145/93 and 25091/94, 13 November 2003 and also *Selmouni v France*, op. cit. for example, in Ireland v the United Kingdom, op.cit. the European Court of Human Rights indicated that stress positions, hooding, auditory white noise, sleep deprivation and deprivation of food and drink – did not amount to torture. However, subsequently, the European Commission of Human Rights stated that the combination of these techniques did amount to torture.

43 Inter-American Commission of Human Rights, Case 10.574, Report No. 5/94, Lovato Rivera (El Salvador), 1 February 1994.

44 Inter-American Commission of Human Rights, Case 9274, Resolution No. 11/84, Roslik (Uruguay), 3 October 1984.

45 Inter-American Commission of Human Rights, Case 10.970, Report No. 5/96, Raque Martín de Mejía (Peru), 1 March 1996.

46 Male witnesses to the Commission to Inquire into Child Abuse described being forced into scalding or freezing showers or baths, being hosed with cold water, being burned with matches and cigarettes, having to put their fingers into electric sockets and having scalding water thrown at them. See the Ryan Report Vol. III, 7.24 – 7.25.

47 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, UN Doc. E/CN.4/2006/6 (23 December 2005), para. 39.

48 *Abad v Spain*, UN Committee against Torture, Communication No. 59/1996: Spain. 14/05/98. CAT/C/20/D/59/1996 at [8.3].

49 Note for example, that the terms 'cruel' treatment and punishment were intentionally omitted from inclusion in Article 3 of the ECHR. However,'or cruelty' was included in the discussion on torture in Ireland v United Kingdom, where the Court found that the ill-treatment "did not occasion suffering of the particular intensity or cruelty by the word torture". Ireland v United Kingdom op. cit. at 67). There is also an accepted practice of cross-referencing sources between international humanitarian law and human rights law as regarding cruel and inhuman treatment as an aid to interpretation. No distinction is made in the case law of the International Criminal Tribunal for the former Yugoslavia (ICTY) as between "cruel" and "inhuman" treatment, See *Prosecutor v Mladen Naletilic and Vinko Martinovic* (Trial Judgement), IT-98-34-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 31 March 2003, which states at paragraph 246: "Materially the elements of these offences are the same…the degree of physical or mental suffering required to prove either one of those offences is lower than the one required for torture, though at the same level as the one required to prove a charge of wilfully causing great suffering or serious injury to body or health".

50 This is due to the fact that human rights for adjudicating under treaties that prohibit cruelty rarely consider it in isolation. For example, the practice of the Human Rights Committee has been to refer only to violations of Article 7 and not to its constitutive parts. Actions that violate the article are thus not categorized distinctively as "torture" or "inhuman" or "degrading" treatment. Its General Comment 7 describes this approach: "As appears from the terms of this article, the scope of protection required goes far beyond torture as normally understood. It may not be necessary to draw sharp distinctions between the various prohibited forms of treatment or punishment". United Nations Human Rights Committee General Comment 7, U.N. CCPR, 16th Sess. (1982) reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. GAOR, U.N. Doc. HRI/GEN/1 (1992). See further, Rodley, op. cit. at 96-98.

51 Ireland signed the ICCPR and ICESCR in 1976 but they were not ratified until December 1989. However, it is well established that even the mere signing of a treaty requires a nation "to refrain from acts which would defeat the object and purpose of the treaty . . . until it shall have made its intention clear not to become a party to the treaty". Vienna Convention on the Law of Treaties [Treaty on Treaties], 1969, art. 18, paras. 1 and 1(a)

52 UN Convention Against Torture Art 16 (Note that criminalisation and jurisdiction articles 1-9 only apply to torture). While Ireland did not ratify this treaty until 2002, the Committee has ruled that that although "a State party's obligations under the Convention apply from the date of its entry into force for that State party", the Committee "can examine alleged violations of the Convention which occurred before a State party's recognition of the Committee's competence to receive and consider individual communications alleging violations of the Convention … if

the effects of these violations continued after the declaration under article 22 became effective, and if the effects constitute in themselves a violation of the Convention". *A.A. v Azerbaijan* [Communication No. 247/2004]

53 *Denmark v Greece*, op. cit. at 186.

54 See, e.g., UN Human Rights Committee, *Améndola Massiotti and Baritussio v Uruguay* (Communication No. R.6/25) [United Nations, Human Rights Committee] (1982), and *Deidrick v Jamaica* Communication No. 619/1995, U.N. Doc. CCPR/C/62/D/619/1995 (4 June 1998). African Commission on Human and Peoples' Rights, Civil Liberties Organisation v. Nigeria (151/96) (2000) AHRLR 243 (ACHPR 1999) and European Commission of Human Rights, Greek case, op. cit. n.103.

55 See, e.g., The UN Human Rights Committee, General Comment No. 20 (Article 7 of the International Covenant on Civil and Political Rights) (1982) that acknowledges that solitary confinement, according to the circumstances, may be contrary to Article 7 of ICCPR, which prohibits such treatment and punishment if it is not used for the purposes of preventing escape, protecting health or maintaining discipline. In addition, in the Inter-American Court of Human Rights, the Velasquez Rodriguez case held that "prolonged isolation and deprivation of communication" amounted to cruel and inhuman treatment because they were harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being. Op. cit.

56 UN Human Rights Committee, *Essono Mika Miha v Equatorial Guinea*, Communication No. 414/1990, 8 July 1994, § 6.4; UN Human Rights Committee, *Williams v Jamaica*, Communication No. 609/1995, § 6.5; European Court of Human Rights, *Keenan v United Kingdom*, Judgement, 3 April 2001, § 115; African Commission on Human and Peoples' Rights, *Civil Liberties Organisation v Nigeria*, Communication No. 151/96, 15 November 1999, § 27.

57 The Court has held that special facilities must be put in place to accommodate the needs, including educational, of minors and there must exist very good and urgent grounds to take a minor into detention. Putting children together with adults, in particular on their own, constitutes inhuman treatment. *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* 13178/03, Council of Europe: European Court of Human Rights, 12 October 2006.

58 *Ireland v UK*, op. cit. *Tomasi v France* (A/241-A)(1993) 15 E.H.R.R. 1 ECHR, *Ribitsch v Austria* (A/336(1996) 21 E.H.R.R. 573 ECHR.

59 *Mentes v Turkey* 23186/94.

60 No. 7 16th session.

61 *Brudnicka and Others v Poland* No 54723/00, paragraph 26 and *Nolkenbockhoff v Germany*, Judgement of 25 August 1987, Series A No 123, paragraph 33, both related to breaches of Articles 6(1); *Cakici v Turkey*, judgment of the ECHR, 8 July 1999.

62 "Events can be more frightening and disturbing, and hence, cruelty is more terrifying, for children". Van Bueren, G., 'Opening Pandora's Box: Protecting Children Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment', in *Childhood Abused: Protecting Children Against Torture, Cruel, Inhuman and degrading Treatment and Punishment*, Dartmouth, 1998.

63 *Aerts v Belgium* (2000) 29 E.H.R.R. 50, *Ebbinge v The Netherlands* (47240/99)(Dec.) March 14 2000 ECHR.

64 In *X v United Kingdom*, (1982) 30 DR 1 13, EComHR 154 Application 9057/80: a teenage girl caned on the hand in 1981 by a male teacher in the presence of another male teacher was held to be inhuman and degrading due to its sexual nature.

65 *Ireland v United Kingdom* op. cit. at para.162. In *Soering v United Kingdom*, op cit. The court added that the severity "depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution" as well as the factors above. at para. 100.

66 Torture and inhuman treatment are of a different character than degrading treatment. If the treatment is considered to be inhuman, then it will also be degrading. However, the converse is not necessarily true; a finding of degrading treatment does not necessarily mean a finding of inhuman treatment.

67 In more recent times, General Comment 20 extends it to mental suffering and specifically corporal punishment. The UN Committee on the Rights of the Child has issued a 15 page authoritative interpretation of the prohibition of ill-treatment in the CRC, Committee on the Rights of the Child, General Comment No. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), UN Doc. CRC/C/GC/8, June 2006.

68 *The Greek Case*, op cit.

69 While when considering whether a punishment or treatment is "degrading" within the meaning of Article 3, the court will have regard as to whether its object is to humiliate and debase the person concerned (*Ranninen v Finland* judgment of 16 December 1997, ECHR 1997-VIII, p. 2821-22,), the absence of such a purpose cannot rule out a finding of a violation of Article 3. See, among others, *Becciev v Moldova* (Application no. 9190/03) — judgment from March 5, 2005.

70 *Ireland v United Kingdom*, op cit. p. 66, §167.

71 *The Greek Case*, op cit. p.186.

72 See *Campbell and Cosans v United Kingdom* (1982) ECHR (Series A) No 48 at para. 28. in which it was decided that "the 'treatment' itself will not be 'degrading' unless the person has undergone – either in the eyes of others or in his own eyes – humiliation or debasement attaining a minimum level of severity". See also *Yankov v Bulgaria*, no. 39084/97, ECHR 2003-XII, judgement of 11 December 2003, para 117, "Even if it was not intended to humiliate, the removal of the applicant's hair without specific justification was in itself arbitrary and punitive and therefore likely to appear to him to be aimed at debasing and/ or subduing him".

73 In *Tyrer v United Kingdom*, 5856/72, Council of Europe: European

Court of Human Rights, 15 March 1978, the European Court found that the birching of a boy at a police station was degrading even though he did not suffer any permanent or long lasting effects.

74 *Campbell and Cosans v United Kingdom* op cit., at 13.

75 The Ryan Report Vol. III, 7.15-7.27; 9.11-9.19.

76 Ibid., 7.28; 9.20-9.21.

77 It is noteworthy that this threshold has also lowered in more recent years. In 1998, for example, the Committee found that a spanking was severe enough to constitute degrading treatment despite being accepted as reasonable by an English jury. In addition, its General Comment No. 8, para 11, "The Committee defines "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices)". There is thus no ambiguity regarding the State's duty to impose a total ban on corporal punishment.

78 See in particular *Tyrer v UK*, op cit n. 142 *Campbell and Cosans v UK*, op cit *Costello-Roberts v United Kingdom*, Series A, No.247-C, (1995) 19 E.H.R.R. 112. *A v United Kingdom*, (1999) 27 E.H.R.R. 959, which concerned a boy whose stepfather had repeatedly caned him, but was subsequently acquitted of assault on the defence of reasonable chastisement. O' Mahony notes that if the Court found that the State has an obligation to take measure to prevent excessive chastisement in the family home, then it follows that the State has an even stronger obligation to take measures to prevent abuse in State schools. O' Mahony, C., ""State Liability for Abuse in Primary Schools: Systemic Liability and O'Keeffe v Hickey" (2009) 28, *Irish Educational Studies*, 315

79 In *Tyrer*, ibid., the incident in question took place in 1972, when the victim was 15 years old. He was hit with a birch in the presence of his father and a doctor, as punishment for the crime of assault. He was made to take down his trousers and underpants and bend over a table. He was held by two policemen, whilst a third administered the punishment, pieces of the birch breaking at the first stroke. The birching raised, but did not cut the applicant's skin causing pain for about a week and a half.

80 Institutionalised violence is that which is permitted by the law, ordered by the judicial authorities of the State and carried out by the police authorities of the State.

81 As the series of cases on strip searching since 2001 illustrates, the removal of clothing where there is no acceptable necessity justification may also in itself humiliate and debase to a level that would be contrary to article 3. *Iwanczuk v Poland* (25196/94) (2004) 38 E.H.R.R. 8 ECHR, *Wieser v Austria* (229303)(2007) 45 E.H.R.R. 44 ECHR, *Valasinas v Lithuania* (44558/98) 12 B.H.R.C. 266 ECHR, *Frerot v France* June 12th 2007 ECHR, *Van der Ven v The Netherlands* (50901/99)(2004) 38 E.H.R.R. 46 ECHR.

82 Another important factor in the European Court of Human Rights decision was the delay between sentencing and implementation of the punishment, which caused the boy mental anguish because of the anticipation of the punishment and pain.

83 See *Warwick v UK*, 1986 and *Y v the United Kingdom*, 8 October 1991, Series A no. 247-A; 17 EHRR 233.

84 Article 7 of the Civil and Political Rights Covenant, which forbids torture or cruel, inhuman or degrading treatment or punishment, has been interpreted to extend only to excessive physical chastisement.

85 *Costello-Roberts v UK* op. cit.

86 In Costello Roberts, the European Court of Human Rights (ECtHR) did not find a violation of article 3 but did decide there had been a breach of Article 2 of the First Protocol to the ECHR because the government did not respect the parents' objections to corporal punishment. The case also established that even in a private setting the responsibility of the State is engaged, if a violation of one of the Convention rights results from non-observance of its obligations. Ibid.

87 *Y v United Kingdom*, (Settlement not judgment) (Rep.) October 9, 1991, Series A, No. 247.

88 The Ryan Report Vol III, 7.82-7.87, 9.51-9.54.

89 S.Bitensky, 'Spare the Rod, Embrace Human Rights: international law's mandate against all corporal punishment of children', *Whittier Law Review*, 21, 1999, 147-161.

90 (Committee Against Torture, 1995, 1999, 2007; Committee on Human Rights, 2007). The committee recently issued General Comment No. 8, which forcefully declared that there is no ambiguity: "all forms of physical or mental violence" does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and the State must take all appropriate legislative, administrative, social and educational measures to eliminate them. (CRC/C/GC/8: Committee on the Rights of the Child, 2006, para. 18).
The committee further relied upon children's right to protection from "cruel, inhuman, or degrading punishment or treatment" (Children's Convention, 1989, art. 37(a), p. 10) and the guarantee of "school discipline [that] is administered in a manner consistent with the child's human dignity" (Children's Convention, 1989, art. 28(2), p. 8; Committee on the Rights of the Child, 2006).
In 1992, the Committees on Human Rights viewed the prohibition in Article 7 (on torture, cruel, inhuman or degrading treatment or punishment) as relating not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or an educative measure. It is appropriate to emphasise in this regard that Article 7 protects, in particular, children, pupils and patients in teaching and medical institutions. Para 5. Human Rights Committee's general Comments (forty-

fourth session 1992). In addition, former U.N. Special Rapporteur on Torture, Theo van Boven, has stated that "any form of corporal punishment of children is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment punishment". Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002.

91 The Ryan Report Vol. III, 7.221-7.251.

92 Article 19 requires States to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child". As the Committee stated, "there is no ambiguity".

93 General Comment No. 8, para 11, "The Committee defines "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices)".

94 This is as distinct from non-punitive and necessary force (or reasonable restraint) to protect the child or another person. See General Comment No. 8, paras 14 and 15.

95 General Comment No. 8, para 11.

96 The Ryan Report Vol. III, 7.117-7.121; 9.76-9.83; the Ferns Report, the Murphy (Dublin) Report; the Cloyne Report.

97 The Ryan Report Vol. IV, 6.43.

98 See *E and others v UK*, op. cit .

99 See e.g. Concluding Observations of the Committee on the Rights of the Child: Fiji. 24/06/98, UN Doc. CRC/C/15/Add.98, para. 37.

100 The Ryan Report Vol. III, 7.162-7.197; 9.126- 9.174.

101 *Greek case*, op. cit.

102 *Ireland v United Kingdom* op. cit.

103 In a series of cases involving the length of civil proceedings the Court has repeatedly emphasised that there is a duty on States to organise their judicial system in such a way as to comply with the requirements of a fair trial (Article 6). See, for example: *Multi v Italy*, Series A no. 281-C; *Susmann v Germany* judgment of 16 September 1996, Reports 1996-IV. In the case of Article 3 the obligation on States to organise their system of detention to ensure that individuals are not kept in degrading conditions will be even more pressing.

104 *Kudla v Poland* [2000] 35 EHRR 198, para 158.

105 Over the last two decades there have been findings that in a prison setting, lack of medical assistance has also been found to constitute degrading treatment, that unjustified delays in ensuring access to medical treatment when requested may violate article 3 (Poltoratskiy v Ukraine (38812/97)(2004) 39 E.H.R.R. 43 ECHR) and the behaviour of the prisoner is no justification for delaying treatment). *Iorgov v Bulgaria* (40653/98)(2005) 40 E.H.R.R. 7 ECHR. The failure to ensure access to an independent medical assessment can be aggravated where an individual is suffering additionally from a mental disorder. Khudobin v Russia no. 59696/00, §95-96, 26 October 2006.

106 In *Price v United Kingdom*, Application No.33394/96, Judgment of 10 July 2001, the Court held that to detain a severely disabled person in conditions where "she is dangerously cold, risks developing sores because her bed is too hard or unreachable and is unable to go to the toilet or keep clean without the greatest of difficulty" constituted degrading treatment contrary to Article 3. In P.M. v Hungary (1998), the Commission found that the failure to provide adequate sanitary care to a detainee, who was paralysed from the waist down and thus incontinent, amounted to a violation of Article 3. See also *Vincent v France*, Application No. 6253/03, Judgement of 24 October 2006.

107 Figures provided by Resident Managers to the Cussen Commission indicated that there were 56 intellectually disabled children in residential institutions and 46 children with physical disabilities, although the Ryan Report suggests 'that this may have been a gross underestimation'. The Ryan Report Vol. IV, 1.78.

108 *Kalashnikov v Russia*, (47095/99)(2003) 36 E.H.R.R. 34 ECHR.

109 *Fedetov v Russia* (5140/02)(2007) 44 E.H.R.R. 26 ECHR, Dougoz v Greece, op. cit. Kalashnikov v Russia, Ibid.

110 The Ryan Report Vol. III, 7.221-7.256.

111 No. 7 16th session.

112 *Z v United Kingdom*, [2002] 34 EHRR 97.

113 Annual Report of the UN Special Rapporteur on Torture, 11 August 2000, UN Doc. A/55/290, para 11, "foster care systems and residential institutions caring for children who become wards of the State after being orphaned or removed from parental care for their own protection are in some cases alleged to permit inhuman forms of discipline or extreme forms of neglect. Particularly in the case of extremely young children, such abuses can amount to cruel and inhuman treatment".

114 Ibid., para 12.

115 Van Bueren, G., 'Opening Pandora's Box: Protecting Children Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment', in *Childhood Abused: Protecting Children Against Torture, Cruel, Inhuman and degrading Treatment and Punishment*, Dartmouth, 1998.

116 The Ryan Report Vol. III, 7.252.

117 General Comment 20, 1992, para 6.

118 The Case of Victor Rosario Congo, Inter-American Commission on Human Rights Report 29/99, Case 11,427, Ecuador, adopted in Sess. 1424, OEA/Ser/L.V/II.) Doc. 26, March 9, 1999, para. 54.

119 Also included in Article 17, ICCPR.

120 Article 16 of the CRC contains a similar provision specific to children.

121 Article 12: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". In addition, see Article 11 of the American Convention on Human Rights. The Inter-American system has rarely dealt with complaints alleging violations of the right to privacy, but in the case of Riv*as Quintanilla v El Salvador* (Case 10.772, Decision of 1 February 1994, Report No.6/94), the Commission found that the rape of a seven-year-old girl by a soldier violated her right to 'have one's physical, psychological and moral integrity respected' under Article 11 American Convention. In another case, *X. and Y. v Argentina* (Case 10.506, Decision of 15 October 1996, Report No. 38/96) the Commission found that the practice of performing vaginal inspections on all female visitors who desired to have personal contact with inmates in a prison violated the right to privacy. Ms. X, whose husband was in prison and their thirteen year old daughter Y were submitted to such searches each time they visited the prison. The Commission concluded "that by imposing an unlawful condition for the fulfilment of their prison visits without judicial and appropriate medical guarantees and performing these searches and inspections under these conditions, the State of Argentina violated the rights of Ms. X and her daughter Y guaranteed, inter alia, in Article 11".

122 UN Human Rights Committee, General Comment no. 16, The right to respect of privacy, family, home and correspondence, and protection of honour and reputation, 8 April 1988, para. 1.

123 *Costello-Roberts v The United Kingdom*, op. cit. para. 36.

124 *Coeriel and Aurik v The Netherlands*, Communication No. 453/1991, Views of 31 October 1994

125 For further detail on this test see U.Kilkelly, *The Child and the European Convention on Human Rights*, Dartmouth Publishing Company, Aldershot, 1999, pp. 197-206.

126 The Ryan Report Vol. I, 3.08.

127 Though it is arguable that the threshold of the level of suffering is lower under Article 8 than under Article 3.

128 *Costello-Roberts v The United Kingdom*, op. cit. n,150 at para. 3

129 In X & Y v Austria, 8/05/1962 in relation to the guardianship and contacts with children after divorce and *O v United Kingdom* (1988) 13 EHRR 578 in relation to the placement of children in care.

130 *M.C. v Bulgaria*, Appl. No. 39272/98, Council of Europe: European Court of Human Rights, 3 December 2003,

131 *X and Y v The Netherlands* (8978/80)(1986 8EHRR235). In X & Y v the Netherlands the Court held that private life is a concept which covers the physical and moral integrity of the person, including his or her sexual life.

132 This principle is also contained in Article 24 of the EU Charter of Fundamental Rights).

133 U.Kilkelly, "Children's Rights : A European Perspective" in *Judicial Studies Institute Journal*, 4, 2, 2004 at 68.

134 General Comment 10 (19th session, 1983) and General Comment 16 (32nd session 1988). Specific Standards on "contact with the wider community" are included in the UN Principles on Children Deprived of their Liberty in principles 59-62. The CRC, article 37 (c) also provides that, "every child deprived of liberty … shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".

135 The Court held that "it would be too restrictive to limit the notion [of private life] to an "inner circle" in which the individual may live his own personal life as he chooses and to exclude them from entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings". *Niemietz v Germany*, 72/1991/324/396, Council of Europe: European Court of Human Rights, 16 December 1992.

136 The Ryan Report Vol. III, 7.237-7.243.

137 The Ryan Report Vol. III, 7.236.

138 Both the CRC and the ICCPR protect the right to identity/ and right to recognition as a person. See for example articles 7 and 8, CRC, which include the right to registration at birth, to a name, nationality, (as far as possible) to know and be cared for by his or her parents, to protection for his or her identity and to a speedy remedy where elements of the child's identity are illegally deprived. See also The Ryan Report, 7.256.

139 *Gaskin v United Kingdom* (10454/83)(1990, 12 E.H.R.R. 36, ECHR). para. 89.

140 Due to the contribution which the policy of confidentiality makes to the overall effectiveness of the child care system, it was not the confidential nature of social services records per se that violated Article 8.

141 The Ryan Report Vol. I, 3.23.

142 Article 40(1) provides that children in conflict with the law have the right to be treated in a manner consistent with the promotion of the child's sense of dignity and worth as well as reinforcing the child's respect for the rights and freedoms of others. Their treatment must take into account the child's age and the desirability of promoting the child's reintegration and assuming a constructive role in society. Article 40 recognises

that the traditional rights of due process afforded to adults are also applicable to children and that children have supplementary rights which are particularly important to them, such as the right to be informed promptly and directly of charges through parents, if appropriate, the right to involvement of parents in the trial, and also to have their privacy respected at all stages of the proceedings. Article 40(3) also makes provision, 'whenever appropriate and desirable', for the development of measures dealing with children without resorting to judicial proceedings, provided that human rights and safeguards are fully respected.

143 In recent years application of provisions such as the right to fair trial and right to liberty by the European Court of Human Rights has included clear articulation of an age appropriate and child focused justice system. *T v UK* and *V v UK* (2000) 30 EHRR 121 para 84. In this case, the ECtHR held that the trial of two 11 year old boys in the English Crown Court violated their right to a fair trial under Article 6: "a child charged with an offence (must be) dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings".

144 Article 10.

145 Article 14 states "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children".

146 The Ryan Report Vol. I, 3.28.

147 Ibid.

148 See earlier argument that soft law documents such as these have proved invaluable in interpreting the CRC provisions and have been utilised by the European Court.

149 UN Rules for the treatment of juveniles deprived of their liberty, Defence for Children International, http://childabuse.com/childhouse/childrens_rights/dci_pr25.html

150 Article 10 ICCPR.

151 UN Human Rights Committee, General Comment No. 9, Humane Treatment of Persons Deprived of their Liberty (Article 10), 30/7/82 (1982), para. 1.

152 The UN Standard Minimum Rules for the Administration of Justice (the Beijing Rules) Rule 17.1 b/ and c/ highlight that detention should only be imposed when there is "no other appropriate response" and "shall be limited to the possible minimum". This is reiterated in Guideline 46 of the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), which makes it clear that deprivation of liberty must be limited to exceptional cases only and early release must be a possibility.

153 They include the usual grounds – following conviction by a court under article 5 para. 1(a) for contempt under article 5 para. 1(b) and on remand under article 5 para. 1(c).

154 U.Kilkelly, op cit.

155 The Ryan Report Vol. I, 3.25.

156 *Bouamar v Belgium*, European Court of Human Rights, unreported, 29 February 1988,Series A, No. 129, (1989) 11 E.H.R.R. 1. See further U.Kilkelly, "The Human Rights Act 1998: Implications for the Detention and Trial of Young People", *Northern Ireland Law Quarterly*, 51, 3, 2000, at 466.

157 The Ryan Report Vol. III, p. 6.07 – 6.15; 8.02 - 8.22.

158 Ibid.

159 The Ryan Report Vol. III, 7.185- 7.189

160 The Ryan Report, Vol. I, 3.28.

161 Ibid., 7.735.

162 Preamble to the Constitution of the World Health Organisation as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

163 UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, adopted in 2000, clarifies that the right to health should be understood as extending beyond health care to "the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health".

164 The Ryan Report Vol. III, 7.193.

165 For a more comprehensive explanation of the principle of non-discrimination in international human rights law see Amnesty International, *Dealing with Difference: A Framework to Combat Discrimination in Europe*, 2009 (Index: EUR 01/003/2009).

166 The Ryan Report Vol. III, 11.38.

167 47 per cent of people agreed that wider society is prejudiced against people who were in industrial schools. See annex two for further details of the poll.

168 The Ryan Report Vol. III, 7.08; 9.55.

169 It is submitted that the rule of State responsibility has now been elevated to the status of a general principle of international law. Brownlie, I., *Principles of Public International Law* (5th ed 1998) 435-6 at 436. In Chorzow Factory (*Germany v Poland*) (Merits) [1928] PCIJ (ser A) No 13, at 29, the Permanent Court of International Justice defined it not only as a principle of international law but also as a 'greater conception of law' involving an obligation to make reparation for any breach of an engagement.. See also Corfu Channel (*United Kingdom v Albania*) (Merits) [1949] ICJ Rep 4, 23.

170 Articles 5,7,8 of the International Law Commission Draft Articles.

171 The Ryan Report, Vol. IV, 1.03.

172 The 1941 Children Act gave the Minister the power "to remove Resident Managers who were derelict in their duties" although the act did not give the Minister power over the selection of a manager or approval of appointees.

173 Industrial schools and reformatories were regulated by the 1908 Children Act, of which s. 46 (3) provides that every certified school was to be inspected, "at least once in every year". In addition, under s.47 the Minister for Education had the power to withdraw the school certificate if dissatisfied with the conditions, rules or management of the school.

174 Also, the interpretation of the States duty under Article 42.2 of the Constitution to provide for a child's education has been interpreted to take a "hands-on approach" and a 'positive role' in the provision and supervision of services offered on its behalf and also to provide funds necessary to meet its constitutional obligations- even in relation to private schools. *Sinnott v Minister for Education* [2001] 4 IR 545 as per Barr. J.

175 General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant.

176 See for example judgments of the European Court, *Nilsen and Johnson v Norway* (2000) 30 HERR878, and a series of Turkish cases including *Kilic* (2001) 33 E.H.R.R.1357, *Akkoc* (2002) 34 E.H.R.R.41 and *Kaya*, Eur.Ct.Hr 2000 – iii 149. The UNCAT includes more detailed expression of attribution "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

177 Article 7 ILC Draft Articles and also *The Youmans Claim United States v Mexico* (1926) 4 RIAA 110 and *The Janes Claim United States v Mexico* (1926) 4 RIAA 82.

178 *Ireland v United Kingdom* (1978) ECHR (Series A) No 25, *Tihmurtus v Turkey* (23531/94) [2000] ECHR 221 (13 June 2000), *Ertek v Turkey*, Application number 20764/92, judgement of 9 May 2000. See also Velasquez Rodriguez, Judgment of July 29th 1988, Inter-Am, Ct.H.R. (Ser C.) No.4 (1998).

179 For an example of this reluctance to investigate see the Ferns Report, pp 231-2.

180 The Report describes how "[A] systemic change occurred within An Garda Síochána from November 1999 whereby a paper trail evidencing such correspondence has now been supported with a computerised system which records all incidents that An Garda Síochána deal with from the time of the initial contact made to it by a complainant or witness until a particular offender is dealt with by the court. This is known as the PULSE system. It is a system which is available online to all networked Garda stations throughout the country". See the Ferns Report, pp 60-61.

181 The Murphy (Dublin) Report, 2.19.

182 Velásquez Rodríguez case, op. cit. para.172.

183 *Z v United Kingdom*, [2002] 34 EHRR 97.

184 See the inspection reports of Dr. Anna McCabe who acted as a Department of Education inspector from the 1940s. She stated she was "simply horrified at the conditions existing in the majority of the Schools". The Ryan Report Vol. IV, p. 1.152.

185 The Committee on Economic, Social and Cultural Rights which monitors the implementation of International Covenant of Economic, Social and Cultural Rights has stated that it imposes an obligation on State Parties to prevent violations of these rights by private actors. For example, the CESCR has stated that the State has an obligation to prevent third parties from 'compromising equal, affordable and physical access to sufficient safe and acceptable water. The CESR has also stated that states have the duty to "ensure that activities of the private business sector and civil society are in conformity with the right to food". CESCR, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 15: The Right to Water, UN ESCOR, 29th Sess, Agenda Item 3 [24] UN DOC E/C 12/2002/11 and CESCR, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights; General Comment 12: The Right to Adequate Food, UNESCOR, 20th session Agenda Item 7, UNDOC E/C 12/1999/5 (1999).

186 See, amongst others, the International Covenant on Civil and Political Rights, Dec. 16, 1966,999 UNTS 171 (entered into force Mar. 23, 1976) which provides that the duty to ensure encompasses the duty to take preventive measures against occurrences of violations of human rights by private actors as well as the duty to take remedial measures once the violations have occurred.

187 The Human Rights Committee has stated that positive obligations on States Parties to ensure rights "will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights". General Comment 31 on Article 2 of the International Covenant on Civil and Political Rights, adopted by the UN Human Rights Committee on 29 March 2004. UN Doc.: CCPR/C/74/CRP.4/Rev.6, at para. 8. The obligation has most recently been articulated by the UN Committee against Torture: "The Convention imposes obligations on States parties and not on individuals. States bear international responsibility for the acts and omissions of their officials and others, including agents,

private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law. Accordingly, each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm". UN Committee against Torture, General Comment No. 2, Implementation of Article 2 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by States Parties, UN Doc. CAT/C/GC/2, Para 15. In relation to the European Convention of Human Rights see the cases of Young, James and Webster Case (1981); Case of *X and Y v The Netherlands* and Ahmed v Austria. See further Provost, R.: International human rights and humanitarian law, (Cambridge studies in international and comparative law ; 22), Cambridge University Press, Cambridge, 2002, at 60 and Finell "Accountability under Human Rights Law and International Criminal Law for Atrocities Against Minority Groups Committed by Non-State Actors" Åbo Akademi Institute for Human Rights, May 2002, available at http://web.abo.fi/instut/imr/norfa/peter.pdf and accessed on 28th May 2011.

188 The Ryan Report, 'Executive Summary', p. 16.

189 The HRC has stated, for example, that States have the duty to provide a legislative framework prohibiting acts constituting arbitrary and unlawful interference with privacy, family, home or correspondence by natural and legal persons. Human Rights Committee, general Comment 16, as contained in Report of the Human Rights Committee, UN GAOR, 43rd sess, Annex VI UN DOC A/43/40 (1988).

190 See for example Comment 2 of the Committee v Torture (CAT/C/GC/2 24 January 2008), paragraph 17 relating in particular to the responsibility of the State for privately run detention centres and their obligation to monitor and take all effective measures to prevent torture and ill treatment.

191 This has been applied in cases under Article 3 (torture and ill -treatment) since the 1990s and has also been applied to cases of historic abuse. See in particular *E and others v UK*, op cit. Z and others v UK, Judgement of 10 May 2001, para 109. See further Provost, R.: *International human rights and humanitarian law*, Cambridge University Press, Cambridge, 2002, p. 61.

192 The Ryan Report Vol., I, 15.119.

193 The Ryan Report Vol. II, 11.42, 11.35, 11.39; The Ryan Report Vol. I, 8.38.

194 The Ryan Report Vol. I, 15.472- 15.473.

195 E and others v UK, op. cit. n 79. para. 100.

196 The Ryan Report, Vol. I, 14.157.

197 UN Committee against Torture, General Comment No. 2, Implementation of Article 2 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by States Parties, UN Doc. CAT/C/GC/2, Para 18. In addition, the Human Rights Commission has submitted that a State is obliged to establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons to avoid a finding of a breach of the right to life. Human Rights Committee, General Comment 6. (Sixteenth session, 1982), HRI/GEN/1/Rev.9 (Vol. I) p.176.

198 For example see Ribitschv Austria (A/336(1996) 21 E.H.R.R. 573 ECHR, *Avsar v Turkey* (25657/94)(2003) 37 E.H.R.R. 53 ECHR.

199 See http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.IRL.CO.1.pdf.

200 *E and Others v United Kingdom*, Application No. 33218/96, Judgement of 26 November 2002.

201 In 2003, the UN Sub-Commission on the Promotion and Protection of Human Rights approved the UN Norms on the Responsibilities of Trans-national Corporations and Other Business Enterprises with Regard to Human Rights (also known as the UN Business Norms), the most authoritative and comprehensive set of standards on business and human rights issued to date. In 2005, the UN Secretary General appointed Professor John Ruggie as Special Representative on business and human rights. On 16 June 2011, the UN Human Rights Council endorsed the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" proposed by the UN Special Representative, and also established a Working Group on business & human rights and an annual forum on business & human rights to discuss trends and challenges in the implementation of the Guiding Principles.

202 The Ryan Report, 'Executive Summary', p. 20.

203 For examples see the Ryan Report Vol. I, 8.433 - 8.450.

204 For an example see ibid., 7.148 - 7.179.

205 The Ryan Report, 'Executive Summary', p. 14.

206 This is discussed in chapter 2.

207 A possible exception to this would appear to be in the context of the ECHR, in which the drittwirkung (or third-party-effect) of the Convention has rendered the Convention applicable in the private sphere. It is noteworthy that courts remain under a duty to interpret and apply the law in a manner which is compatible with the European Convention of Human Rights, including the law as it applies to disputes between private parties. (Section 2 of the ECHR Act 2003 states that "in interpreting and applying any statutory provisions or rule of law, a court shall, in so far as is possible, subject to the rules relating to such interpretation and application, do so in a manner compatible with State's obligations under the Convention provisions".) See Beddard, "Duties of Individuals under International and Regional Human Rights Instruments", in (1999), 21, *Human Rights Quarterly,* 30-47, and also Rosas and Scheinin, "Categories and Beneficiaries of Human Rights", in in Raija Hanski and Markku Suksi (eds), An Introduction to the International Protection of Human Rights, 1999, Institute for Human Rights,

Åbo Akademi University, 49-62, at 60. It is worth noting that the international law is currently in a state of flux in this area, and the need for clarification was highlighted in the UK Joint Committee on Human Rights Report 2009. More recently work of UN human rights mechanisms, particularly the Special Representative of the Secretary General on Business and Human Rights (SRSG), Professor John Ruggie, has begun to clarify the area. The SRSG has developed a framework of respect, protect and remedy duties of business.

208 The UDHR preamble states that the Declaration is: "… a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance". In addition, the last article of the UDHR further states that "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein".

209 81 per cent of people agreed with the following statement: Noting that the 1948 Universal Declaration of Human Rights says that all people "should act towards one another in a spirit of brotherhood", ordinary people in Ireland should accept some responsibility for respecting and defending the human rights of other people in Ireland. See annex 2 for more details of this poll.

Chapter 2

Why did this happen?

This chapter addresses the question why did this happen?. In other words, in the case of what was revealed in the Ryan, Ferns, Murphy (Dublin) and Cloyne Reports, what factors facilitated both the systemic abuse of children over many decades in residential institutions, and the sexual abuse of many children in the community? This is a complex and difficult question for which there are no definitive answers. However, by tackling this question Amnesty International Ireland hopes to start a national conversation that will identify and illuminate the factors that led to this abuse.

This chapter examines internal, political and public responses to evident failings in residential institutions and to incidents of abuse in both residential institutions and in the community. In examining these responses, a framework of factors has been developed which will help analyse the question, why did this happen? These factors include:

Responsibility and Accountability – Who was responsible?

Non-State actors – agents of the Roman Catholic Church
State actors - members of the executive, government departments, the Gardaí and the health authorities
Individuals in society

Identity and Status – Who was abused?

Class
Threats to the 'moral order'
Disability
Ethnicity

Attitudes to Children - Why didn't we listen?

Responsibility and Accountability: Who was responsible?

The absence of both clear lines of responsibility and effective accountability mechanisms played a significant role in enabling the continuation of the abuse of children. The actions of agents of the Catholic Church (members of religious orders, priests, and diocesan and Vatican authorities), agents of the State (those within the executive and government departments, the Gardaí and the health authorities), and the responses of wider society to failings in residential institutions and abuses will be examined.

Non-State Actors – Agents of the Roman Catholic Church

Religious Orders

Despite the formal constitutional separation of church and State, the Catholic hierarchy had a unique position among pressure groups in Irish society.[1] By the 1950s "indirectly through its influence on the Catholic majority, and directly through its influence upon Catholic members of government", the Catholic Church was "without peer in terms of power".[2] The Murphy (Dublin) Report suggests that the prominent and influential role of agents of the Catholic Church in society was the very reason why these abuses were allowed to go unchecked.[3] While there was a failure to demand accountability from this powerful and pervasive institution, article 44.5 of the Irish Constitution suggested that any involvement in the internal affairs of the various Irish

churches was inappropriate, even unconstitutional:

> Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.[4]

The absence of effective accountability mechanisms for an organisation that acted as the dominant provider of services for the majority of the population contributed to the conditions which allowed for the large scale abuse of children housed in residential institutions run by religious orders and enabled the abuse of children in the community by priests to go unchecked. While there was an absence of external accountability mechanisms, there was similarly an absence of internal mechanisms within the governing structures of Catholic organisations, which made abuse even more likely.

Staffing

In residential institutions, run by religious orders, not only were members often allowed to go unchecked in their abuse of children, but abuse was made more likely by the selection of particularly unsuitable staff. Barry Coldrey describes how "old, sick and mentally unstable members" were commonly 'hidden' in institutions.[5] He has identified this as a worldwide problem in children's institutions managed by religious and charitable organisations.[6] This also reflects the traditional low status attached to the work of caring for children and the low status attached to children housed in residential institutions.[7]

[I]t was generally believed in the order that men were often sent to staff such terrible places because they had proved difficult or inadequate or had got into trouble in 'normal' schools.

Professor Tom Dunne, who had spent time training with the Christian Brothers. See The Ryan Report Vol. IV, p. 334, ft.nt. 212

The vast majority of these children were of 'working class' origins and it is clear that that this affected the staff selection process. Religious orders often managed a variety of educational facilities and it is apparent that the explicit hierarchy within orders determined staff allocations between secondary schools and residential institutions. Indeed, a two-tier membership system that reflected class origins existed within the orders, which produced 'choir' sisters and brothers, who received more training, usually for teaching and nursing, and 'lay' sisters and brothers who were responsible for farm work and domestic duties, and who were more likely to end up staffing residential institutions.[8] Margaret Lee, a former Sister of Mercy who entered the novitiate in 1961, describes how "the brightest and most talented sisters were assigned to the secondary school system" which, until 1967 when post primary education became free, educated only a minority of Ireland's children. In contrast "untrained personnel were often deployed to the care of the children in the orphanage [industrial school][9] , reflecting the scant regard in which both the carer and those cared for were held".[10] She notes that secondary schools were highly valued because they "provided an education for the middle class section of society from which our own roots had sprung and were also the recruiting ground for new members to the congregation".[11] Similarly Tom Dunne argues that Christian Brothers' secondary schools, which housed potential recruits for the order, "were staffed with their brightest and best" while they left "the far more needy boys of their industrial schools to the inadequate or the troubled, who were given no special training and little supervision".[12] For Lee the class system underpinned the value system of her order and while the congregation was predominantly middle class, children placed in the orphanage "were seen as coming from the lower strata of society and therefore as unequal to us and less deserving".[13] The low status of the staff that worked in residential institutions reflected that of the schools themselves, and of the children who resided there, in Irish society. [14]

Retired Bishop of Killaloe, Willie Walsh, has suggested that the young age at which people entered orders, the burden of celibacy for some members, the

promotion of obedience, and the authoritarian nature of leadership in all areas of religious life, were "not conducive to good human formation" and that these factors go some way to explaining why the abuse happened.[15] Walsh suggests that their very powerlessness within the structure of their order meant that abusers were likely "to abuse whatever little power they may have [had] over other people in their care or control".[16] Similarly Lee suggests that,

> these people were voiceless and without any great status in their congregations and, consequently, within themselves were simmering with anger, frustration and dissatisfaction with life … In the religious communities they were powerless but in the world of the orphanage they had absolute power. Put with this the fact that they could be fairly certain that any violence or rough treatment, indeed any punishment of the children, would go unchallenged, and we may be coming to some explanation for it all. Even if some parents did challenge what was occurring they were unlikely to get a hearing from any authority figure in church or state, due to the commonly held perception that they were not worthy of a hearing.[17]

The use of corporal punishment in residential institutions was widespread and excessive. For Coldrey this was the result of large numbers of children and teenagers being left in the care of few untrained staff who "resorted to corporal punishment as the only control mechanism they knew".[18] He also asserts that "the boundary between acceptable punishment and abuse was vague and ambiguous" while similarly blurred were the boundaries between physical and sexual abuse.[19] Neglect and hunger were also common features of residential institutions while few resources were devoted to the children's education or entertainment.[20]

Resources

The Ryan Report is somewhat ambiguous in its conclusions with regards

to the adequacy of the financial resources provided by the State for residential institutions. Religious orders frequently complained about a lack of resources when responding to accusations of neglect in the institutions that they managed. The Report asserts, "their constant claim was that the State under-resourced the Congregations in carrying out the State's duty".[21] In their submission to the Commission to Inquire into Child Abuse, the Christian Brothers asserted that the Kennedy Committee, which investigated reformatories and industrial schools on behalf of the Government in the late 1960s, had found that the grant aid paid to industrial schools in Ireland was "totally inadequate", and in comparing the capitation rate to funding in Northern Ireland found that the former rate was significantly less.[22] Disagreement about funding was a long-standing issue. In the 1940s the Department of Education inspector Anna McCabe was dissatisfied with the condition of the boys she found at St. Joseph's Industrial School, Ferryhouse, Clonmel. She had particular concerns about the fact that they were underweight. While McCabe considered the diet she recommended to be "of very ordinary proportions", the Resident Manager[23] protested at its estimated cost noting that "even managers of industrial schools have to meet their bills, so I fear on our present allowance it just cannot be done".[24]

State funds for industrial schools and reformatories came from a variety of budgetary votes: the Reformatory and Industrial School vote; the Department of Education vote; and the Board of Works/Office of Public Works vote.[25] The Reformatory and Industrial Schools Branch (RISB) of the Department of Education also collected 'Parental Monies'.[26] While not discussed in the Ryan Report, it is apparent that some parents were ordered by the court to contribute weekly amounts for the support and maintenance of their children, by virtue of a 'contribution order'. Those who did not pay were threatened with court proceedings.[27]

The Rosminian order, in its submission to the Commission to Inquire into Child Abuse, stated that "the financial relationship between the schools and the State was adversarial" and argued that "if it is assumed that funding

was even barely adequate, the temptation for the Schools to seek maximum numbers of boys on the basis of economies of scale (same overheads, more income) was destructive to standards of performance, because boys were then being kept for money, and not vice versa".[28] The Ryan Report reveals the collusion of the Department of Education in this process as it concluded that children were sent to St. Michael's Industrial School, Cappoquin, not because it was suitable for their needs but to keep the institution open. Furthermore, when falling numbers jeopardised its existence, the nuns who managed the school threatened to close it unless more children were assigned there. Despite evidence of neglect in inspectors' reports the Department of Education acceded to this request.[29]

In 1968 Mr R MacConchradha, a Higher Executive Officer in prisons administration but formerly of the Department of Education, wrote to Mr McCarthy, his superior in the Department for Justice, expressing his views on the resources afforded the schools and the role of the Department of Education in allowing the continuation of a clearly flawed structure:

> **Even at the risk of breaking confidence, may I say that the Industrial School system has been centrally administrated in a very plodding way, with little sympathetic involvement or thought for the children. Finances have been ungenerous for years and what forward thinking there was, came from individuals in the conducting communities. The lot of the children, especially the boys, is very sad and there is an unbelievably entrenched 'status quo' to be overcome, not least in the Department of Education, if there is to be any change for the better.[30]**

Mazars, an audit and accountancy agency, was asked by the Commission

to Inquire into Child Abuse to examine the accounts of four sample institutions to see how the capitation grant, which the State paid for each resident child, was used and "to identify what the overall financial impact the schools had on the Congregations that ran them".[31] Their conclusions were challenged by the religious orders in their own submissions.[32] Mazars suggested that the religious orders viewed the industrial schools they managed "as a potential contributor to other unfunded or under-funded activities of the Order".[33] This attitude is evident in the late 1930s, when the Christian Brothers used finance from St. Joseph's Industrial School, to alleviate the debt on St. Mary's secondary school, even though no boys from St. Joseph's attended the latter.[34]

For some institutions, finances were enhanced by the fact that the children housed there worked on farms and in nurseries. Rosary bead making by children in Goldenbridge became "a very profitable enterprise", which contributed significantly to the purchase of a holiday home for the Sisters of Mercy in the 1950s.[35] Michael Pierse surmises that working class children were therefore used to subsidise "a bloated order of profiteers", and asserts that the way in which finances were managed and accrued within some institutions resulted in a situation whereby,

> **the slave labour of the poorest and most vulnerable children in Irish society – who were systematically deprived of tuition – was being used to subsidize the education of more affluent children who attended other, more conventional schools operated by the orders. These children, who would often times laud the education they received from the 'Brothers' and the 'Sisters', profited also from the labour of their poorer contemporaries. Thus, while it has been widely observed that the Catholic Church's institutional abuse of working-class children was perverse**

and inexplicable, in a way it was merely part of the church's assimilation to a system of social organization that had been normalized.[36]

While evidence of malnutrition recorded in Department of Education inspectors' reports did lead to an increase in the capitation grant, and while increases to reflect the cost of living were also implemented, the refusal of the orders to make itemised accounts outlining the expenditure of the State grant available to the Departments of Education and Finance meant that the latter felt unable to determine which schools were in need of increased funding to provide adequate care for the children who resided there.[37] The Ryan Report "broadly" concluded that

> [In] large, mainly boys' schools with big productive farms, industrial training geared to the needs of the school and sufficient numbers to allow economies of scale to apply, were well resourced. These schools should have been able to provide a good standard of care. However, the evidence indicates that the children in these schools were some of the most poorly provided for. The Committee also concluded that some schools struggled valiantly to survive, some did not, yet the negotiations [between the Resident Managers' Association and] the Department of Education made no distinction and the larger boys' schools dominated the debate. The Department of Finance could see that not all schools were the same and sought to distinguish those in genuine need. The Resident Managers Association, however, did not co-operate and thereby condemned many children in the less well resourced institutions to needless poverty.[38]

Managing incidents and complaints of abuse

An absence of internal regulations in residential institutions allowed for the

abuse of children to go on unchecked. Different religious orders have a variety of internal management structures. For example, within the Christian Brothers each Community (the basic organisational unit) is led by a Superior, and assisted by a Sub-Superior and a local council. When a Community of Brothers managed an industrial school, the Superior was also the Resident Manager. Annual Visitations, carried out by a member of the Provincial Council, facilitated supervision of Communities.[39]

While the Ryan Report notes that the order "was well organised at a national and provincial level", it asserts that "local organisation was often unsatisfactory" and that within the industrial schools managed by the Christian Brothers, "there was no discernable management structure in place".[40] It continues,

> Individual post-holders were appointed by the Superior, but there was no system of monitoring or support once the appointment had been made, and there was no obvious system of consultation with younger members of the Community who were often responsible for the day-to-day running of the school. There was no formally recognised complaints procedure within the local Community. This was evidenced by the number of complaints communicated to the Visitor that had not been voiced by the Brothers to the Superior in the community.[41]

In other schools, such as St. Vincent's Industrial School, Goldenbridge, managed by the Sisters of Mercy, there were no internal controls. The Report concludes that those Sisters of Mercy who managed Goldenbridge appeared to receive no guidance or supervision from the Carysfort Mother House (the mother house for all the Dublin Mercy Communities) and that even the nuns within the Goldenbridge convent adopted a "hands off" approach.[42] These examples indicate that internal management, complaints, and inspection systems were either problematic or non-existent in many industrial schools.

With regards to the physical abuse of children the Report describes how "individual Brothers, priests or lay staff who were extreme in their punishments

were tolerated by management", while in some schools "a high level of ritualised beating was routine".[43] When action was taken in response to cases of physical abuse, it was usually to transfer the Brother in question. For example, in 1945 in Letterfrack Industrial School, Brother Aubin[44] reported to the Visitor, that the 'Disciplinarian', Brother Maslin[45] , "can inflict terrible punishment on children and the boys have a terrible dread of his anger".[46] Brother Maslin was subsequently transferred to Carriglea Park Industrial School, Dun Laoghaire where, the Report notes, he "continued his abusive practices".[47]

Night times were the worst; if you weren't taken out of bed and beaten you were listening to it happening to someone else. You could hear the screams all over the whole building at night it was so quiet.

Testimony of a male witness to the Confidential Committee of the Commission to Inquire into Child Abuse. See The Ryan Report Vol. III, 7.79.

The complaints of parents and former pupils were not investigated or handled appropriately by the Christian Brothers. For example in the mid 1950s a written complaint from a parent in relation to a beating his son received afforded no response.[48]

[T]hese sort of people give us all a lot of trouble and their complaints have to be nailed.

A monsignor's description of a concerned grandmother who was worried about the treatment her grandson was receiving in St. Joseph's Industrial School, Artane. See The Ryan Report Vol. I, 7.195.

Similarly the Congregation refused to respond to the letters of Peter Tyrrell[49] , who wrote of the 'tyrannical and sadistic' behaviour of three Brothers, detailing

the physical abuse he had been subjected to in Letterfrack.[50] The Report concludes that the refusal to respond to Tyrrell's complaints "was indicative of an organisation that chose not to investigate criticism or admit failings".[51]

Cases of sexual abuse,

> were managed with a view to minimising the risk of public disclosure and consequent damage to the institution and the Congregation. This policy resulted in the protection of the perpetrator. When lay people were discovered to have sexually abused, they were generally reported to the Gardaí.[52] When a member of a Congregation was found to be abusing, it was dealt with internally and was not reported to the Gardaí … The recidivist nature of this abuse was known to religious authorities … No protocols or guidelines were put in place to protect children from predatory behaviour and children were not listened to when they complained of abuse.[53]

One Brother kept watch while the other abused me… (sexually)…then they changed over. Every time it ended with a severe beating. When I told the priest in Confession he called me a liar. I never spoke about it again.

Testimony of a male witness to the Confidential Committee of the Commission to Inquire into Child Abuse. See the Ryan Report Vol. III, p. 83

Responses to incidents or allegations of sexual abuse included transferring Brothers to other residential institutions or primary schools, offering dispensations or complete inaction. For example, in the 1960s Brothers Benoit[54] and Karel[55] were accused of sexual abuse. Benoit had been working in the O'Brien Institute[56] while Karel had been in St. Joseph's Industrial School, Artane. Both were transferred to day schools and then ten years later they were transferred to positions in Letterfrack. These instances led the Report to

conclude that Brothers with prior records or allegations of sexual abuse against them were transferred to Letterfrack in the early 1970s.[57]

Diocesan/Vatican Authorities

It has been argued that characteristics of the institutional Catholic Church have created "a climate in which child sexual abuse by Catholic clergy becomes possible" and that while some "prefer to think in terms of individual pathology rather than systemic breakdown, the evidence seems to point otherwise".[58] These characteristics include the nature of the theology of sexuality, seminary formation, power relations and governance structures.[59] The association of almost all aspects of human sexuality with sin and guilt has been viewed as contributing to an unhealthy view of sexuality that could possibly help explain the actions of child abusers. In Catholic theology, actions such as "prolonged and repeated kissing" and looking "at the private parts of a person of the opposite sex" could be considered mortal sins, which meant hell for all eternity.[60] However, the gravity of the consequence for these perceived transgressions makes the often-lenient response of diocesan and Vatican authorities to the crime of child sexual abuse even more difficult to understand. The failure to use internal canon law procedures to remove abuser priests from ministry, and the refusal to report these abuses to the civil authorities, facilitated the continued abuse of children.

Seminary Formation

The Murphy (Dublin) Report reveals that "there was no structured training on matters concerning child sexual abuse by priests or others" in the years 1970-1995.[61] Furthermore, there is no evidence to suggest that this issue was addressed by those who conducted psychological assessments of candidates for the priesthood.[62] The Ferns Report identified that the guidelines entitled 'Norms for Priestly Training in Ireland', promulgated by the Episocopal

Conference in 1973, and which recommended a psychological assessment of candidates, was not properly implemented, as many candidates were not assessed in this way.[63] In the case of serial abuser Seán Fortune, the Ferns Inquiry was satisfied that "Fortune did engage in child sexual abuse during his years as a seminarian and in spite of clear warnings from his own behaviour … this did not prevent ordination".[64] The Cloyne Report describes how the psychological assessment undergone by Fr Calder[65] during his training for the priesthood placed him in the 97th percentile on the psychosis scale as well as indicating "deep sexual repression and a rigid, inflexible quality to his personality which is likely to make it very difficult to get through to him".[66] The psychologist concluded that Calder's personality profile "might make it inadvisable for him to continue" but that if he were retained he should be kept under review. Calder went on to be ordained and there is no evidence to suggest that he was reviewed.[67]

I didn't want to know the name of the priest. If she told the name of the priest I had to do something about it … We as priests had been advised in college not to seek the name of priests that allegations were being made against.

Fr Eddie Griffin in a statement to the Gardaí. See The Murphy (Dublin) Report, 13.12

While the Council of Clonliffe College held monthly meetings to discuss and evaluate seminary students, the Murphy Commission was unable to obtain these records. The absence of this information was explained, in part, by Bishop Eamon Walsh, former Dean of the college:

> I always recall… Brendan Houlihan as President, saying to me when a priest is ordained he should leave the college with a clean record. If we have approved him for ordination, he should start from scratch and maybe that accounts for the attitude towards

records, that once you promoted the person for ordination then he is a graduate and let the file begin from that day forward.[68]

Internal governance

The Ferns, Murphy (Dublin) and Cloyne Reports reveal the failure of the internal management structures of both the dioceses of Ferns and Cloyne, and the archdiocese of Dublin to deal effectively with complaints and allegations of clerical child sexual abuse. In the diocese of Ferns, priests who sexually abused children were often transferred by the bishop to other parishes.[69] Other priests were sent to psychiatrists or psychologists for assessment; although in some cases the advice of the medical professional was not always taken and the bishop went on to sanction transfers to other parishes.[70] No child protection measures were put in place when priests were transferred. Similarly, the Murphy (Dublin) Report reveals how priests with complaints against them continued in ministry or were transferred. In some cases there were failures on behalf of bishops and auxiliary bishops even to investigate complaints. The Cloyne Report investigated allegations of abuse made after 1996. A number of priests against whom allegations were made were 'retired' or in other cases their ministry was restricted. Prior to 2008 the priest in question was not required to cease wearing clerical dress, while the restrictions on their ministry were not made known to the laity.[71] Some priests continued to carry out their usual priestly functions.[72] In the case of one priest whose ministry was restricted as a result of allegations of child abuse, young people continued to attend his house for music lessons.[73] In another case the priest in question continued to have contact with vulnerable children – taking them on trips to Knock and saying mass with them.[74]

In some cases known abusers were sent to other dioceses with untrue or misleading information about them.

See The Murphy (Dublin) Report, 1.68

Bishop Comiskey (1984-2002) told the Ferns Inquiry that prior to 1990 he would never have considered reporting an allegation of child sexual abuse against a priest to the civil authorities.[75] Similarly, in the archdiocese of Dublin, church officials only began notifying the civil authorities of complaints of clerical child sexual abuse in 1995.[76] Despite this, the archdiocese first considered the matter of obtaining insurance indemnity in 1986. The Murphy (Dublin) Report asserts that this, "signalled a significant realisation at that time of the potential exposure of the Archdiocese to civil claims arising from the abuse of children by priests".[77]

In 2002, Archbishop Connell allowed the Gardaí access to archdiocesan files. The decision to do that, Connell told the Commission of Investigation, "created the greatest crisis in my position as Archbishop" because he considered it conflicted with his duty as a bishop, to his priests. When asked why, he explained:

> Was I betraying my consecration oath in rendering the files accessible to the guards? … you've got to remember that confidentiality is absolutely essential to the working of the bishop because if people cannot have confidence that he will keep information that they give him confidential, they won't come to him. And the same is true of priests.[78]

While O'Connell allowed the names of 17 priests about whom he had received complaints to be given to the Gardaí, there was knowledge within the archdiocese of at least 28 such priests.[79] Furthermore, while the archbishop promised that Gardaí, who first began investigating allegations that senior figures in the Catholic Church had covered up cases of child sexual abuse in 2002, would be given unlimited access to diocesan files, this did not happen.

Members of the Gardaí expressed privately that their inquiry was hampered by the unwillingness of the diocesan authorities to give full access to the files, which could not be physically removed from Archbishop's House.[80]

Canon law

In both Ferns and Dublin, church authorities failed to use even the Catholic Church's canon law structures or the procedural laws of the Vatican to take action in relation to priests against whom complaints of sexual abuse had been made. Instructions were promulgated by the Vatican, which indicated procedural requirements for dealing with clerical child sex abuse (Crimen Solicitationis, issued in 1922 and 1962). These instructions set out how a bishop should respond when complaints or allegations were made. They included the procedures for investigating allegations, trials, sentencing and an appeals process. The Murphy (Dublin) Report describes how "the entire process was permeated by a requirement of secrecy" – even witnesses and victims were required to take an oath of secrecy, the penalty for breach of which could extend to excommunication.[81]

Both the 1917 and the 1983 codes of canon law also include rules for dealing with clerics who are accused of child sexual abuse.[82] An initial inquiry to decide whether the accusation had a "semblance of truth" would be undertaken, followed by a "preliminary investigation", which as outlined in canon 1717:1, requires the bishop to inquire about the facts and circumstances and about the imputability (guilt) of the offender.[83] While there appears to be two schools of thought as to whether or not a bishop can compel a priest to step aside while the 'prelimiary investigation' was on going, the Ferns Inquiry posed the following question to a leading canon lawyer: "Has the Bishop power under canon law to suspend temporarily a priest of his diocese from his priestly ministry in such a way as to remove him from contact with potential victims on the basis of an express allegation or reasonable suspicion

For further discussion on canon law see Thomas Patrick Doyle (Canon Law Expert and Advocate), 'Canon Law as an essential enabling factor in child abuse' on page 209.

that the priest in question has in the past, and may in the future, abuse children?" The Inquiry was told that if the bishop was satisfied that there was some credibility to the allegation, he had the power to remove the priest and could temporarily suspend that priest pending final determination of the matter.[84]

Despite the existence of these procedures the Murphy (Dublin) Report describes how the "canon law [in particular the penal provisions] appears to have fallen into disuse and disrespect during the mid 20th century" and how for "many years offenders were neither prosecuted nor made accountable within the Church".[85] The evidence indicates that while certain provisions of canon law had fallen into disuse, others were followed in a piecemeal fashion. While Bishop Comiskey accepted that it was appropriate to have accused priests step aside from active ministry pending an inquiry of the allegation made against him, he consistently failed in this objective. The investigations he initiated into cases of sexual abuse are described in the Ferns Report as "protracted and inconclusive".[86] According to canon law "care must be taken that this investigation does not call into question anyone's good name" – in canon law commentary this rule is described as being of fundamental and vital importance.[87] It seems that in the majority of cases the failure to remove priests from ministry was due to the conviction of Comiskey that it would be unjust, if it were possible, to remove even temporarily a priest on the basis of an allegation which was not corroborated or substantiated by what he considered to be convincing evidence. The Ferns Report concludes that while "the bishop was rightly conscious of the need to protect the good name and reputation of his clergy he failed to recognise the paramount need to protect children as a matter of urgency, from potential abusers".[88]

A bishop who fails to impose the provisions available to him in canon law in a case of sexual abuse of a child is liable to penal sanctions imposed by Rome. The Commission is not aware of any bishop who was subjected to such penalty in the period

covered by its remit.

See The Murphy (Dublin) Report, 4.81.

Culture of secrecy

Donald Cozzens suggests that priests were considered the bishops' "spiritual sons" and that therefore bishops responded to reports of abuse,

> as a father might try to protect his household, and contain the damage done by a wayward son, even when the son was guilty of a crime. Damage control in these circumstances becomes the mindset of the bishop and his core advisers. The aim is to keep the abuse from the media so as not to cause scandal. A criminal investigation or a civil lawsuit might also threaten the financial stability of the diocese. And in these circumstances, the welfare of the victim is seldom the first concern of Church authorities.[89]

The fear of scandal reinforces the 'culture of secrecy' in the Church, a culture which was similarly was identified by the Attorney General for Massachusetts in his report on child sexual abuse in the Boston archdiocese.[90]

Willie Walsh, former Bishop of Killaloe, described how fears "that the people would be scandalised" pervaded the institutional Church and that this was an oft cited phrase. He mentioned the references to scandal in the gospels noting that causing a scandal can be as grave as the sin itself and that scandalising people received the strongest condemnation.[91] That this teaching pervaded wider society is evident from a mother's response to her son's abuse in 1974. She and her husband decided not to report the abuse to the Gardaí in the interest of her son but she also wished to protect the priest:

> In case it was scandal, I suppose. That's the way we were instructed in those days: you didn't give scandal and we went out of our way not to let anybody know who it was. [92]

Lindsey Earner Byrne asserts that this reflects how, in a broader culture of

secrecy, the needs of the abuser and the abused were perceived as bound together, as "this mother believed it was both in her son's interests and the priest's to keep things quiet".[93]

Record keeping

The failings in the internal management system of the diocese of Ferns were compounded by a failure to keep adequate records of complaints and the absence of a transparent complaints procedure.[94] The Murphy (Dublin) Report described the archdiocese of Dublin as having no proper management structure.[95] Auxiliary bishops and the chancellor all dealt with complaints but they did not have defined areas of responsibility or authority.[96] While it was apparent that some regarded the archbishop as "the repository of the overall perspective"[97] it is apparent that not all complaints were reported to him. When complaints were made to the archbishop he often told only one other person and there was often a failure to convey information of known abusers even to priests of the parish where the abuser was being transferred.[98] The Cloyne Report shows how Bishop Magee "took little or no active interest in the management of clerical child sexual abuse cases until 2008…".[99] Monsignor Denis O'Callaghan, Vicar General and the delegate selected by Magee to manage complaints of sexual abuse, did not always keep the bishop informed of complaints and allegations of child sexual abuse.[100] Furthermore, O'Callaghan kept files relating to complaints of child sexual abuse in his house, and about 20 per cent of the documents supplied to the Commission of Investigation were undated.[101]

While the Ferns Report concludes that both "Bishop Herlihy and Bishop Comiskey placed the interests of individual priests ahead of those of the community in which they served"[102], the Murphy (Dublin) Report asserts that the Dublin archdiocese, at least until the mid 1990s, was preoccupied with the maintenance of secrecy, the avoidance of scandal, the protection of the reputation of the Church, and the preservation of its assets in dealing

with cases of child sexual abuse. It concludes that "all other considerations, including the welfare of children and justice for victims, were subordinated to these priorities".[103]

While priests who abuse children are directly responsible for their actions, the Murphy (Dublin) Report makes it clear that

> **their superiors are responsible for ensuring that they are not protected by their status and that they do not get special treatment. Their superiors are also responsible for ensuring that offending priests are not protected from the normal processes of the civil law nor facilitated in their privileged access to children and that they are not facilitated in re-offending.**[104]

The Ferns Inquiry expressed concerns at the level of cooperation extended to the Gardaí by Bishop Comiskey, at the initial stages of their investigation into the case of Seán Fortune, a serial child abuser. It reported how despite three attempts on behalf of the investigating Garda, Bishop Comiskey would not make a statement, although he stated that he was in communication with "a senior Garda officer" at the time. He did not volunteer diocesan files in relation to Fr Fortune to Gardaí, which would have facilitated the investigation, until a year after the investigation had commenced.[105]

The use of 'mental reservation' to mislead or conceal information is highlighted in the Murphy (Dublin) Report. Described as "a concept … which permits a churchman knowingly to convey a misleading impression to another person without being guilty of lying", mental reservation was used in a press statement on behalf of the Dublin archdiocese after the conviction of Fr Edmondus[106] in the criminal courts in 1997.[107] The statement claimed that the archdiocesan authorities had "co-operated with the Gardaí in relation to" one of the victim's complaints. The Report describes how the victim, Marie Collins,

was upset by that statement as she had good reason to believe that the archdiocese's level of cooperation was, to say the least, questionable. Her support priest, Fr James Norman, subsequently told the Gardaí that he asked the Archdiocese about that statement and that the explanation he received was that 'we never said we cooperated 'fully', placing emphasis on the word 'fully'.[108]

Guidelines

Every diocese and every organisation which "employs, qualifies or appoints persons to positions where they have a significant measure of unsupervised access to children", is responsible for preparing, publishing and revising "a code of conduct dealing with the manner in which priests, or other employees or appointees, would interact with young people".[109] In 1994, the Irish Catholic Bishops Conference set up an Advisory Committee to consider and advise on an appropriate response by the Catholic Church in Ireland to an accusation, suspicion or knowledge that a priest or religious had sexually abused a child. The Committee was also charged with developing guidelines for church policy and to suggest a set of procedures to be followed in these circumstances. The resultant report is commonly referred to as the Framework Document.[110] The document provided a framework within which the bishop could fulfil his canon law obligations whilst also reporting complaints to the civil authorities.[111] The recommendation, that in instances where it is known or suspected that a priest or religious has sexually abused a child, the matter should be reported to civil authorities, marked a radical departure from the procedure historically adopted by church authorities. The Framework Document also set out detailed procedures to deal with allegations of child sexual abuse.[112] The establishment of a committee in each diocese, which would advise the bishop on what action should be taken when a complaint of child sexual abuse was made, was one of its principal recommendations.[113]

However, it is important to note that the Framework Document and the

guidelines it entailed were not mandatory. While the Bishops' Conference endorsed the document, bishops are not bound by the decisions of the Conference.[114] Nor was it recognised by the Holy See. Vatican authorities had reservations about the policy of reporting to the civil authorities and the Congregation for the Clergy in Rome indicated that the text of the document "contains procedures and dispositions which are contrary to canonical discipline".[115] The Apostolic Nuncio wrote to the Bishops of Ireland in 1997 informing them that if priests affected by the guidelines in the Framework Document were to appeal to the Holy See, the results could be "highly embarrassing and detrimental" for Irish bishops if their actions were not in line with canon law.[116] A recent RTÉ documentary made this letter public and showed that at least one bishop interpreted this letter as "a mandate from the Congregation of the Clergy asking us to conceal the reported crimes of a priest".[117] The Cloyne Report described the reaction of the Vatican to the Framework Document as "entirely unhelpful to any bishop who wanted to implement the agreed procedures".[118]

The Vatican

Vatican authorities did not cooperate with the investigations into both Dublin and Cloyne. The Commission of Investigation into the Dublin archdiocese requested material relating to reports of clerical sexual abuse conveyed to Rome from the archdiocese to Vatican authorities. However, the relevant body, the Congregation for the Doctrine of the Faith (CDF) did not respond directly to the Commission. Instead the CDF contacted the Department of Foreign Affairs "stating that the Commission had not gone through appropriate diplomatic channels".[119] As the Commission was independent of government it did not consider it appropriate to use diplomatic channels.[120] In 2001 the CDF issued Sacramentorum Sanctitatis Tutela, which provided that all allegations of child sexual abuse, which have reached the threshold of "a semblance of truth" should be referred directly to the CDF, which would elect to deal with the

matter or would advise the bishop on the appropriate action to take in canon law.[121] However, when the Commission was investigating the diocese of Cloyne and it asked the Papal Nuncio to submit to it any relevant information, the Nuncio replied that the Nunciature,

> does not determine the handling of cases of sexual abuse in Ireland and therefore is unable to assist you in this matter. In fact, such cases are managed according to the responsibility of local ecclesiastical authorities, in this instance the Diocese of Cloyne. Like all ecclesiastical entities in Ireland, the Diocese of Cloyne is bound to act in accordance with canon law and with all civil laws and regulation of Ireland as may be applicable.[122]

It is clear the Vatican response to the Framework Document "gave comfort and support to those who … dissented from the stated official Irish Church policy".[123] There is evidence in the Murphy (Dublin) Report that these guidelines were routinely ignored. While Cardinal Connell told the Commission that he "made the guidelines the policy of his Archdiocese", a note taken by Fr Norman of a meeting between the Archbishop and Marie Collins, a victim of abuse, noted that,

> **One of the matters that upset Marie most was the statement by Cardinal Connell that the Framework document was not binding in canon or civil law and that therefore he could follow what parts of it he wanted to follow.[124]**

The Framework Document was subsequently reviewed and replaced by a similar document, *Our Children Our Church*, in 2005, which also did not have legal status under canon law.[125] These guidelines indicate that each bishop, religious superior and chairperson of a church organisation should have available to them a director of child protection. The director, a professionally trained person, is responsible for referring allegations, suspicions and

concerns of child abuse involving church personnel to the civil authorities and for implementing the appropriate church procedures. When an allegation of child abuse is received, the director may take one of the following courses of action: report to the civil authorities; seek further clarification to establish whether "reasonable grounds for concern" exist; or they can take no further action.[126] When those working within the Church have concerns or suspicions that a child or young person with whom they have contact is at risk or experiencing abuse perpetrated by non-church personnel, the procedures to be followed are notably more concise. The guidelines state that the person with the concerns has a "civil and moral responsibility to report the matter directly to the civil authorities …" noting that "it is the role of the civil authorities to assess the situation … ".[127]

The Cloyne Report demonstrates how Monsignor O'Callaghan, who fulfilled the role of director, on occasion followed only some of the Church guidelines and on many occasions ignored them completely. The Cloyne Report differs from the Ferns and Murphy (Dublin) Reports in that it deals only with allegations, concerns and suspicions of child sexual abuse made to Church authorities in the period 1996 to 2009. This means that the Church's own procedures were supposed to be in place, and the so-called 'learning curve' which Church authorities had previously used to explain very poor handling of complaints in other dioceses had no relevance in these cases.[128] The failure to report all complaints to the Gardaí was perhaps the greatest failing on behalf of the diocesan authorities in Cloyne. There were fifteen complaints that should have been reported, but 9 were not. In two cases the alleged victims were minors at the time the complaint was made.[129] The Cloyne Report makes it clear that O'Callaghan did not believe it was always appropriate to report to the civil authorities. He felt that the bishops who drew up these guidelines had "rolled over under pressure from the media" noting his surprise that "they expected Rome to endorse the new policy!".[130] He felt that the commitment of the Church to report to the civil authorities compromised his relationship with a priest against whom allegations had been

made.[131] The Commission notes that in most cases O'Callaghan believed the complainants, however, he did not understand that the requirement to report was for the protection of other children.[132] O'Callaghan was not alone in disregarding the guidelines. Other priests in the diocese who knew of complaints did not report them to the diocese, while in one case a priest who tried to report to Bishop Magee was discouraged from doing so.[133]

O'Callaghan favoured a "pastoral approach" to complaints and allegations, and with the assistance of a soliticor, Diarmaid Ó Catháin, who advised the diocese on such cases, "he devised a scheme whereby counselling was provided to the complainants in a manner which it was hoped would not attract any legal liability to the diocese".[134] In many cases O'Callaghan took it upon himself to decide whether the priest in question continued to be a threat to children. Usually there was no proper investigation or inquiries made to see if there was an ongoing risk or if others had been abused.[135]

The case of Brendan Wrixon[136], identified as Fr Caden in the Cloyne Report, shows how O'Callaghan preferred cases to be dealt with in-house, but also that other priests in the diocese may have felt the same way. In 2004 allegations of sexual abuse against Wrixon were made by Patrick[137], who had gone on to be ordained as a priest himself.[138] After the allegations were made, O'Callaghan wrote to Magee noting that,

> the committee found it difficult to understand what Patrick is about – asking for action from Diocese, which would evidently lead to taking a fellow priest out of ministry, while professing his wish for reconciliation, without appreciating that his action will render his own position in the Diocese untenable where fellow priests are concerned.[139]

Wrixon, who ultimately pleaded guilty to three counts of gross indecency, admitted the abuse to Bishop Magee when Magee produced a letter written by Wrixon to Patrick, which referred to "a dark secret".[140] After the meeting at which this admission was made Magee wrote two accounts of it, one reporting that Wrixon had denied the allegation which was sent to the diocesan office,

and a second report noting that he had admitted the abuse, which was sent to the CDF in Rome.[141] Magee explained that the two reports reflected his belief that a conversation between a bishop and a priest was confidential and privileged and that he believed his correspondence to the Vatican would not be discoverable.[142] In his initial meeting with the Gardaí, Magee did not disclose the full content of the conversation he had with Wrixon,[143] and he also lied to Ian Elliott who was investigating the case in his role as Chief Executive Officer of the National Board of Safeguarding Children in the Catholic Church (NBSCCC). An independent supervisory body established by Irish bishops, the NBSCCC introduced new child protection guidelines for the Catholic Church in 2009. Elliott had asked whether the accused had admitted to the offences and Magee said that he had not. Magee told the Commisson that he had been "torn between what he considered his duty of confidentiality to Fr Caden and to Rome and the question Mr Elliott had put to him. He said he felt obliged to preserve the confidence".[144]

Similarly, in 2002, Magee was reluctant to cooperate with the Gardaí in the case of Patrick Twohig, identified as Fr Drust in the Cloyne Report.[145] The complainant, Ula[146], had first presented a handwritten account of the abuse she experienced to the diocesan authorities and she later met with Magee. O'Callaghan reported the matter to the Gardaí and an investigation began. Magee was asked for a statement; however, the solicitor who advised the diocese on matters relating to child sexual abuse, explained to the garda sergeant that "[i]f a matter was discussed in confidence with a bishop, the bishop could not disclose the confidence without first getting, obtaining, the consent of the person who had reposed the confidence".[147] He also stated that "it was in the interests of the common good that Bishop Magee should not be asked to make a statement".[148] The sergeant wanted a statement from the bishop in relation to his involvement in the case and a copy of Ula's handwritten account of what had happened. According to the Garda report the Bishop, through his solicitor, declined to make a statement or supply the document in question. The Garda report states that the solicitor said that the

document was "a Church document and hence confidential".[149] Ultimately it was agreed that the sergeant could have a copy of the document if Ula gave her written consent. However, incidents such as these raise significant questions about the rule of domestic law in Ireland and the way it must apply equally to all people living in this jurisdiction.

Conclusion

The absence of effective accountability mechanisms within the internal structures of religious orders and diocesan and Vatican authorities meant that cases and complaints of child abuse were ignored or mishandled, allowing for the continued abuse of children. The low status attributed to and the unsuitability of some of the staff that worked in residential institutions, the large children to staff ratio, and a lack of resources, were significant factors in enabling the abuse of children. The subsequent ignoring of complaints and the transfer of those who abused was an entirely ineffective way of addressing child protection issues. Furthermore, it is apparent that those in authority knew the recidivist nature of this abuse, while knowledge of its criminal nature was confirmed by the fact that lay offenders were generally reported to the Gardaí. Similarly the actions of the diocesan and Vatican authorities facilitated rather than prevented the abuse of children by priests. The failure to investigate complaints, to accept the advice of psychologists in some cases, to notify relevant parties that a recently transferred priest had experienced complaints of child abuse, combined with the failure to use canon law to remove abuser priests from ministry, the culture of secrecy around this issue and the use of mental reservation, reveal an organisation that went to extreme lengths to protect its priests and its reputation at the expense of children. The failure to notify the Gardaí of allegations of child abuse indicates that some of those in authority in the Catholic Church did not feel their members were accountable to civil authorities.

State Actors

Government Departments

The Ryan Report reveals how State agencies, in particular the Department of Education, failed in their statutory duty to inspect and monitor residential institutions. The Report asserts that the evidence of these failures "can … be seen as tacit acknowledgement by the State of the ascendancy of the Congregations and their ownership of the system".[150] This 'tacit acknowledgment' reflected the State's inheritance of denominational residential institutions, the special position afforded Catholic social teaching in Irish society, the constitutional provision which suggested the State could not interfere in the internal management of churches, and the "deferential and submissive attitude" held by State officials towards the religious orders.[151]

Responsibility

Industrial schools and reformatories were regulated by the 1908 Children Act, by which every certified institution was to be inspected "at least once in every year".[152] The minister for education had the power to withdraw the certificate if dissatisfied with the conditions, rules or management of the school.[153] The 1941 Children Act gave the minister the power "to remove Resident Managers who were derelict in their duties"[154], although the act did not give the minister power over the selection of a manger or approval of appointees.[155] In terms of finance, the State paid for the children rather than the institution; i.e. it made a grant for each child.[156] Although "the Minister for Education had legal responsibility in respect of schools", the Ryan Report reveals that the minister and officials in the Department of Education considered themselves to have a purely administrative role in residential institutions, one carried out by the staff of its Reformatory and Industrial Schools Branch (RISB).[157] They considered members of the religious orders associated with the schools, in particular the Resident Manager, responsible for the running and management of the

For further discussion of State responsibility see Professor of Law Gerard Quinn, 'A Civic Republic?' page 217.

schools.

These schools came under the control of the Department of Education on 1st June 1924. The function of the Department is to certify that the schools are fit for the reception of the young persons and children committed to them.

The Department of Education's Annual Report. See The Ryan Report Vol. I 6.186

The Department had a duty to ensure that "the rules and regulations were observed, the finances were correctly utilised and that reasonable standards were maintained".[158] The Report asserts that "the Department of Education should have exercised more of its ample legal powers over the schools in the interests of the children".[159] In particular, the minister's power to remove a manager "should have been exercised or even threatened on more than the handful of occasions it was invoked", as "this would have emphasised the State's right to intervene on behalf of a vulnerable group".[160]

Deference

The deferential relationship agents of the State had toward the Catholic Church resulted in the complete absence of effective accountability mechanisms in relation to residential institutions. This deference reflected the legacy of a nineteenth century system in which agents of the Catholic and Protestant traditions in Ireland had both sought to provide welfare services for their co-religionists – Catholic services for Catholics, and Protestant services for Protestants – usurping the potential role of secular services.[161] This resulted in "considerable competition – and duplication – in the provision of welfare activity".[162]

For Catholic Church authorities welfare services should reflect Catholic

social teaching and therefore permit assistance based on need; hence the promotion of charitable services rather than secular services provided by the State as a legal entitlement. Earner-Byrne has described how in the 1950s the Catholic Archbishop of Dublin, John Charles McQuaid (1940-1972), continued to promote 'the subsidiarity principle' which allowed for State funding but not control of social services. She notes that "he was determined that co-operation would not entail capitulation", and that agents of the Catholic Church should determine the nature of the services provided while agents of the State were not expected to interfere.[163] Large numbers of vocations meant a sizeable number of men and women in religious orders were available to undertake the provision of services, thus securing the position of the Catholic Church as a dominant service provider.[164] The State often only entered the private sphere to directly provide services when private actors were totally unable to do so. This meant that services often developed in an ad hoc manner, and the lines of responsibility and accountability in welfare provision were often unclear.

It is apparent that the nature of the relationship between the Catholic Church and the State posed few problems for most members of the political establishment. Agents of Church and State "were moulded by the same culture" and educated at the same schools, resulting in a situation whereby many agents of State, from cabinet members to civil servants, were prepared to accept both the social and moral teachings of the Catholic Church as they pertained to issues of governance.[165] Barry Desmond, former Labour minister for health has suggested that in both the Departments of Health and Education, belonging to a Catholic lay organisation such as the Knights of Columbanus or Opus Dei, "would do you no harm", in terms of graduating through the ranks of the civil service. He also described how policy documents from the Department of Health were regularly sent for the consideration of Archbishop of Dublin, John Charles McQuaid.[166]

It has been argued that in the early years of Irish independence both nationalist and religious leaders combined forces in order to "shape the moral landscape in their own vision through their new abilities to formulate, control

and deliver legal reform and welfare, health and education [services]".[167] Anthony Keating submits that this involved the construction of an "imagined nation" that defined Irishness and the national moral character in terms of a Celtic Catholic purity.[168] In this "imagined nation" the infusion of social policy with Catholic social teaching meant that the family[169] was of prime importance and should not be subject to State interference. This is reflected in articles 41.1.1 and 41.1.2 of the Irish Constitution (1937) which recognise the family "as the natural primary and fundamental unit group of society", worthy of protection in its "constitution and authority".[170]

However, Moira J. Maguire asserts that "far from protecting and upholding the family, Irish social policy had the effect of destroying family life when it did not conform to middle-class norms and expectations, or when it threatened the nationalist ideal of simple, content, if poor, morally pure Irish society".[171] She adds that "the constitutional rights of poor parents were regularly trampled with impunity throughout the twentieth century as thousands of children were removed from their homes on the grounds of poverty, neglect and illegitimacy...". [172] Children who were poor, 'illegitimate' and abused were not considered part of the "imagined nation" and often paid a heavy price as they were defined as the 'other' in Irish society.

Irish society "held a particular view of children, of punishment, of unmarried mothers, of sexuality, of sin, of institutional care, of the rights of single parent, of the proper place of the poor".[173]

Keating concludes that the history of institutional childcare "was dictated for much of the twentieth century by the alliance and sensibilities of a generation of clerics, politicians, and civil servants who, like most postcolonial elites, viewed the success of their mission as worthy of any sacrifice".[174]

Regulation: Inspection and punishment

In evidence to the Investigation Committee of the Committee to Inquire into Child Abuse, the Secretary of the Department of Education admitted that there had been "significant failings" by the Department and that it had been ineffective in ensuring a satisfactory level of care for children in institutions, given its role to "approve, regulate and fund" industrial schools and reformatories.[175] The Assistant Principal of the Reformatory and Industrial Schools Branch (RISB) usually conducted general inspections of the schools, while a qualified doctor acted as the medical inspector.[176] The nature of the relationship between agents of the Catholic Church and the State contributed to the latter's failure to regulate residential institutions appropriately; however, the failure of department officials to inspect some institutions at all indicates that children in residential care were not a priority for government departments. Furthermore, the RISB occupied "a lowly place in the Department's hierarchy"; until 1971, the head of the RISB was "a relatively junior official" usually at or about Assistant Principal level.[177]

Certain institutions were not subject to any inspection by government officials. This was the case in St. Joseph's School for Deaf Boys in Cabra, Dublin.[178] Similarly there were no inspections of the detention centre for boys on remand, Marlborough House, Glasnevin, Dublin. The Departments of Education and Justice therefore relied almost exclusively on responding to complaints as their means of monitoring Marlborough House.[179] There were also no inspections undertaken at Our Lady of Good Counsel, Lota, a school for children with learning disabilities managed by the Brothers of Charity.[180]

Apart from my high regard for the Brothers concerned, the community concerned, there is also a very constant system of inspection for all such institutions. I personally have visited practically all of them.

Minister for Education in the mid-1950s. See The Ryan Report Vol. I, 7.117

The inspection reports that were completed alerted officials within the Department of Education to the failings of residential institutions. Keating describes how "even the most cursory examination of the existing archives explodes the myth that the State was unaware of the level of physical privation and abuse in these institutions".[181] Dr Anna McCabe was appointed as Medical Inspector in 1939 and in the early years of her appointment she was highly critical of many residential institutions. In 1944, she described St. Michael's Industrial School, Cappoquin as "another school run by the Sisters of Mercy which has a long record of semi-starvation".[182] That same year, in St. Joseph's Industrial School, Dundalk, she noted that "very many of the children" had "nitty and verminous heads" and in 1946 she reported that "practically every single child in the school had a verminous and nitty head".[183] She wrote "if these people are going to run a school they must look after these children - otherwise I will have to recommend that they are not fit to look after children and have them transferred elsewhere".[184]

There was also awareness within the Department of Education of problems at St. Conleth's Reformatory for boys, in Daingean, Co. Offaly. In 1950 Fr Ricardo[185], Superior General of the Oblate Congregation, and Fr Pedro[186] , Resident Manager of Daingean, met with the Minister for Education and other department officials to discuss the problem of reduced numbers in Daingean - due to the end of the Emergency. In particular the Oblates wanted a grant on a sliding scale once numbers fell below 200. The Inspector of Reformatory and Industrial Schools drafted a reply which contained "forthright criticism" of the reformatories including the following points: "reformatory schools did not fulfil the purpose for which they were established"; "there was something wrong in the system"; "the Oblates needed to be educated as much as the boys, as they knew little about the value of practical subjects or the training of boys"; and "the authorities of the industrial schools were no better, and they would only be convinced of the need for change by example, and changing the Reformatory may do that".[187] While these criticisms were made in 1950 almost nothing changed in the operation of industrial schools and

reformatories until the 1970s.[188]

Keating concludes that the State seemed "paralysed from action for fear of being left holding the baby and of sullying the reputation of the very organisation that acted as custodian of the State's founding myth, i.e. Ireland as the model Catholic nation".[189] The historical legacy whereby the Catholic Church had provided extensive social services resulted in a State that felt that it was inappropriate to provide such services for its citizens and therefore became incapable of providing services. The Ryan Report demonstrates how this weakened the position of agents of the State when problems arose, especially when they sought to remove managers. In its conclusion to the chapter on St. Joseph's Industrial School, Dundalk, the Ryan Report notes:

> Problems arose from time to time in this institution because of the incapacity of a Resident Manager, by reason of old age and/or infirmity. The management system of the Congregation was slow to remedy the situation. The Department of Education was limited to exhortation and threat, but was unable to effect the necessary change because the Mother Superior appointed the Resident Managers.[190]

However, while it was true that the Mother Superior appointed managers, the minister had the power to remove both certificates and managers. Under Section 5(4) of the 1941 Act, the minister could request the removal of a manager on the grounds of unsuitability.[191] During her tenure, McCabe managed to have two Resident Managers removed; these cases demonstrated that when the Department was "prepared to insist and to invoke the statutory power, the religious authorities responded".[192]

The Department … should never have undertaken and is in the nature of things unable to discharge [these responsibilities] satisfactorily.

Department of Education Memo (1944) regarding the management of Marlborough House, a remand centre run by that Department. See The Ryan Report Vol. I, 16.42

The Department's lack of control or influence in the selection of a new appointee may have made the minister less inclined to use this tool. In Cappoquin, where the manager had been removed in 1944, McCabe described the new appointment as "completely under the influence of the previous occupant of the post".[193] That said, it is also worth noting that regardless of the criticisms in inspection reports, school certificates were never revoked. The Department considered it "impolitic" to remove the certificates.[194] This was most likely the result of the State's fear that the religious orders would cease to provide these services. Indeed, the Ryan Report highlights that "the capital and financial commitment made by the religious Congregations was a major factor in prolonging the system of institutional care of children in the State".[195] Perhaps even more significant than this financial and capital commitment was the fact that changing the status quo would have required the State to take on a very powerful vested interest, "something the State was simply not prepared for politically …[or] psychologically".[196]

This change would have also required a "brave new imagining" in how the State should provide for the 'public child'[197] and a re-imagining of Irish society along egalitarian lines. Earner-Byrne describes how "contemporary welfare debates reveal a deep-rooted distrust of the working class family".[199] Poverty was often considered not only criminal but self-inflicted. She reveals how fears of interference with the family "did not extend to the destitute" and describes a debate in the Dáil which makes this clear:

> **In 1959, Dr Noel Browne … asked the Minister for Social Welfare if , 'to protect the integrity of the family unit', he would pay destitute parents the equivalent of grants paid to religious homes. The Minister retorted that 'there is no guarantee whatever that the money paid would be devoted to the care of the children.'[200]**

Earner-Byrne notes that "the poor record of inspection reveals that the State did not have the same anxieties about how the religious homes deployed resources", and she concludes that "the official resistance to refocusing the welfare system from incarceration to family support repeatedly boiled down to an unwillingness to put the industrial schools out of business (i.e. to redefine the State's relationship with the Roman Catholic Church) and a distrust of the poor family (i.e. to confront class inequality)".[201]

Far from devising a new system of child care, up until the 1970s the State colluded with the practices of religious orders who ran residential institutions. This is particularly evident with regards to the use of corporal punishment. Regulation 12 of the Department's Rules and Regulations required that residential institutions have punishment books to record serious misconduct and the punishments inflicted. The book would be presented to the Inspector when he/she visited.[202] Regulation 13 described the nature of punishment, which included forfeiture of awards, privileges, or rank previously obtained by good conduct; moderate childish punishment with the hand; and chastisement with the cane, strap or birch. Chastisement with the cane, strap or birch should only be inflicted by the Manager or by "an Officer specially authorised by him".[203] The regulation also stated that caning on the hand was forbidden and that no punishment that was not described in the regulation "shall be inflicted".[204]

The Report makes it clear that many staff members dealt out severe physical punishment, and that it was not the preserve of the Manager or his appointed officer in many institutions. For example in St. Joseph's Industrial School, Artane, a 'Disciplinarian' was appointed to deal with serious offences but "all Brothers carried leathers and administered punishment for a wide variety of infractions".[205] Furthermore, it is apparent that the minister did not insist on residential institutions keeping punishment books as, on 16 December 1970, the Minister for Education informed the Dáil that "no industrial school now keeps a punishment book".[206] Only St. Patrick's Industrial School, Upton, and St Joseph's Industrial School, Dundalk, could

provide the Commission to Inquire into Child Abuse with punishment books, and even they could only provide books for part of the period under investigation.[207] The Report describes the punishment book of Upton from the 1950s as documenting "brutal corporal punishment".[208] Furthermore, officials at the Department of Education and the members of the Oblate order who managed Daingean, where no punishment book was kept, had an "open and frank discussion" in the 1940s and 1950s "on the way in which flogging was administered, revealing indifference by the Department to flagrant breach of the rules".[209]

The State sanctioned the use of corporal punishment in residential institutions long after it was banned in national schools. In January 1982 the Department of Education issued Circular No 9/82, which prohibited corporal punishment in national schools. The Resident Manager of St. Joseph's Industrial School, Ferryhouse, Clonmel inquired if "because of the nature of the work in which we are involved, there may be certain occasions when … some form of corporal punishment should be used".[210] The Department of Education asked the Manager, given that the Rules and Regulations for industrial schools had been approved fifty years previously and had become outdated, if he "would give earnest consideration to the question of statutory Rules for the conduct of your school" and then forward them to the department.[211] The former Manager gave evidence to the Commission that nothing was done about this request, and the Report notes that "Ferryhouse was given leeway to continue" the use of corporal punishment.[212] It was only in 1993 that the "senior management team at Ferryhouse took a decision to stop using the strap".[213]

Complaints and cases

The treatment we receive out here in Artane is unbearable specially from Br Verrill if you say a Vulgar word and he hears about it he takes you out of bed … gives you a shocking

treatment, there has been proof of this in some boys faces during the last month.
[The Boy]
Yours sincerely

PS Do what you can Sir

An anonymous letter to the Minister for Education from the 1950s. See The Ryan Report Vol. I, 7.163.

There is clear evidence of deference to agents of the Catholic Church in the manner in which the Department of Education handled complaints. The Ryan Report concludes that,

> The Department did not have a system for examining and investigating complaints. It had a system that managed complaints in a way that minimised adverse publicity and scandal. Its trust in the religious Congregations led to a sceptical approach that rejected complaints in the majority of cases. The Department relied on the Resident Managers to respond to complaints and tackle the issues raised. This approach was a serious failure of the Department's supervisory role.[214]

It is highly regrettable that the Reformatory and Industrial School system should be the subject of so much ill informed and malicious attack. The difficulty in dealing with the problem is that it is not always possible to identify those responsible or to be sure of the motivation which inspires the attack. The ignorant and the malicious, like the poor, we have always with us.

The Assistant Secretary of the Department of Education to the Brother Superior at Artane in relation to a newspaper article which detailed a case of physical abuse at the school in the late 1960s. See The Ryan Report Vol. I, 7.216.

In the case of direct complaints the Resident Manager would often be sent a copy of the complaint with a request for his observations on the matter. Usually this response and the seriousness of the complaint itself determined whether or not the matter would be pursued with management. In the Department's submission it summarised the situation:

> There does not appear to have been a defined system of assessing the seriousness of a parental complaint and generally the Department did not interview the parent or child concerned … There is no indication that complaints supported by public representatives were taken more seriously than others … There is also evidence to suggest that in many cases the Department accepted the explanations given by the Resident Manager when complaints were brought to his/her attention and the Department may have viewed some complaints with a degree of scepticism… Where complaints were aired in the public media, the Department appears to have been concerned to protect the reputation of the school while privately addressing concerns with the religious order.[215]

The following examples elucidate this analysis:

(a) The Report found that the the Department of Education was dismissive towards the serious complaint of a former resident of St. Joseph's Industrial School, Artane from 1929-1935. He wrote to the department in 1946 about his experience of physical and psychological abuse. He wrote "It is 11 yrs [sic] since I was in Artane and I don't [sic] forget one minute of it, neither do others, the injustices done to others and myself, I will see; won't happen to others: Boys beaten, under the Shower Baths by Staff Mr Byrne[216], Boys heads beaten on the Handball Alley Wall by Bro Acel[217] " And a Drill Master who used say 'do it where

you Stand' when a boy ask to go to the W.C.".[218] The Assistant Secretary in the Department of Education simply agreed with the Inspector that no action was required. The complainant received no response and no comment was sought from the Resident Manager.[219]

(b) In 1964 a solicitor sent a letter to the Department of Education on behalf of the parents of a boy resident at Daingean, alleging that their son had been physically abused and calling for an investigation. A copy of the letter was sent to the Manager and a letter was subsequently sent from the Department to the solicitor in question: "I am directed to inform you that the allegations made by the parents of the boy have been investigated by the Manager of the school. He is satisfied that the allegations … are without foundation …". [220] There is no record of what investigations the Resident Manager made and no record of what he told the Department of Education. [221]

The Report shows that complaints made via public representatives did not usually receive a more urgent response. In 1945 a local councillor wrote to the Minister for Education and the Minister for Justice recounting the story of a boy who had absconded from St. Joseph's Industrial School, Glin, following a severe punishment. He returned home to his mother, who brought him to the councillor, who in turn brought the youth to be examined by a doctor. The boy had a number of dark stripes on his back, and the doctor said he bore evidence of having received a flogging. The boy described being stripped of his clothes and flogged with a whip. The councillor made the following enquiries: was this punishment prescribed by law; should the victim be compelled to be partly stripped; was it compulsory for the Superior or other authorised person to inflict such treatment in certain circumstances; was the use of a whip prescribed and permitted; and did the report from Glin reflect what the boy said. When he received no response from the Department of Education,

the councillor wrote a second letter which drew the following response: "I am directed by the Minister for Education to say that he has had full enquiries made into the circumstances of the case and has taken appropriate action in connection therewith".[222] The councillor repeated his request for answers to his questions, "in view of the grave public importance of the case" and asked to know the nature of the "appropriate action" that had been taken. The Ryan Report describes the reply to this letter as having been "designed to put him in his place",

> The Minister desires me to inform you that he does not feel called upon to give you the information you have asked for in the matter unless he is supplied with evidence as to your right to obtain that information and is given an assurance as to the purpose for which it is required.[223]

Undeterred the councillor replied that his "position as a public representative" entitled him to the information. He finally received a reply with further information in January of 1946 "on condition that it should not be made known to anyone else".[224] Ultimately the boy in question was discharged, and the Resident Manager of Glin was transferred to St. Joseph's Industrial School, Salthill, Co Galway, to work again as Resident Manager.[225]

Culture of secrecy

The difficulty encountered even by a public representative in gaining information from the Department of Education confirms what John Bruton, as Parliamentary Secretary for Education, described almost 30 years later as "a certain amount of secretiveness" in the approach of the Department to the subject of residential care for children.[226] Finola Kennedy has suggested that a mirror image of the culture of secrecy that existed within the operational mechanisms of the Catholic hierarchy, can also "be located in the culture of secrecy in government".[227] She describes how,

> **[u]ntil the late twentieth century it was accepted practice, even regarded desirable by those in authority, that neither the citizenry of the State, nor the laity in the Church, had any business knowing about the inner workings of Church and State. Indeed it was regarded better that they should remain in the dark.[228]**

State officials often labelled those who broke this silence as cranks and troublemakers. Lay people who worked in the institutions made complaints to both the Department of Education and the Department of Justice. In the 1950s Mr Dubois[229], who had been employed as a night watchman at St. Joseph's Industrial School, Glin, informed the Department that the boys there experienced physical abuse and had inadequate supplies of food, clothing and heat. McCabe was sent to inspect the school but in her brief report said that there was no ground for complaint. Dubois subsequently wrote to the Department of Justice, which provoked a second visit from a Department of Education official, but this did not lead to any further actions. It was reported that the observations of inadequate food, clothing and heating,

> are true in the main of many Industrial Schools, but they are of course, not matters of deliberate intent and so the light in which they have been put by Mr Dubois is false.[230]

The Ryan Report concludes that no thorough investigation was undertaken and Dubois' complaints were written off as the outpourings of a man with a personal grievance – he had been dismissed for "insubordination" and according to the Manager had "vowed to injure the school".[231] No one from either Department interviewed him.[232] Keating argues that the State "actively used its authority to silence any complaints" and silenced those who put their head above the parapet.[233] He asserts that "members of the State ruined careers, they would start negatively speaking against people, they would block people's promotions, they would pull people in, given them talkings to,

For further discussion on whistleblowers see Elaine Byrne (Lecturer, Journalist and Political Analyst), 'We did know' on page 224.

and tell them they ought to be minding their own business".[234]

Mr Dubois is a confirmed letter writer, as is evidenced by the number of letters he has written to the boys in the School and by the fact that his turn of English is unusual in a night watchman ...I would guess that Mr Dubois is a well-meaning person of rather unreserved character, and would advise taking no further notice of any missives he may forward.

A senior civil servant to the Secretary of the Department of Education, early 1950s. See The Ryan Report Vol. I , 11.102

Ineffective procedures

When members of religious orders brought clear cases of abuse to the attention of the Department of Education, the blurred lines of responsibility and the absence of accountability procedures led to the mismanagement of cases of abuse by civil servants. In 1980 the Resident Manager, Fr Stefano[235] , of St. Joseph's Industrial School in Clonmel (Ferryhouse), informed the Department of Education of an incident of sexual abuse that had occurred at the school.[236] The perpetrator, who was subsequently arrested and charged in 1996, was a Brother of the Rosminian order, which managed the school. An official within the Department, Mr Black[237] , gave evidence to the Investigation Committee, revealing that he had received a phone call from Fr Stefano to this effect in 1980.[238]

Mr Black stated that he had not made a written record of the events but had passed the details of Fr Stefano's disclosure on to his superior, the Secretary of the Department, Mr Orange.[239] There is no evidence that Mr Orange kept a written record either. Mr Black confirmed that he had not asked whether Fr Stefano had informed the Gardaí of the incident and that there was no follow up investigation, "as the culprit was found" – according to Stefano the abuser was "now on a train … out of the place".[240] While Black

explained that there were no guidelines in the Department as to how to handle a complaint of that nature, there was a complaints procedure "which had been handed down by tradition in the Department" which "involved sending an investigator out to interview the people concerned".[241] When asked why this procedure was not used in this case, Mr Black replied,

> Because the thing was finished, the crime was solved, the culprit was on his way off … What more could I do at that time? I should have now have told the Guards, of course, you know, because it was a crime, but it wasn't regarded in that light at that time.[242]

The Department of Education held no contemporary written records in relation to this incident, and there was no follow up investigation. The Department of Education outlined its position in relation to this case, and other allegations of abuse at Clonmel:

> In detailing the allegations of abuse in Clonmel and the response of the Department it is worth noting the Department's position with regard to dealing with allegations of this nature was that the Department does not investigate allegations of abuse. This is a matter for the employers of the staff (in the case of St Joseph's this would be the Rosminian Order), the Gardaí and the health authorities. The responsibility of the Department would be to ensure that the welfare and safety of children was protected and that the matter had been reported to the appropriate authorities and that appropriate steps were being taken to investigate the matter and protection of children.[243]

This statement suggests that the Rosminian order has primary responsibility for dealing with these cases rather than any agent of the State. Furthermore, the Department did not conduct an investigation, nor did it facilitate an investigation, "whether by the Garda Síochána, by the Department of Health, by the local Health Authority or by any other agency".[244]

Collusion and contention

The relationship between agents of the State and of the Catholic Church was not without tension; while frequently collusive, it could also be contentious. In 1954, Resident Managers decided to close one of the Christian Brothers' schools, Carriglea Park Industrial School, Dun Laoghaire, and to segregate all of the 'juvenile delinquents'[245] in their residential institutions by placing them in Letterfrack Industrial School. Officials at the Departments of Justice and Education, and members of the judiciary, were strongly opposed to this move because Letterfrack's remote location would cause difficulties for residents and their families. Ultimately this opposition was ignored and the closure and transfer of 'delinquents' to Letterfrack went ahead. In relation to these events one Christian Brother commented that "the Government does not seem to have any power to prevent us from giving effect to [these] proposals", which demonstrates how new developments acted like a test case, testing the boundaries of power. In relation to this particular incident the Ryan Report concluded that "the matter was clearly out of the Government's hands".[246] It describes the relationship between the religious orders and the State as representative of 'agency capture', whereby "a regulatory body is effectively controlled by the body it is supposed to regulate".[247]

However, while it is clear that government officials wanted religious orders to provide welfare services for children and young people, they were often careful to maintain distance between themselves and management in order to protect the reputation of their departments and to ensure that the State was not associated with the failures in provision and practice. In 1976, Inspector Granville[248], 'Child Care Advisor' in the Department of Education, provided a confidential report to three senior officials in the department. The report noted that the new group home system being developed at St. Michael's Industrial School, Cappoquin, had seen the transfer of "ineffective child care practices" by the nuns involved:

We are in the area of malfunctioning and nearing neglect totally of the children's emotional needs. And we consequently have to scrutinise the future of St. Michael's very closely or the Department could be seen to be colluding with St. Michael's child care practice.[249]

For further discussion on governance see Colin Gordon (Chairman of Food and Drinks Industry Ireland), 'Lessons for Corporate Governance' on page 231.

These sentiments suggest that officials in the Department of Education did not see themselves as responsible for child care practices, and they did not want the Department to be viewed as endorsing or 'colluding' with the very practices they were supposed to be regulating. Granville also suggested that "there is a grave danger that this Residential Child Care Centre may be subjected to a Press campaign".[250] This suggests that a primary concern was fear that a scandal would break and that the Department of Education would be associated with it.

The Ryan Report reveals that those who staffed the schools "seldom if ever had any education or training for their exacting role in childcare" and that "[t]he view seems to have been taken by the Department that the training and development of religious and lay staff in the institutions was largely a matter for the religious Orders".[251] In fact, it was careful to make sure that it did not become charged with such duties. In 1946 a Departmental memo outlined "the challenges facing the Resident Managers" in terms of the trades taught in the schools and in "finding suitable employment for the children".[252] The memo warned that if the Department "interferes much in the matter there might be a danger of the Managers trying to transfer their responsibility to the Department".[253] No effort was made to provide necessary services that religious orders were unwilling or unable to provide. This was to the detriment of children who had been placed in residential institutions, often by agents of the State.

The State as service provider

The physical abuse and neglect suffered by children in the remand centre Marlborough House, reveals that the State also failed when it acted as the direct service provider. Marlborough House differs from most of the institutions addressed in the Ryan Report because it was not managed by a religious order. While the Department of Education had managerial responsibility for the remand home, by section 108 (3) of the Children Act 1908, the Department of Justice had an obligation to satisfy itself as to the "suitability of the accommodation".[254] The Ryan Report makes clear the tensions between the Departments, noting that, from the 1960s, the Minister for Justice "indicated disquiet at the Department of Education's performance and made an attempt to urge that Department into reforms".[255] Evidence in the Ryan Report and Keating's study of Marlborough House indicate "administrative and political tolerance for the evidently abusive system". [256] Only a staff walk out and media coverage of the poor conditions there in the early 1970s led to its closure. Keating describes how the decision to close Marlbourogh House reflected the "delicate equations that civil servants make regarding the likelihood of ministerial damage if it remained open rather than any coherent policy decision based on the rights of marginalised children".[257]

The fact that there was no unified approach to children's services across the departments meant that lines of responsibility were unclear. Former Minister for Justice, Des O'Malley, who encouraged the closure of Marlborough House, described how this led to a lack of joined up thinking between departments, while civil servants were inclined to be vague with regards to the boundaries or limits of responsibility for certain matters. The more vague, the easier it was to evade responsibility, according to O'Malley, and if the minister was in doubt as to whether it was his responsibility or not, the civil servants would think "we'll keep our fella out of that".[258] O'Malley described reams of interdepartmental memos drawn up to explain why responsibility for a particular issue did not lie with a particular department. He said that was the

mindset in the civil service in this particular area of policy.[259]

Gardaí

The Ferns, Murphy (Dublin) and Cloyne Reports raise serious questions about the rule of law, given the evidence of deferential treatment shown to priests and Church authorities by members of the Gardaí. Although Church authorities share responsibility for child protection, the Murphy (Dublin) Report makes it clear that the primary responsibility for child protection must rest with the State, and that in enforcing child protection rules and practices, organisations such as the Church cannot be equal partners with State institutions such as the Gardaí and health authorities.[260]

The Murphy (Dublin) Report refers to the inappropriate relationship between some senior Gardaí and priests and bishops.[261] One example of this was the transfer of the Fr Edmondus[262] case to Archbishop McQuaid. In August 1960, McQuaid was informed that a security officer at a photographic film company in the UK had referred colour film which featured pictures of children, sent to them for developing by Fr Edmondus, to Scotland Yard. Scotland Yard referred the matter to the Commissioner of the Gardaí. There is no evidence of any Garda investigation. According to McQuaid's papers, Garda commissioner Costigan asked him to take over the case because a priest was in question and the Gardaí "could prove nothing".[263] The Murphy (Dublin) Report asserts that

> A number of very senior members of the Gardaí, including the Commissioner in 1960, clearly regarded priests as being outside their remit.[264]

Similarly, the Ferns Report asserts that prior to 1990 there "appears to have been reluctance on the part of individual Gardaí to investigate properly some cases of child sexual abuse that came to their attention".[265] The Inquiry noted that members of the Gardaí kept inadequate records of allegations, perhaps made informally, of child sexual abuse prior to the early 1990s.[266]

While a number of complainants who gave evidence to the Commission of Investigation into the diocese of Cloyne were highly complimentary about the way in which members of the Gardaí dealt with their complaints[267], the Commission expressed concerns about the approach adopted by the Gardaí in three cases.[268] In one case there are no files to indicate that an investigation actually commenced; in another evidence given by a Garda to the Commission differed from the statements he had made in two prior Garda investigations; while in a third case a statement was taken from a young man, but was put in a drawer by a Garda who was soon to retire and then forgotten about. The statement was found as a result of further searches conducted on foot of inquiries from the Commission. The Commission noted that "the Gardaí have given three different explanations for what happened in this case; none of them is convincing".[269]

Some complainants indicated to the Inquiry that they were reluctant to report to local members of An Garda Síochána either because of personal friendships or connections or because they were fearful that confidential information would be disclosed … In at least two cases complaints were made to the Inquiry that information which they gave to Gardaí in confidence was improperly divulged.

See The Ferns Report, p. 48

The Ryan Report describes a number of complaints to the Department of Education about St. Joseph's Industrial School, Greenmount, in the 1940s. A Garda from Union Quay Station wrote a letter to the Department of Education in 1949, asking that the "the next time an Inspector was in Cork, they call him regarding a matter which he did not wish to commit to paper".[270] It was only in a subsequent letter that he set out his concerns:

> For some time past I have been receiving complaints from parents having children in Greenmount Ind[ustrial] Schools,

> these complaints are in respect of clothing and food. One mother complained that a child of hers is in School 12 months and he has the same pair of boots on him as he took in with him, that he has colds continually from neglect ... One complaint was that soup supplied to the children is a week old and sour when given to them. I am not relying on all the complaints received, to be genuine but I have the word of a lady Cook who worked there and has no reason for confirming the complaints I have received for some time. I have … called to the School myself and in my opinion the children are not near as healthy or as well fed looking ... They look cold and miserable looking…[271]

His letter ended by making it clear that he did not want to be named as a complainant due to his relationship with the Presentation Brothers at the school,

> Now I am a particular friend of the Bros' in Greenmount and have no wish to do any injury to them and their good work; which is at times difficult but I consider I owe a duty towards these children owing to the position I hold and as a representative of the Dept. of Education. I do hope this matter will be treated in confidence as I do not wish it to be known that it was I brought this matter to notice.[272]

The Ryan Report also describes how a close relationship between a member of the Gardaí and a Resident Manager, appeared to influence the former's response to an incident of sexual abuse. In the 1970s, Sr Astrid[273], Resident Manager of St. Joseph's Industrial School, Kilkenny, received a complaint of sexual abuse. The perpetrator was a child care worker, Mr Peter Tade.[274] She informed a Garda, who is described as a volunteer at St. Joseph's and a friend of Sr Astrid. Both the Garda and Sr Astrid confronted Mr Tade who admitted that he had touched the child in question improperly. The child, Gerry[275], was the son of a family "who befriended children in St. Joseph's". Mr Tade used to take Gerry and Richard[276], a boy in care at St. Joseph's, on fishing

trips and "for spins in his car". Tade took photographs of the boys, which Gerry's mother subsequently found. Sr Astrid told Tade that he could never return to St. Joseph's.[277]

Although according to the Report, the Garda "was in no doubt that an indecent assault had taken place", he did not take a statement from Sr Astrid at the time, "on the basis that there was no formal complaint from Gerry's parents".[278] He did not question any of the children who had been in the care of Tade for the previous ten months, and he did not think that Sr Astrid had done so either.[279] The Report notes that the Garda did not question Richard and that there "was a failure on the part of both the Garda and Sr Astrid to face up to the danger Peter Tade posed to other children".[280] The Report concludes that "experienced Gardaí … were … inadequate in their response" to the issue of sexual abuse at St. Joseph's.[281]

Health Service Executive / Health Boards[282]

The Kennedy Report (1970)[283] , the result of the State's second inquiry into industrial schools and reformatories, noted that four per cent of those in industrial schools were voluntary admissions, 80 per cent had come through the courts and 16 per cent had been placed there by health authorities.[284] While the regional Health Boards placed children in residential institutions and paid for their care, prior to 1996 they had no statutory responsibility for monitoring these institutions.[285] In a 1968 memo, Mr O'Rourke in the Department of Health expressed his concerns at this situation. In response Miss Clandillon, a Lady Inspector of Boarded-out Children, noted that it was decided in the Department of Health that as the institutions were

> **under the Department of Education and inspected by one of their officers, there was no need for inspection by the Department of Health. Thus it came about that nobody visited the Health Act**

> **children to ascertain the reason for their admission in the first place ... These children might be described during these years as the 'forgotten ones'.**[286]

She also noted that a number of children had been admitted to industrial schools directly from mother and baby homes without notice being given to the Department of Health. They continued on into senior industrial schools and by then, "little or no information was available as to their background".[287]

O'Rourke was also concerned with the decline in the number of children who were boarded out, the growth in the number of those adopted and, what he considered a "disquieting feature", the increase in the number of children maintained by health authorities in residential institutions, despite the fact that it was departmental policy to encourage boarding out or adoption.[288] Miss Murray, also a Lady Inspector, explained that these trends were a direct result of the introduction of legal adoption. She felt that this was

> welcomed by the local authorities for the wrong reasons, viz. as a means of avoiding financial and supervisory responsibility for illegitimate children, and health authority officials have been known to put pressure on unmarried mothers to allow their children to be placed for adoption, even to the extent of refusing any alternative help.[289]

Murray felt that boarding out was a much more successful scheme, but argued that similar to the situation with adoption, the increased number in institutions reflected the fact the these children were not subject to inspection by the local authorities:

> no reports on their progress are called for, and no records or case histories have to be compiled in relation to them … Once admitted to a school …the Health Authority has no further trouble with a child apart from an occasional letter from the Department inquiring why he has not been boarded-out. The easy answer to

> this is that a suitable foster home is not available and there the matter rests.[290]

Department of Education inspectors took no responsibility for children placed in institutions by the Health Boards. The Murphy (Dublin) Report describes how in evidence to the Commission, social workers asserted that they tried to encourage better standards and that while their role was accepted and welcomed by some institutions, they were effectively excluded by others.[291] Responsibility for inspection was ultimately transferred to the Department of Health, particularly in the period after 1970, which saw the closure of large institutions and their replacement by smaller group homes. Cappoquin group home was transferred from the Department of Education to the Department of Health in 1984; however, inspections were not carried out until 1991 due to a lack of staff. This was despite the fact that the South Eastern Health Board was aware of rumours that the Resident Manager was absenting herself from the home and was drinking heavily.[292]

Attitudes to child sexual abuse

Both the Gardaí and the Health Service Executive, formerly the Health Boards, are responsible for handling allegations and cases of child abuse. *Children First: National Guidance for the Protection and Welfare of Children* (2011) sets out the particular statutory responsibility of HSE Children and Family Services and An Garda Síochána when they are alerted to concerns about the welfare and safety of a child. The current Government has committed itself to putting these guidelines on a statutory footing.

The Department of Health first issued guidelines addressing child sexual abuse in 1987.[293] The long silence around this issue was addressed in both the Ferns and Murphy (Dublin) Reports, with the former arguing that "the extent of sexual abuse of children both within and outside families was recognised as a world wide problem" in the period 1965-75. Catríona Crowe has criticised the Ferns Report for failing to identify "by whom or where this

recognition was held" and notes that the report does not question why State agencies that employed professionals in the field for child protection took so long to deal with an issue "recognised as a world-wide problem" since at least 1975.[294]

While knowledge of child sexual abuse has always existed, attitudes to the criminalisation of child abusers have changed over time. The relatively recent release of archival material relating to the Committee on the Criminal Law Amendment Acts and Juvenile Prostitution, and the subsequent Carrigan Report (1931) provide insight into how the political establishment has historically approached the issue of sexual crime generally and child sexual abuse specifically. The Committee was established "to examine the proposals which had been repeatedly put forward by various societies and organisations for changes in the law relating to sexual offences, the most important being the raising of the age of consent".[295] Eoin O'Sullivan explains how the age of consent is crucial to our understanding of child sexual abuse, as sexual relations between adults and children were not always a criminal act.[296] While the Criminal Law Amendment Act (1885) raised the age of consent to sixteen years, and made sexual assault on girls less than thirteen years a felony, assault of those aged between 13 and 16 was only a misdemeanour.[297] Under this Act, reasonable cause to believe that the child in question was of or above the age of 16 years served as a sufficient defence, but this proviso was abolished in both England and Northern Ireland with the passing of the Criminal Law Amendment Act (1922).[298] The passing of this Act meant that the Irish Free State was out of step with its near neighbours. Therefore, the Committee was set up to consider whether criminal law acts needed to be amended or if new legislation was needed.[299]

While clerics' evidence to the Committee focused on extramarital sexual practice, i.e visible manifestations of 'sexual immorality' which would ultimately be legislated for by the likes of the Public Dance Halls Act (1935), that of the Garda Commissioner, General Eoin O'Duffy, focused on prosecutions for sexual offences and addressed the need to legislate against rape, incest, and

paedophilia.[300]

In an earlier memo prepared for the Department of Justice, O'Duffy described how

> an alarming aspect is the number of cases of interference with girls under 16, and even under 13 and 11, which come before the Courts. These are in most cases heard of accidentally by the Guards, and are very rarely as a result of a direct complaint. It is generally agreed that reported cases do not exceed 15 per cent of those actually happening.[301]

O'Duffy recommended that the 1885 Criminal Law Amendment Act be revised and that the age at which assaults on children should be classed a felony be raised from 13 to 16. He noted that there were 31 prosecutions for defilement of girls under 16 in Dublin city between 1924 to 1929, that offences on children between the ages of nine and 16 were increasing, and that "cases have occurred recently in which children between four and five have been interfered with".[302] In the case of these young children O'Duffy argued that "any attempt to commit this offence should be classed as a felony".[303] He also recommended that the defence built on a belief that the child was of the age of consent be eliminated. He further suggested, noting that parents at times "suppressed all information for fear of consequences", that cases be held in camera, or that if the press were allowed to report, that the name of the victim and details that could lead to identification be suppressed.[304] He also criticised court justices for not availing of the maximum sentences provided under existing law and he recommended "that sexual offences against children be reclassified and that stiffer [minimum] sentences be imposed on those convicted of sexual crimes".[305]

The Carrigan Committee made 21 recommendations, which included raising the age of consent to 18. It concluded that there was "no doubt that gross offences are rife throughout the country".[306] The report was submitted to government "with an accompanying note from the Department of Justice advising against its publication".[307] Mark Finnane describes the Committee's

findings as "profoundly uncomfortable for the political and clerical elites that governed Ireland".[308] It undermined the idea of Catholic morality as "a hallmark of Irish identity, differentiating the national community from its near neighbours".[309] Rather than investigate further "whether young children might be vulnerable to sexual assaults on a wide scale", Maguire describes how "the government's primary concern was … whether the attention of the general public (both inside and outside of Ireland) should be drawn to such a state of affairs".[310] The executive council agreed not to make the report available to the public or to the members of the Dáil and most of the print run was destroyed.[311]

Finnane stresses the government's concern "with appearance, rather than reality" and interprets the government's response to the Carrigan Committee as part of a political culture, which "placed a high emphasis on the appearance of things".[312] For James Smith, the Carrigan Report was a formative moment in establishing an official State attitude toward 'sexual immorality', which confirmed the criminalisation of victims of rape, incest and paedophilia who were contained in an array interdependent institutions, including residential institutions and Magdalene asylums, managed by agents of the Catholic Church.[313]

Both Smith and Kennedy pose the question, would the government have been forced to take action on the issue of child sexual abuse if the Carrigan Report had been debated in public?[314] While this question is valid, Maguire points to court records that indicate that at the time of the Carrigan Report there was already substantial public and judicial awareness of sexual crimes against children.[315] Similarly, Diarmaid Ferriter's study of circuit court files from the 1930s to the 1960s suggest "that between five and eight percent of all cases heard were to do with sexual crime". He reveals that:

> In the Circuit Court Record Book for 1960, 13 out of the 157 indictments listed were for sexual crime, including attempted buggery, carnal knowledge of an 8 year old girl, indecent assault on a male and rape. These statistics, which are provisional would suggest the Gardaí were quite vigorous in pursuing paedophiles,

and given that most sex crimes were not reported, would suggest this was a serious problem in Ireland throughout the twentieth century. These case books and the depositions for the cases document a consistently high level of sexual crime directed against young boys and girls. While it is true that most of these cases were not being recorded in the media, nevertheless, there were many parents (usually the instigators of prosecutions), Gardaí and members of the legal profession who had extensive knowledge of the existence of these crimes, as well as doctors who supplied graphic and detailed depositions regarding the physical damage resulting from the assaults.[316]

HSE responses to clerical abuse

After the publication of the Ferns Report in 2005 the HSE was directed to audit child protection practices in each diocese. The Cloyne Report describes how "what was being proposed was not an audit in the usual sense of that word" and that it was less an independent examination of evidence supporting specific statements and more of a survey or information collection exercise.[317] The audit took the form of a questionnaire; however, many bishops had reservations about answering the section which sought statistical details about the numbers of complaints received and the numbers reported to the civil authorities.[318] While names of complainants and alleged abusers were not required, bishops were concerned about the arrangements for the confidentiality of the responses given.[319] Mr Seamus Mannion of the HSE suggested that bishops answer the other elements of the questionnaire and only two bishops completed this section.[320] In the case of Cloyne, Bishop Magee stated that the diocese reported allegations "to the HSE and/or an Garda Síochána in keeping with Children First"; the Cloyne Report establishes that this was not in fact the case.[321]

On the basis of the bishops' responses a report entitled 'Audit of Catholic

Church's Current Child Protection Policy, Practices and Procedures & Compliance with Ferns Report Recommendations' was sent to the Minister for Children in January 2008.[322] The Report demonstrated that the dioceses had child protection policies in place and stated, "the audit has provided a substantial information base on the Church's child protection policies, practices and procedures".[323] However the Commission of Investigation into Cloyne stated that it could not understand how this statement could have been made considering that the report itself recognised that there was no information provided on the actual child protection practices, but rather the information described the policies in place.[324] The HSE did not recommend that any diocese be referred to the Commission for Investigation, however, it did mention its concern about the diocese of Cloyne as it had become aware of a case of non-compliance.[325]

This case referred to that of Brendan Wrixon, identified as Fr Caden in the report.[326] In August 2007 it was confirmed to 'Patrick', who had made allegations of abuse to diocesan authorities against Wrixon, that despite having made a complaint the HSE had not been informed of the complaint as was required by the procedures in the Framework Document and *Our Children, Our Church*. Patrick then made contact with the advocacy organisation, One in Four, who wrote to the Department of Health and Children in September 2007 pointing out that the HSE had not been informed by the Church authorities or the Gardaí about this complaint, and that the Minister needed to consider this information in relation to the terms of reference of the Commission of Investigation, which required that it examine a diocese in which the guidelines and structures set out in the Framework Document and in subsequent sets of guidelines, were not operating satisfactorily.[327]

In March 2008 the HSE arranged a meeting with diocesan authorities in Cloyne to discuss the fact that a complaint had not been reported to them; Bishop Magee apologised for the "oversight".[328] A copy of the same complaint was given to Ian Elliott of the NBSCCC at a routine meeting with the Office of the Minister for Children in February. However, while department officials

maintain that they were simply informing the appropriate Church body of the existence of a problem, Elliott understood that he had been formally requested to investigate and report on this complaint.[329] Elliott's investigation into this complaint, and into a second one in the same diocese, resulted in a report that found that child protection practices in the diocese were "inadequate and in some respects dangerous".[330]

While Elliott sent this report to both the diocese and to the Office of the Minister for Children, the latter desired that he report directly to the HSE.[331] Elliot told the Commission that he was asked by an official in the Office of the Minister for Children to withdraw the report, to agree to shred it and redirect "something softer" to the HSE.[332] The official maintains that there was a misunderstanding, that he had not wanted to transgress into an area of responsibility reserved to the HSE, and that there were concerns about legal exposure if the report were to be published and acted on by the Minister. He said that he suggested Mr Elliott might consider rewriting those parts of the report that gave rise to legal concerns and forward it on to the HSE. Elliot refused to withdraw the report and ultimately it was sent from the Office of the Minister for Children to the HSE over a month later.[333]

The Commission of Investigation came to two conclusions with regards to these confusing events. It found it interesting to contrast the investigations carried out by the HSE and that of Elliott as both investigations had access to the same material. It found that the HSE dealt only with the question of the failure to report to it, while Mr Elliott took a much more robust approach to the inadequacies as he perceived them of the diocesan approach to child protection.[334] It also concluded that the Office of the Minister for Children "was clearly concerned about the inadequacy of the HSE's capacity in relation" to these issues and hoped that "Mr Elliott's involvement would improve the situation".[335] It notes that "there was an absence of clarity in the Office of the Minister for Children and the HSE about their respective roles in relation to dealing with the outcome of the Ferns Report and in child protection generally",[336] and describes how there was a considerable lack of clarity with

regards to who was responsible for such issues within the HSE when it was first established in 2004 and that this was not addressed until 2009[337]:

> **large number of officials based in different parts of the country and in different divisions of the HSE dealt with the issues as they arose in Cloyne. The absence of clear responsibility at national level within the HSE became obvious to the Commission as it read the very many communications between various officials of the HSE and between the HSE and the Office of the Minister for Children and other agencies.[338]**

The absence of clear lines of responsibility and the apparent reliance of the Office of the Minister for Children on a Church body to supplement the work of the HSE raises serious questions about how the State is fulfilling its responsibilities in relation to child protection. There are also questions to be asked in relation to the powers of intervention held by those who work for the HSE.

Powers of the HSE/Health Boards

The Murphy (Dublin) Report is critical of the Health Boards and the Health Service Executive (HSE) for failing to record cases of clerical child sexual abuse appropriately.[339] The Report describes how the HSE had "insuperable difficulties in identifying relevant information in its files".[340] The Commission was informed that because the HSE files were filed by reference to the name of the abused and were not in any way cross referenced to the alleged abuser, it would have to examine individually up to 180,000 files in order to ascertain whether an alleged abuser was a priest in the Dublin archdiocese. On the basis of this, the Commission calculated that "it could take up to ten years

to carry out such an exercise".[341] The Commission expressed its concerns that information relevant to cases of clerical child abuse was "not maintained in a manner which would facilitate a more active role".[342] While this may reflect concerns regarding the legal issues around soft information and data protection, the Commission noted that other agencies rely on the HSE in circumstances "where it does not have the capacity to respond".[343]

The Murphy (Dublin) Report describes the "minor role" the health authorities have in dealing with child sexual abuse by non-family members and expressed concern that the legislation governing the role of the HSE "is inadequate even for that limited role".[344] It asserts that the "HSE and the health boards have given the impression to Church authorities and the Gardaí that they can do more in the area than they actually have the power to do" and that there is a need to clarify exactly what the role of the HSE is in relation to non-family abusers.[345]

The Health Board does not currently have statutory powers to prevent a suspected abuser from acting in a capacity such as a teacher or sports coach or indeed a priest, which would bring him or her into close contact with and afford him or her ready access to young people.

See The Ferns Report, p. 56.

The only power the Health Boards/HSE have to inform interested parties that allegations of child abuse have been made against a particular person, is one inferred from the wide ranging objectives of child protection imposed on Health Boards/HSE by the Child Care Act, 1991. This Act describes how it is "a function of every health board to promote the welfare of children in its area who are not receiving adequate care and protection".[346] The Ferns Report concludes that "the powers and duties of the HSE in this connection should be regulated by the express terms of primary or secondary legislation and not by inferences drawn from general obligations imposed on those bodies".[347]

Notification to the health board of alleged abuse by priests does not seem to serve any useful purpose if the health boards do not have any power to do anything about it.

See The Murphy (Dublin) Report, 6.28

The Commission of Investigation into Cloyne considered that the health authorities have limited powers in relation to cases of extra familial abuse of children and noted that there has been disagreement between the Office of the Minister for Children and the HSE about the extent of these powers since at least 2005, when they were first highlighted in the Ferns Report.[348] This ongoing confusion is further examined in chapter three.[349]

Conclusion

In the wake of the publication of the Ryan Report, the Ombudsman, Emily O'Reilly, described how "the hands and fists that descended on the bodies of the children were those of the people who worked in or who had access to the religious run institutions, yet the forces that enabled the abuse or turned blind, indifferent eyes to it ranged way beyond the institutions' walls, present within the plusher offices of State … as well as within the dank, depressing, and frequently terrifying dormitories of the institutions themselves".[350]
A historical legacy of voluntary provision, deference to agents of the Catholic Church, negative attitudes toward the working class family, a failure to address the issue of sexual crime appropriately, and the low priority afforded the 'public child' are all factors that affected the responses of agents of the State to allegations and incidents of child abuse, and to failings in residential institutions. The failure to inspect some institutions at all demonstrates that the children housed in institutions were not a priority for the Department of Education, while deference to Church authorities when complaints were made directly to the Department, and indeed the suppression of complaints, also indicates the deferential relationship between the two bodies.

Although the State clearly had legal responsibility to oversee and monitor institutions, this relationship, combined with an unwillingness and inability to act as a service provider, prolonged the existence of an arrangement that allowed for the abuse of children. The deferential attitude of members of the Garda Síochána to agents of the Catholic Church, combined with the lack of clarity that surrounds HSE powers in cases of non-familial abuse and issues with its record keeping, further served to minimise accountability and responsibility for abused children. The failure of the State to deal effectively with cases of abuse, even when religious authorities presented them, highlights the complete absence of accountability mechanisms between the State and a service provider that had thousands of children in its charge.

Few of these factors can be consigned to history. Evidence of a special relationship between agents of the State and the Catholic Church were evident in responses to the Ferns and Ryan Reports. In the wake of the publication of the Ferns Report, Taoiseach Bertie Ahern sought to minimise damage to the institutional church by stressing that "it was an important part of civil society" and that Irish citizens owed the Church "a great debt of gratitude".[351] The actions of Michael Woods, former minister for education, who oversaw the €128 million indemnity deal between eighteen religious orders and the State[352], have been viewed as minimising the culpability of the Catholic Church and exaggerating the role of State - despite the fact that two separate High Court judges have found that the State had no legal liability for the abuse of children in organisations managed by the religious.[353]

Eugene O'Brien has described how despite former minister for justice Dermot Ahern's statement that "a collar will protect no criminal", few priests and religious have been convicted of abuse "and there have been no prosecutions of people in the hierarchy for withholding evidence, or protecting priests, or moving them on to abuse in other dioceses when their abuse has been brought to light".[354] O'Brien submits that "the correct and ethical legacy of the Murphy (Dublin) Report, and that of the Ryan and Ferns Reports, should be that we look at the Church as a temporal and historically-contingent

organisation and subject it to the same scrutiny as any other institution in society" – whilst identifying that organisations representative of other sectional interests in Irish society, such as those in politics, business and the financial sector similarly close ranks to protect their own members.[355]

Continuing problems in the child care system reflect not just the legacy of a patchwork system dominated by voluntary service providers, but the continued low status of the public child. While the need for new legislation in relation to child care and child protection was recognised in the early 1970s, there was extraordinarily slow progress in introducing this legislation. The Kennedy Report had many recommendations for improving services, such as making one government department responsible for child care. However, as outlined by Eoin O'Sullivan, difficulties and delays in realising these recommendations arose from the scale of organisational changes required; the difficulty of devising new legislation; "an evolving external environment" that saw a "professional childcare and social work cadre emerge alongside a decline in the role of Catholic Religious Congregations in the delivery" of services; and the lack of consensus between the Departments of Health, Education and Justice on particular aspects of child welfare policy.[356] The Task Force on Child Care Services, an interdepartmental committee that was established in 1974 and issued its final report in 1981, revealed another reason for the slow progress. It argued that "the most striking feature of the child care scene in Ireland was the alarming complacency and indifference of both the general public and various government departments and statutory bodies responsible for the welfare of children".[357] It took another decade to enact the Child Care Act of 1991 "that finally began to replace the Children Act of 1908, eighty-three years after it was passed by the British Houses of Parliament and sixty nine years after the foundation of the Irish State".[358] However, as noted above, this Act does not sufficiently "clarify the powers and duties of the health authorities".[359]

Finally, it is important to note that while the role of voluntary agencies in the provision of services has diminished, this should not be represented as some

For a further discussion of State accountability see Eddie Molloy (Director of Advanced Organisation and Consultant in Strategy and Large-Scale Change), 'Public Servants also need to be Accountable' on page 235.

sort of panacea. A secular professional service has not resulted in the eradication of danger to children – a fact highlighted by the investigation into abuse of children in State-run residential facilities in Wales throughout the 1970s and 1980s, exposed in the Waterhouse Report (2000).[360] Many factors contribute to the abuse of children in care, including "the lack of appropriate response to … earlier inquiries conducted into institutional abuse".[361] Colton, Vanstone and Walby describe how other factors include: the failure to deal effectively with the threat posed by paedophiles; lack of adequate education, training, supervision, selection systems and registration for residential social workers; management failure at every level within local authorities and government; the lack of emphasis given to children's rights; and the indifference or, at best, ambivalence of the wider public towards children in care.[362]

Wider Society

The imbalance of power which existed between members of the general public and agents of the Catholic Church, an imbalance enhanced by the deference of agents of the State, made open criticism of agents of the Church difficult.[363] Those who attempted to alert State authorities to abuses in residential institutions were usually silenced or labelled troublemakers. While the position of individuals was difficult, it is essential that we examine the role of the society in which these individuals, the residential institutions and abuser priests operated. Michael Molino describes how the abuse suffered by these children has for years been "a problem hidden in plain sight".[364] This chapter will probe this observation by discussing the relationship between the Catholic Church authorities and wider society; the extent to which people had knowledge of abuse; and attitudes to children housed in industrial schools and reformatories.

Church and People

That the Church exerted a particularly strong influence on its Irish members reflected the traditional absence of a well-educated laity and the moral authority attributed to a church that had a long history of oppression.[365] Furthermore clericalism, the recognition of clerics as a special elite superior to the laity, saw the elevation of the priest in Irish society while the status accorded to members of religious orders was evident even in such mundane activities as their free use of public transport.[366]

The traditional emphasis on sacramental activity and mass attendance in Irish Catholicism ensured the presence and elevated position of priests.[367] Kennedy describes how,

> It is safe to say that a majority of Irish people were born in a Catholic hospital, baptised in a Catholic church, educated in a Catholic school, married in the presence of a Catholic priest and will be buried following a Catholic funeral. From the cradle to the grave the priest or bishop is a key figure.[368]

Clericalism preserved the power and prestige of priests and bishops, and thus can be considered "an enabler of the contemporary clergy abuse scandal".[369] Benkert and Doyle assert that "the powerful conscious and subconscious influence [clericalism has] on church members and on secular society in general", has shaped the community response to the sexual abuse of children, which was often to protect the errant cleric while "covering the incident of abuse in denial, minimisation and blame shifting".[370] Such a response further harmed victims of clerical sexual abuse, whose abuse by a priest, a person who acted as both "the enforcer of the church's stringent moral code" and confessor, often led to guilt "over their own role, though passive, and at having led a priest into sin".[371]

An example of such a community response can be found in Wexford in 1990, when Fr Jim Doyle, having pleaded guilty to the sexual assault of a child, was convicted in the District Court. When *The Wexford People* published

For further discussion of a community response to clerical child sexual abuse see Andrew Madden (Author and Campaigner), 'Not before Time' on page 244 and Rosaleen McDonagh (Pavee Point Travellers Centre; Playwright), 'Holy – House' on page 250.

these details on its front page, it provoked a hostile reaction, particularly from primary school teachers in the parish, because it was felt that front-page coverage of the case amounted to unfair treatment of the priest.[372] The former editor of the newspaper, Ger Walsh, described how the story provoked the largest number of complaints ever received by the publication, while in addition to "hundreds of abusive phone calls", copies of the newspaper were burnt outside their offices. Local businessmen began cancelling their advertisements while members of the clergy refused to cooperate with the preparation of obituaries.[373] The Murphy (Dublin) Report also contains evidence of this kind of community response. Fr William Carney was accused of abusing two boys in a swimming pool in 1983. While one set of parents contacted the bishop and subsequently, having been told by the bishop to "pray for" Carney, made complaints to the Gardaí, the other set of parents did not. The mother informed that Commission that "she was afraid to do so as she had already been ostracised by some of her neighbours for making a complaint to the Church".[374]

Incidents such as this undermine the ideas of "a docile laity" and suggest that the relationship between Church authorities and members was often symbiotic.[375] This point was articulated by Fintan O'Toole in the wake of the Ferns Report when he asserted that "Irish Catholics helped to corrupt their priests by obedience, indulgence and easy absolution".[376] Furthermore, the relationship between the Church and the people often determined the responses of those who believed their children to have been sexually abused. Similar to the Carney case above, many parents first reported the abuse to another cleric rather than going directly to the Gardaí.[377]

The Cloyne Report described how most of the complainants who gave evidence to the Commission "continued to live in the small towns and parishes in which they were reared and in which the abuse occurred" and that "their difficulties were compounded by the fact that the alleged abuser was usually still in the area and still held in high regard by their families and the community".[378] Not only did this inhibit revelations of abuse but the

psychological effect on an abused person to have their abuser continue to officiate at family weddings and funerals is difficult to comprehend. In one case, the alleged abuser officiated at the complainant's own wedding.[379]

Attitudes to residential institutions

Harry Ferguson's assessment of the relationship between children in industrial and reformatory schools and the wider community, which is based on material from the N/ISPCC archives, indicates that while it is difficult to ascertain exactly what proportion of children were removed from parental custody due to cruelty and neglect, as opposed to poverty, "ordinary people in communities did have a concept of child cruelty and were not prepared to tolerate child abuse and neglect".[380] He notes that in the period 1889-1970, approximately 80 per cent of cases reported to the N/ISPCC every year came from the general public: from neighbours, concerned strangers, as well as family members.[381] However, despite these displays of concern he also asserts that once in institutions, "Irish citizens probably had an ambivalent attitude toward children in care", suggesting that "consciously or unconsciously, the community may have welcomed their exclusion and ambivalently known about and been complicit in accepting their harsh treatment in schools because they were perceived as socially dangerous".[382]

There can be no doubt that many children and young people were treated as second-class citizens when they left the institutions. The prejudice and discrimination they experienced led many to emigrate. In his biography Peter Tyrrell, a resident of Letterfrack in the 1920s, discusses the difficulties of mixing with the other "local chaps" upon his release. He describes how, "an industrial school boy is considered low class, within the same category as a pauper or a prisoner", while the trade he had learned in the industrial school, tailoring, was "considered the very lowest profession".[383] He also offers a poignant description of the effect his identity as a former industrial school resident had when he was in conversation with a girl he liked. Her response

was "oh, I didn't know you were one of them", while Tyrrell describes how "she then became fidgety, restless and ceased looking at him".[384]

The low status of children in institutions reflected attitudes towards those who were considered 'other' in Irish society. If we consider the reformatories and industrial schools as part of an "architecture of containment" for those who transgressed the prevailing moral order, the attitudes of wider society to those who were considered deviant in some way revealed how the majority of Catholics adopted and embodied modes of self regulation, using the rules and practices of the Catholic Church.[385] Crowley and Kitchen argue that this created an "intimate symbiosis between government and civil society" as "most Irish people seemingly accepted a role (if at the unconscious level) as accomplices in the new vision of Irishness and Ireland".[386] For O'Sullivan and O'Donnell, this role was a more active one. They identify the 1950s as "an era of low formal crime, but high perceived-deviance in the sense that contravention of social norms was regularly met with an institutional response".[387] They recognise reformatories and industrial schools as part of a system of "coercive confinement", which "served as repositories for the difficult, the deviant and the disengaged"[388]:

> Families which for a range of economic, social and moral reasons wished to divest themselves of a problematic member regularly utilized such institutions. Although indisputably unpleasant places these institutions sometimes offered strategic resources to the poor and the marginal…With limited alternatives for those who did not emigrate or were not financed to enter a limited range of professions, such institutions were an integral element in the maintenance of social order in 1950s Ireland.[389]

Veins of Knowledge

Ferguson describes "the unquestioned and apparently unquestionable moral authority of the care providers" as a striking feature of industrial schools[390]

while highlighting the characteristics of the abuse perpetrated on children, which served to hide it from officials and members of the general public:

> When child abuse did go on, be it in institutions or families, threats, violence and the coaching of children to give false accounts of their injuries were used to try and conceal it. These are the very dynamics that made disclosure and discovery of the abuse so difficult. All the testimony from survivors of the schools shows that, while corporal punishment was known by the state to on occasions to have been excessively practised, religious and lay carers put significant effort into concealing the children's bruises and other injuries from the outside world. They also deliberately gave the children nice food and created the false impression of adequate care when inspections by the Department of Education were being done … when abusers do this, they demonstrate that they know very well that what they are doing is wrong and that they are abusers. [391]

He concludes that, "in most respects, such appalling institutional child abuse thrived because it was so well hidden by those who knew they were doing wrong".[392] While this analysis is valid, it does not address the veins of knowledge that are connected with every abuse victim and every abuser.[393] The Ryan Report describes how:

> Parents, relatives and others knew that children were being abused as a result of disclosures and their observation of marks and injuries. Witnesses[394] believed that awareness of the abuse of children in schools and institutions existed within society at both official and unofficial levels. Professionals and others including Government Inspectors, Gardaí, general practitioners, and teachers had a role in relation to various aspects of children's welfare while they were in schools and institutions. Local people were employed in most of the residential facilities as professional, care and ancillary staff. In addition, members of the public

> had contact with children in out-of home care in the course of providing services to the institutions both at a formal and informal level. Witnesses commented that while many of those people were aware that life for children in the schools and institutions was difficult they failed to take action to protect them.[395]

In evidence to the Confidential Committee witnesses described "the lack of investigation by medical and nursing staff who observed or were involved in treating non-accidental injuries in the School, local clinics or hospital settings".[396] The Report noted that "eighteen (18) [female] witnesses reported being attended by a doctor in the School for treatment of an injury, including suturing following assaults, and they were neither questioned about how the injury occurred nor was any intervention made to protect them from further abuse".[397]

It was complete fear, sheer bully boy tactics that stopped people … A lay teacher had a job and said "if I report this my job is gone, where am I going to seek work?"

Testimony of a witness to the Confidential Committee of the Commission to Inquire into Child Abuse. See The Ryan Report Vol. III, p. 287.

The Ryan Report concludes that "the general public was often uninformed and usually uninterested".[398] While it seems apparent that the general public was "usually uninterested", the amount of knowledge in the public domain in respect of conditions in the schools and of the abuse children suffered is more difficult to measure. The Ryan Report asserts that it seemed apparent that

> the general public living in the locality of a School had some broad idea of the conditions. It was not uncommon for parents to threaten children who were misbehaving with some such formula as: "Stop it or you'll be sent to Artane/Upton/Letterfrack". Both sides knew what was meant.[399]

While both the religious orders and the Department expressed fears that abuses or failings in institutions could create a scandal and were always at pains to prevent such a development, it is apparent that many failings did become public/local knowledge. For example, in the mid 1930s nine residents of St. Joseph's Industrial School, Greenmount, were sentenced for "indecency", in this case a reference to peer sexual abuse. A mother of one of the boys in question wrote an anonymous letter to the Department of Education, which alleged that this behaviour was prevalent at Greenmount and named a teacher who was "complicit in such activity" and whom the Gardaí were seeking. The letter noted that these incidents were "the talk of Cork City", indicating that there was public knowledge of these events.[400]

With regards to knowledge of sexual abuse the Report contends that "even among external observers who scrutinised the schools, there seems to have been little or no contemporary knowledge of sexual abuse".[401] It then gives conflicting examples. It describes how Michael Viney in his 1966 series of articles on young offenders for *The Irish Times* "did not discover any evidence of sexual abuse (though, in those more innocent days, he was not looking for any)".[402] It then cites a district court clerk who served in the 1960s:

> **We knew about the sexual abuse in the Schools because one of the Gardaí who drove the children from the Court to the Schools told us about it. In today's climate I'd have protested to the Department of Justice. But in those times, at best my protest would have been ignored, at worst I'd have been disciplined.[403]**

Court records suggest substantial public and judicial awareness of sexual crimes against children throughout the twentieth century. However, the victim was often considered to embody the crime, which was ultimately viewed as a moral failing rather than a physical and psychological trauma. N/ISPCC

records reveal how categories of child abuse included 'immorality', which encompassed sexual abuse cases.[404] This indicates how understandings of child abuse are socially constructed and bound up with cultural understandings of sexuality. O'Sullivan describes how the term 'child sexual abuse' was not used in the late nineteenth and early twentieth century but that a variety of euphemisms such as "moral corruption, immorality, tampering, white slavery, juvenile prostitution and ruining" were used to describe this type of abuse.[405]

Maguire argues that, "in many cases, knowledge of the danger of sexual assaults [on children] translated into fear and suspicion on the part of parents".[406] That veins of knowledge had resulted in rumour and suspicion amongst members of the general public was apparent in newspaper coverage after the publication of the Ferns Report. *The New Ross Standard* declared that "the Ferns Report has confirmed what many people in the Fethard-on-Sea have known about Seán Fortune for over 20 years"[407] while a woman born and raised in Ferns wrote to the *Irish Independent*, "we heard rumours, of course, as I was growing up, but the extent of the abuse always remained hidden".[408]

Similarly the existence of veins of knowledge in relation to abuse in residential institutions were apparent in responses to the Ryan Report, with one letter writer to *The Irish Times* describing, "a whisper here, a whisper there but apathy reigned and nothing was done until the abused themselves had to act".[409] In his response in *The New York Times*, John Banville wrote,

> Never tell, never acknowledge, that was the unspoken watchword. Everyone knew, but no one said…Human beings – human beings everywhere, not just in Ireland – have a remarkable ability to entertain simultaneously any number of contradictory propositions. Perfectly decent people can know a thing and at the same time not know it … We knew, and did not know. That is our shame today.[410]

While it is difficult to probe the nature of this knowing and not knowing, it is apparent that deference and denial were central to this dynamic, and

its terrible effects for the victims of abuse are clear. Perhaps acknowledging abuse by agents of the Catholic Church would have meant that the way people had lived their lives for so long would have lost too much of its meaning.[411] The Ferns and Murphy (Dublin) Reports reveal how the prevailing culture even prevented parents from accepting the word of their own children who were being abused. The Ferns Report describes how 'Patrick' who was abused by Seán Fortune, tried to warn his mother when he saw his cousin being called away by the abuser priest. However, his mother not only dismissed the suggestion outright but then physically attacked Patrick.[412] Similarly the Murphy (Dublin) Report reveals how the complaints of a child who was abused in Crumlin hospital by Fr Ivan Payne was dismissed by his parents:

> he had told his parents about the abuse at the time but was told not to be talking like that about a priest. His mother was now very upset when he reminded her that she had been told about it at the time.[413]

The Ryan Report describes residential institutions as being referred to "only spasmodically" in newspapers and as appearing mainly in three contexts: court reports of committal proceedings; discussion of the schools at local authority meetings; and in the form of "human interest stories", for example when Eamon de Valera visited Artane in 1935.[414] Nonetheless, there is evidence of features and articles in the press that revealed failings and neglect as characteristics of residential institutions. *The Irish Times* ran two multi-part features on residential institutions in 1950 and 1966, however the Ryan Report notes that there was little reaction to either series.[415]

Discussions of the schools in the Dáil were described in the Ryan Report as "infrequent and brief", although it does indicate that a wide range of relevant issues were raised in the 1940s and 1950s. These included: the fact that if money was given to parents instead of using that money to pay for a place at an industrial school, there would be a chance that the family situation would improve and the child could stay at home; that six months would be a sufficient period of committal under the school attendance act; improved after

For a further discussion of the role of the media see Kevin Rafter (Writer and Broadcaster, and Senior Lecturer in Political Communication and Journalism at Dublin City University), 'The Power to Censor: the Catholic Church, the Media and Child Sexual Abuse' on page 256.

care was suggested, including compiling figures on those former residents who were subsequently in trouble with the law; and a suggestion of finding suitable foster parents and remunerating them on the same scale as was paid to industrial schools was also made. The Report describes how the

> tone of the debate was invariably respectful and grateful to the authorities who ran the Schools, though sometimes there was an air of 'formal pleading' about this … Down the decades, the same few members took part in debates, on the subject.[416]

Earner-Byrne draws attention to a more vociferous debate on behalf of Fine Gael TD James Dillon who was consistent in pointing out problems in residential institutions. She describes his "angry outburst" in the Dáil in 1941, in relation to the damage done to families by removing children and putting them in to industrial schools. He said that he had raised the issue on nine previous occasions:

> The last time I spoke about it, no newspaper in Ireland considered it worthwhile monitoring, the reason being, apparently, that nobody gave a damn about it. The Minister [for Education] just shovels them [children] into an industrial school … and so long as I am in this House I will repeat my statements until a scandal – and it is a scandal – of this kind is abated.[417]

In more recent years episodic outrage has characterised the response of the general public to reports such as Ferns, Ryan, Cloyne and Murphy (Dublin). The letters pages of national newspapers provide a small sample of public reaction to the Ryan Report. Defences of those agents of the Church who were not abusers were made; people questioned the ramifications for children of foreign parishes, given the fact that many abuser priests were sent on missions; and many questioned the appropriateness of the role still played by the Catholic Church in the provision of social services, particularly primary education.[418] The role of wider society was also queried, with divergent views emerging with regards to the extent of societal culpability for what was revealed. In response to suggestions that a memorial, with an apology from the

people of Ireland be erected, one letter writer expressed how he did not want such an apology:

> Myself, my parents and hundreds of thousands of others like them in this country had no control over, or say in, the systematic abuse in our institutions for young people. They actually lived in fear of their child being taken into care. As a boy I remember being threatened with "Artane" if I misbehaved. Our parents knew the value of the threat, and any boy I palled around with knew, in our subconsciousness, what this meant. If our parents had spoken out about such abuse, they themselves would have suffered dire consequences. In any event, if they had reported any such abuse to the authorities, they would have been dismissed, as history has shown. Any apology should be on behalf of the Catholic Church, the Oireachtas … the relevant Government departments and the prosecution services. But not on behalf of the people of Ireland.[419]

Other members of the public were equally adamant that the public bore significant responsibility for what happened with one letter writer asserting,

> What should be realised is that the Catholic Church in Ireland is not some foreign church or sect imposed upon the poor ignorant people of Ireland. The clergy are our brothers, sisters, cousins, uncles and aunts. In other words they are bone of our bone and flesh of our flesh. If the Irish church is rotten then we are all rotten.[420]

Similarly another author wrote, "terrible as it certainly was, we were all part of it. As a society, we failed to challenge those who dictated their 'truth' to us".[421]

Interestingly in the poll undertaken as part of this research, very high percentages of respondents agreed that the Ryan Report made them feel angry at those who abused children (89 per cent) and angry at the State (83 per cent), while a similarly high percentage agreed that it made them

angry that wider society didn't do more (84 per cent). However, there was greater variation in responses when people were asked if they agreed that members of society were powerless to protect the children whose abuse was described in the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports. 46 per cent strongly disagreed, 19 per cent neither agreed nor disagreed, and 35 per cent agreed with this statement.[422] These variations strongly reflected socio-economic status, with the total net agree figure being significantly higher for those of the more advantaged socio-economic ABC1 group, and lower for those of the C2DE group, indicating a relationship between power and socio-economic status. Irrespective of where anger and blame for past abuse is placed, the implications for today's society are clear. The end of deference to powerful institutions and the taking of personal responsibility on behalf of all citizens would initiate some of the changes that are necessary to prevent the occurrence of human rights abuses in this society. This was surmised by one letter writer in the following way: "It is time to speak out and criticise where criticism is due…More importantly, it's time the citizens of Ireland became responsible for, and to, themselves, for this is the only way change can come about".[423] Similarly, the implications for today's children are clear, as a number of letters highlighted the failure of people to connect the abuses revealed in the Reports with the failings in the child care system today, as thousands of children "remain shamefully vulnerable and unprotected".[424]

Conclusion

Despite the severe imbalance of power that often existed between agents of the Catholic Church and its members, it is clear that this relationship could be symbiotic. While this subject requires further study, it is apparent that clericalism and the attitude of the laity to priests contributed to circumstances by which abuser priests continued to have access to children. Wider societal attitudes to children housed in residential institutions are evident from autobiographies and the testimony of those who spent time there. That

these attitudes were often negative, even hostile, is reflected in the high level of emigration amongst those who left institutions. While it is impossible to quantify the veins of knowledge that existed with regard to the abuse of children in residential institutions and in the community, they undoubtedly existed. Health care professionals, lay workers and members of the Gardaí had direct knowledge of abuse while the veins also reached family members and those living close to institutions.

Legal accountability and democratic responsibility

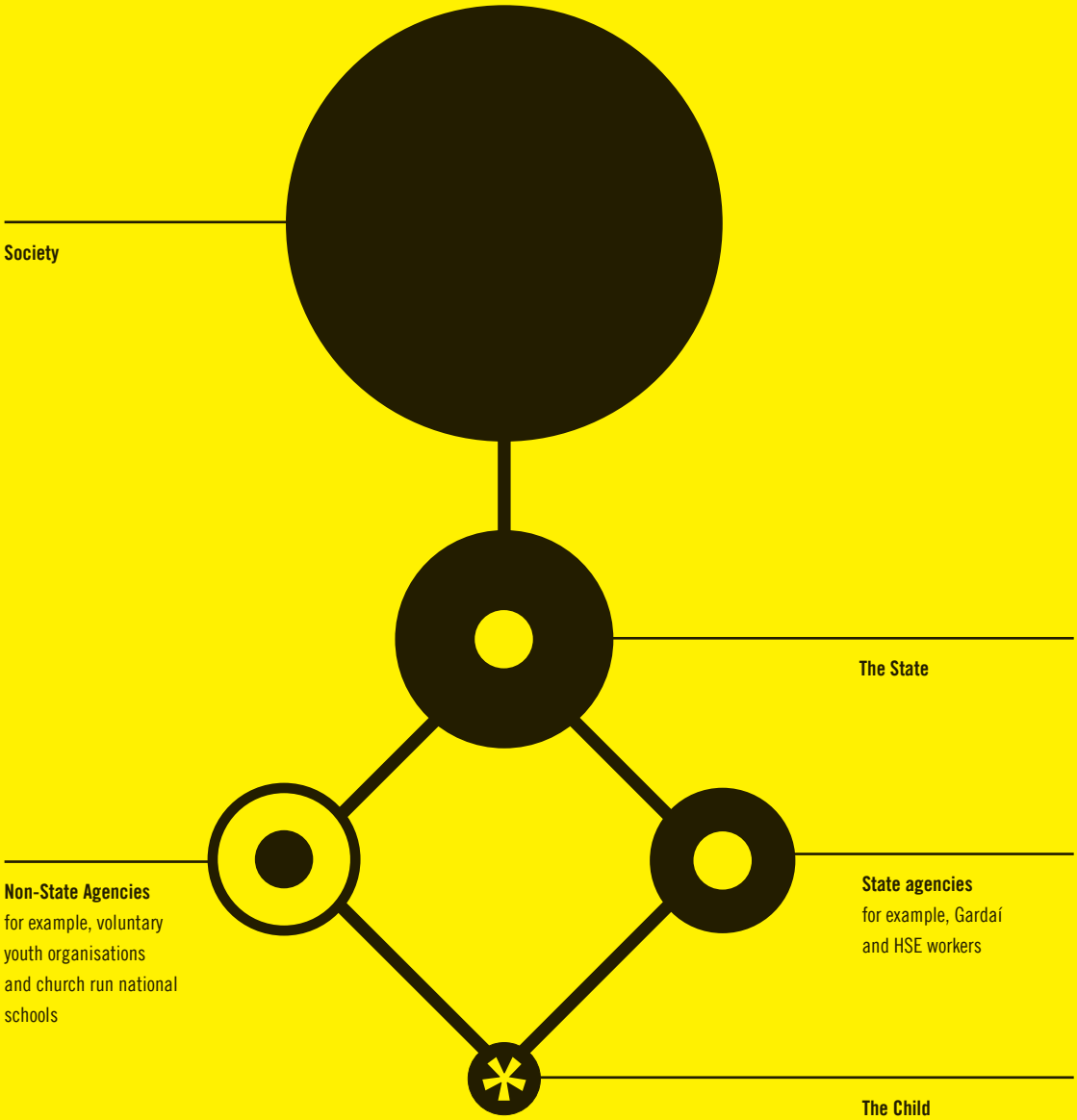
The State is a legal and political construct of society; a means through which society can organise itself in the interests of the common good.

Society therefore has a democratic responsibility to ensure that the State acts in the interests of the common good and is accountable to the people.

The State, in fulfilling its responsibilities to society and its legal obligations to provide services and protect human rights, may choose to devolve functional responsibility for services such as child care to State agencies such as the HSE, or non-State agencies such as churches or voluntary organisations.

However, the State remains legally accountable for the actions of those fulfilling its responsibilities, be they State or non-State agencies.

So society confers upon the State responsibility for the care of children. The State may choose to devolve this responsibility. However, the State remains legally accountable for the care and protection of children.


Society
The State
Non-State Agencies
for example, voluntary
youth organisations
and church run national
schools
State agencies
for example, Gardaí
and HSE workers
The Child

Identity and Status: Who was abused?

Children represent a social grouping vulnerable by its very nature. The Ferns, Murphy (Dublin) and Cloyne Reports show that in a significant number of cases the family of the abused child was often very active in Church activities, which meant that the alleged abuser gained access to children and was trusted by the child's family.[425] Children in residential institutions were made vulnerable by the fact that those who staffed the institutions were rarely subject to supervision or to any kind of effective accountability mechanism.

As mentioned above, the Task Force on Child Care Services described how "the most striking feature of the child care scene in Ireland was the alarming complacency and indifference of both the general public and various government departments and statutory bodies responsible for the welfare of children".[426] This section will address the identity and status of children who experienced residential institutions, and will suggest reasons for the existence of complacency and indifference towards them.

Class

The Ryan Report describes how "the main reason for children being committed to residential care was the poverty of their families".[427] The reason for poverty or deprivation ranged from the low pay afforded their parents, insecure employment, unemployment or loss of a parent.[428] Of those witnesses who gave evidence to the Confidential Committee, 67 per cent (530) reported

that their parents were unskilled at the time of their admission to out-of-home care and a further 97 witnesses were not aware of their parents' skill levels.[429]

Occupational Status	Total Witnesses	per cent
Professional Worker	9	1
Managerial and Technical	8	1
Non-manual	29	4
Skilled manual	45	6
Semi-skilled	73	9
Unskilled	530	67
Unknown	97	12
Total	791	100

Occupational Status of Witnesses' Parents – Male and Female Industrial and Reformatory Schools.[430]

In discussing the history of residential institutions, the Ryan Report describes how prior to the introduction of legislation establishing industrial schools and reformatories, the law seldom intervened in the affairs of a family. The idea of the legislation was that it would give district judges the ability to intervene in the interest of the child, "usually of the poorer class", to protect their physical or moral well-being. The Report cites Jane Barnes work *Irish Industrial Schools, 1868–1908* (1989) in describing the objectives of industrial schools:

> the first being to provide appropriate skills and training to enable children 'to be capable of supporting themselves by honest labour'; the other being to reform the child's character. To achieve these ends, it was considered necessary that 'the links between child and home [be] ruthlessly cut', on the basis that the home was a bad influence. For this reason, committal was generally imposed for the maximum period, correspondence between the

> children and families was vetted, and parental visits were allowed only at the discretion of the Manager.[431]

The 'honest labour' these children were prepared for reflected both gender and class:

> In the schools, boys were put to work on farms and workshops. They were not being trained to run their own businesses but simply to work diligently and punctually for others. The aim of the boy's education was to build character: a distinctly working-class character. What was important in practice was the inculcation of the right attitude. Nor was it expected that girls would rise above their station. They did cleaning, rosary bead making, laundry work and other domestic-type things in the schools, and were essentially trained to do appropriate 'women's work' as domestic servants. The standards that she learned and the skills that she exercised were also expected to stand her in good stead when she had a home of her own. The entire regime was constituted in terms of creating particular gender roles and the disciplining of sexuality as well as class as the Church and State sought to produce their ideal masculinity and femininity – the good bread winning father; and the well-trained domestic servant who would eventually become the ideal of the virtuous Irish mother.[432]

Negative attitudes towards institutions and the children resident in them pervaded Irish society since their establishment and reflected attitudes towards class. From the early 1920s, the impoverished child was viewed as a burden. In 1921 minister for local government and future President of the Executive Council of the Irish Free State W.T. Cosgrave expressed the view that:

> People reared in workhouses, as you are aware, are no great acquisition to the community and they have no ideas whatever of civic responsibilities. As a rule their highest aim is to live at the expense of the ratepayers. Consequently, it would be a decided gain if they all took it into their heads to emigrate. When they go

> abroad they are thrown on their own responsibilities and have to work whether they like it or not.[433]

That these views permeated wider society are evident from a 1944 memo which discussed the fact the children in industrial schools were not being properly fed. A Department of Education Inspector described how

> **We have before us the task of uprooting the old idea that industrial school children are a class apart who have not the same human needs and rights as other children.[434]**

Earner-Byrne's examination of how children in industrial schools featured in Dáil Debates reveals that "Irish society was always aware that the system was intrinsically class based …" and the issue was regularly debated in public.[435] She describes how James Dillon, Fine Gael TD, repeatedly raised the issue of what he termed the "scandal" of the Minister for Education shovelling children into industrial schools, while he pointed out that "none of these children are the children of rich people. No rich person would ever be treated this way". Earner-Byrne outlines the significance of this conceptualisation of the issue in class terms, given that class divisions were regarded as having little significance in Irish society and in fact were considered as "anti national".[436] As Republican ideology "recognised no class distinctions" and Ireland was "constructed as an antithesis to the class-bound English society", the class basis of Irish society went unacknowledged.[437]

Pierse describes Fintan O'Toole as one of the few commentators to highlight the issue of social power and its relevance to institutions. O'Toole asserts that the middle classes "expressed their insecurity about their own status in a hysterical contempt for the poor", noting that "the violent reputation of the institutions served as a general warning" to this section of the population.[438] Ferriter discusses how memoirs written by those who experienced institutions give insight into "what it felt like to be a victim of

class discrimination".[439] He describes how the class background of those who experienced institutions affected the extent to which complaints were taken seriously, citing the evidence given by Brother David Gibson to the Commission, who referred to the complaints of "sadism and vicious beatings" presented by Peter Tyrell, a former inmate of Letterfrack. A letter from the Christian Brothers to their solicitor referred to a "gentleman" named Tyrell and stated, "I know you will know how to deal with him if he approaches". The Christian Brothers maintained that Tyrell was "on a blackmail ticket"[440], while placing the word gentleman in inverted commas implied that those who had been through an industrial school were not considered gentlemen in the normal sense of the word.[441]

Ferriter also cites Gene Kerrigan's *Another Country, Growing up in '50s Ireland* (1998), which described Irish society as one which "laid so much emphasis on one's family pedigree, place of birth and religious persuasion. These were the barometers by which individuals, families and groups were acceptable or not".[442] Ferriter concludes that it is no surprise that many former residents of institutions subsequently emigrated to Britain where they were less identifiable.[443] The Report describes emigration as a feature of many witnesses' lives, especially in the 1950s and 1960s. 37 per cent (290) of witnesses who gave evidence to the Commission were living in the United Kingdom.[444]

Analysis of the industrial schools has revealed that poverty was a significant factor that led to the committal of children. Sarah Anne Buckley's work on the N/ISPCC demonstrates how the early decades of the twentieth century saw inspectors' focus shift from cruelty to the broad category of 'neglect' – "the largest and the vaguest offence investigated", which encompassed poverty, desertion, alcoholism, illegitimacy, mental illness and wife beating, and placed an emphasis on the working class family.[445] While Ferguson states that it is indisputable that the State was guilty of criminal negligence in allowing the children of the poor and their parents to suffer in inhuman living conditions and then to punish them by removing them to institutions, he stresses the existence of cases where children were taken

into care because they were experiencing abuse, cruelty and neglect in their homes. That these cases certainly existed "only adds to the tragedy" as already abused children were then subject to horrors in institutions.[446]

Threats to the 'Moral Order'

He told me hundreds of times never to spare them. I will give you his own words…What are they but "illegitimates and pure dirt".

In 1940 a Christian Brother claimed his Superior at Letterfrack referred to the boys there in this way. See The Ryan Report Vol. I, 8.65.

In 1940 a Christian Brother claimed his Superior at Letterfrack referred to the boys there as "illegitimates and pure dirt".[447] Witnesses also reported,

> being subjected to ridicule about their parents and families, most often in public, in the course of being abused. The sons of lone mothers, 'orphans' or 'conventers' were reported as particular targets for such abuse, being told that their mothers were 'sinners', 'slags' and 'old whores' who did not want them or could not care for them. Others reported hearing their families described as 'scum', 'tramps' and 'from the gutter'. Witnesses admitted to institutions in the context of family difficulties reported being subjected to the constant denigration of their parents. Witnesses recalled being constantly told their parents were 'alcoholics', 'prostitutes', 'mad' and 'no good'.[448]

Bernadette Fahy, who spent time in Goldenbridge describes how the nuns there told the children, "you'll turn out like your mother", a verbal attack which revealed the perception of "an inherent, irredeemable flaw: our birth".[449] It was, therefore, the perceived 'moral stain' that was used to justify the harsh treatment meted out to children in residential institutions.[450]

As noted above, in the event of sexual abuse the child could be blamed and seen as corrupted by the sexual activity. An example of this occurred in St. Joseph's Industrial School, Kilkenny. In 1954 the Resident Manager identified two girls as having taught others 'sinful acts' and of having "corrupted the whole school". She wanted to transfer them to St. Anne's Reformatory. Inspector McCabe interviewed the girls and discovered that they had been abused by a layman, Mr Jacobs[451], a painter at the school. One of the girls in question was transferred to the Good Shepherd Convent, a reformatory in Limerick, without the knowledge of the Inspector. The Resident Manager described her as "a bad type" and asserted that "for two years prior to her coming here she had on countless occasions indulged in sexuality with her two uncles and with other boys. We got none of those details when she was being committed to the school".[452] While Mr Jacobs was dismissed, the Report concluded that "the attitude of the Sisters appeared to be to blame the children for having been abused".[453]

The very existence of St. Anne's Reformatory indicates that children considered a threat to the moral order could be institutionalised on that basis. Established by the Archbishop of Dublin, John Charles McQuaid, the reformatory housed girls and young women regarded as 'morally corrupted' and it "accommodated girls who were considered a risk to other children because of sexual experiences".[454] James Smith describes residential institutions, along with Magdalene laundries and psychiatric hospitals, as being part of Ireland's 'containment culture' and provides an example of the treatment of an abused child to show how this culture operated. In 1941 Dublin's Central Criminal Court determined that a girl, who had been repeatedly raped by her father between the ages of 11 and 14, was "living in circumstances calculated to cause or encourage … prostitution or seduction". The 14 year old girl was ultimately placed in a Magdalene asylum, High Park Convent, as those who managed industrial schools and reformatories refused to admit the girl, "fearing that her mere presence would contaminate her young peers".[455] Smith explains how "although the young girl was the

victim of a crime, the various authorities initially regarded her as a threatening embodiment of sexual deviancy".[456]

Disability

The Cussen Report (1936), which represented the government's first investigation into residential institutions, "advocated the establishment of an institution specifically for the care of intellectually disabled children with separate departments for the physically disabled under the auspices of the Department of Education".[457] Figures provided by Resident Managers to the Cussen Commission had indicated that there were 56 intellectually disabled children in residential institutions and 46 children with physical disabilities, although the Ryan Report suggests "that this may have been a gross underestimation".[458] In evidence to the Investigation Committee, the Secretary General of the Department of Education and Science revealed that "the Government decided…that it shouldn't be made mandatory to have an assessment, I think that was in 1956".[459] The Report concludes that therefore "the number of intellectually and physically disabled children within the Reformatory and Industrial School system is unknown".[460]

The Report exposes the abuse of children with various disabilities. As noted above Department of Education officials did not inspect some institutions at all. This was the case in St. Joseph's School for Deaf Boys in Cabra, Dublin. This school, managed by the Christian Brothers, differed from industrial schools in that its residential component was for those deaf children from around Ireland who could not travel on a daily basis to the school and therefore the children came to the school voluntarily. While officials of the Department of Education inspected the primary and secondary school at St. Joseph's, no inspection of the residential areas were undertaken.[461] In Cabra, corporal punishment was described as excessive while children were victims of sexual abuse, by their peers, in the 1990s.[462]

No inspections were undertaken at Lota (Our Lady of Good Counsel,

Glanmire, Co. Cork) a residential institution for children with intellectual disabilities.[463] Both the Department of Health and the Department of Education were responsible for supervising services. Department of Education officials inspected the education provided at the national school at Lota, while those of the Department of Health inspected the premises. The latter, however, was only in relation to direct funding of capital development projects. From inquiries made within the Department of Health and the Health Service Executive (formerly the Southern Health Board in the case of Lota), the Investigation Committee was informed that officials were not aware of any inspections having been carried out by the Department of Health or Health Board staff "on institutions for persons with intellectual difficulties between the period 1939 and 1990", including Lota. Furthermore, Lota did not come within the remit of the inspectors of the RISB. Therefore, no government department saw itself as responsible for overseeing the conditions and quality of care in the institution.[464] The Report revealed that the Brothers of Charity who managed the institution, placed known sexual abusers in Lota, in one case to protect an abuser who was being investigated by the English police.[465] The McCoy Report (2007), the result of a HSE inquiry, revealed further abuses of children with intellectual disabilities in centres managed by the Brothers of Charity in Galway.[466]

Annie Ryan describes how attempts to draft a bill which would legislate for provisions for people with intellectual disabilities began in 1947 but were abandoned in the 1950s.[467] Instead the entire service for people with intellectual disabilities was ceded to a few religious orders who were already active in this field. The Department of Health looked to these orders to expand their services, which the state funded but failed, from 1957, to inspect.[468] Today, there is still no mandatory or independent inspections of residential services which provide support to people with disabilities in Ireland.

Evidence in the Ryan Report indicates how children with disabilities were placed in institutions where there was an absence of facilities of any kind for their needs. In the chapter dedicated to Artane, the Report cites the work of

Mr Bernard Dunleavy, a barrister engaged by the Christian Brothers to report privately on a number of institutions. Dunleavy maintained that the problem of placing children with disabilities in institutions, in this case Artane, where there were no appropriate facilities, "was exacerbated by a reluctance on the part of the Brothers to direct boys to other institutions which were better able to care for them, even when there were places available for that purpose".[469] Dunleavy quoted the Visitation Report for 1968:

> **Some are very retarded ... Others are mentally deficient, and in recent years the proportion admitted in this latter class has been on the increase. As such children require very specialised attention it is not easy for an industrial school to adjust its programme to care for them in a satisfactory manner. The policy of the Department in directing these boys to Artane, without consultation, is quite unfortunate.**[470]

On the other hand, Dunleavy suggested that there was "a certain reluctance in the school, once children with mental problems had been accepted, to allow them to leave the school for Institutions which might have been better able to care for them".[471] He refers to long delays on behalf of the Brothers to make applications to St. Augustine's Special School for children with intellectual disabilities and concludes that,

> It is clear … that while a deplorable practice existed of "dumping" mentally and emotionally disturbed children in Artane Industrial School, a school which was certainly not equipped to deal with their special needs, the school itself took no steps to alleviate the situation, and indeed appears to have been slow to recognise that the situation existed in the first place.[472]

Ethnicity

While there is little to indicate that a child's ethnicity alone made him or her more likely to end up in a residential institution, there is evidence that the identity of children representative of an ethnic minority affected the nature of their abuse. The Ryan Report gives some insights into societal attitudes towards Traveller children and those who were of 'mixed race'. Seven witnesses reported being verbally abused and ridiculed about their Traveller and 'mixed race' backgrounds. One witness described how "Br ...X... called me a knacker and said my parents didn't want me…".[473] Another described how she was targeted for physical abuse by one nun who "didn't like blacks".[474] The witness described how the nun in question "called me Baluba, every time the Irish soldiers were attacked in the Congo she attacked me".[475]

In 1966 a report on industrial schools and reformatories was submitted to the Minister for Education, Donagh O'Malley, by Dr CE Lysaght. Lysaght noted that an issue raised by Resident Managers was that of keeping children for an extra year, noting that this was in light of proposals to raise the school leaving age. According to Lysaght, the Managers favoured the proposal, "especially in the case of illegitimate children with nobody to care for them…"[476] He further noted how,

> a certain number of coloured children were seen in several schools. Their future especially in the case of girls presents a problem difficult of any satisfactory solution. Their prospects of marriage in this country are practically nil and their future happiness and welfare can only be assured in a country with a fair multi-racial population, since they are not well received by either 'black or white'. The result is that these girls on leaving the schools mostly go to large city centres in Great Britain. They are at a disadvantage also in relation to adoption and, as they grow up, in regard to 'god-parents' and being brought on holidays. It was quite apparent that the nuns give special attention to these

> unfortunate children, who are frequently found hot-tempered and difficult to control. The coloured boys do not present quite the same problem. It would seem that they also got special attention and that they were popular with the other boys.[477]

In 1975 a meeting of representatives from the Departments of Education, Health, Local Government and the Dublin Itinerant Settlement Committee[478] addressed the issue of the provision of residential care for Traveller children and revealed existing attitudes towards these children:

> The Department of Education … noted that there were insufficient places for such children in the Dublin area and that the children tended to abscond at the earliest opportunity. The meeting noted: 'It appears that the problem has arisen in an acute form only since the families began to move in to the Dublin area, attracted by the rich pickings of a prosperous city'. The representative from the Itinerant Settlement Committee, Mr Victor Bewley, was of the view that there were 30-35 young itinerants in the Dublin area in need of residential care, but that a 'high proportion of these would require secure care as they will not stay in open settings. A number of these children by now are extremely hostile and vindictive and very little can be done with them.'[479]

These views reflected wider societal attitudes towards members of the Traveller community. A 1988-9 survey of attitudes towards Travellers revealed a situation of "caste-like apartheid", as "marriage, friendship and even next-door neighbourhood" with Travellers was ruled out by the majority.[480] While mobile parents have often by definition been deemed abusive and neglectful of their children, there is little evidence of a State policy of intervention into Traveller families under the terms of the 1908 Children's Act.[481] However, rather than reflecting respect for their nomadic identity, the absence of such a policy reflected the unwillingness of local authorities to pay industrial school fees for Traveller children.[482]

While the extent to which Traveller children were institutionalised awaits

further research[483] , the returns from Residential Homes and Special Schools in 1975 showed there to be 104 'itinerant' children in care (84 in Residential Homes and 20 in Special Schools), which approximated to 8 percent of the total number of children in residential care.[484] While the 1956 census estimated the number of Irish travellers at 7,148, less than one per cent of the population, the 2002 census estimated the Traveller population to be six per cent. While there are inherent difficulties in calculating the Traveller population, it is clear that Traveller children were over represented in residential care.[485] Rosaleen McDonagh's representation of the experience of a Traveller woman, 'Jessica Ward', at the Redress Board reveals how the particular experience of Traveller children, given their removal from a minority ethnic group, has been ignored.[486] While neither agents of the State or Church accepted that Traveller children were treated any differently to those from the settled community, 'Jessica' makes it clear that racism often underpinned the abuse suffered by Traveller children.[487]

The result of the 1975 meeting of representatives of the Departments of Health, Local Government and the Dublin Itinerant Settlement Committee was a new residential centre specifically for Traveller children: Trudder House in Newtownmountkennedy, Co Wicklow. Trudder House closed in April 1995 following allegations of child sexual abuse.[488] 19 former residents made allegations of sexual abuse against people connected with the home while "allegations against its director included multiple aggravated rape of several children, together with sadistic beatings and torture".[489]

In the wake of the publication of the Ryan Report Mary Raftery highlighted the abuses in Trudder House[490] in order to show the inaccuracy of the prevailing view that institutional child abuse was in the past. Children have been victims of abuse in residential facilities well into the 1990s and in preparing the documentary series *States of Fear*, Raftery was able "to identify up to twenty residential childcare facilities where abuse had been reported and where inquiries were either absent or suppressed".[491] That Traveller children are a low priority for agents of the State and for wider society is reflected in the

fact that despite the Dáil being informed in 1996 that Trudder House would be the subject of an inquiry by the Eastern Health Board, no report was published. Raftery reveals, "we do not even know if it was completed, let alone if any of its recommendations were implemented".[492]

Conclusion

The Ryan Report revealed how the majority of children in industrial schools were placed there as a direct result of the poverty of their families. The low status of poor children in Irish society was reflected in the low status of those members of the religious orders who worked in the schools. This in turn reflected the low status of the Reformatory and Industrial Schools Branch within the Department of Education. Long established attitudes towards poverty and members of the working class deprived these children of the rights afforded their middle class counterparts, while the advantage afforded the latter is clearly evidenced by the fact that money granted to residential institutions by the government could be used by religious orders to fund secondary schools.

That children could be considered corrupted by virtue of their being born out of wedlock or having been sexually abused by an adult demonstrates how already vulnerable children were further punished rather than protected. Neither did the vulnerability of those with an intellectual or physical disability lead to protection. In fact the Department of Education and Science revealed that there was no record of the number of children with disabilities within residential institutions. The fact that many institutions specifically for children with a disability were never inspected by a government official, speaks volumes about the position of these children in Irish society. The Ryan Report also demonstrates how negative attitudes to Traveller and non-white children pervaded government departments, while the failure of government to complete and publish a report that investigated the grave abuses of Traveller children in Trudder House indicates how Travellers continue to be a low

priority.

Attitudes to children: Why didn't we listen?

In many ways attitudes to children have changed substantially over time. Society has begun to acknowledge the importance of listening to the voice of the child, while the old adage that children should be seen and not heard now has little currency. Cinnéide and Maguire have argued that there was little understanding of the harmful effects of corporal punishment, historically speaking, and that many believed that it "was necessary to instil respect for authority, to maintain discipline and to rear 'good citizens'".[493] Both parents and teachers were perceived and perceived themselves as having "an implict right, as well as a responsibility, to discipline their children in order to control them...".[494] While laws and regulations existed to protect children from excessive punishment it is apparent from the Ryan Report that many members of religious orders who managed institutions did not abide by these rules and that the Department of Education accepted this. Similarly evidence in relation to complaints of excessive corporal punishment carried out by national school teachers "indicates that the Department was reluctant to entertain complaints lodged by parents and guardians, and often condoned or ignored even blatant violations of the corporal punishment regulations for schools".[495] In the 1940s, public opinion in Ireland "had begun to coalesce against corporal punishment" and this was reflected in a letter writing campaign in the 1950s and the actions and lobbying of groups such as the School Children's Protection Organisation and Reform.[496] Despite this, successive ministers for education upheld the teacher's right to resort to corporal punishment and ultimately it was only

banned in 1982 – "after thirty years of sustained public pressure".[497]

The results of a public poll commissioned as part of this research in July 2011, reveals that 86 per cent of respondents agree that it is important that children have their opinions taken into account in significant decisions that affect them, while 67 per cent agree that children are trustworthy when voicing their opinions on decisions that will affect them.[498] These high percentages suggest that individuals recognise the importance of children having a voice; it is essential that this be reflected in our laws, policies and Constitution.

Children and Residential Institutions

Ferguson's work on abused and 'looked after' children describes the attitudes and mores, originating in the nineteenth century, which shaped approaches to children housed in reformatories and industrial schools. He stresses the significance of gender, identifying how boys, more often placed in reformatories, were taken in for criminal offences, while girls, more often placed in industrial schools, "were incarcerated for status reasons: wandering, being neglected or living in unsatisfactory homes".[499] Rather than behavioural or criminal deviants, girls were viewed as possible sexual deviants. Unless these children, invariably working class children, were reformed and moulded they were considered a significant threat to the social order.[500]

No I wouldn't trust them. I had been told that the boys had come to Letterfrack through the court.

Testimony to the Commission to Inquire into Child Abuse of a Christian Brother who taught in Letterfrack in the late 1960s. See The Ryan Report Vol. I, 8.152

While some of these children were at risk or abused, the effect of this abuse was viewed "as moral damage rather than psychological trauma".[501] The moral status of these children was considered dubious and therefore the very children who were vulnerable were viewed as the most 'contaminated'.[502]

Ferguson suggests that their considered deviance "provided a (hidden) rationale for further brutalising them", while evidence in the Ryan Report asserts that 'deviance', confirmed by court committal, contributed to the abuse of these children.[503] The Report asserts that "there is considerable evidence, both from documents and oral testimony, that children committed to these schools were seen as being criminals by staff, and that a lot of the mistreatment experienced by the children emanated from this perception".[504] A study of the Scottish industrial and reformatory school system indicates that these practices were not unique to Ireland, with those in authority in the Scottish system reasoning that physical abuse "was necessary because many inmates were from abusive homes and did not understand anything else".[505]

Ferguson concludes by noting that inquires into recent cases of the abuse of children in care in Ireland, the United Kingdom and elsewhere, reveal that what often underpins this abuse "is the failure to treat looked after children with any respect, as citizens …".[506] He maintains that while "there have been some important changes, the construction of abused and looked after children as a grotesque 'Other', … lingers" and that "the prevention of institutional abuse today requires nothing less than a radical reconstruction of the painfully low status children in care have historically had to endure".[507]

Children and the Courts

The Ryan Report describes how within the courts children and young people were "almost always" unrepresented. Usually an Inspector of the N/ISPCC[508], a member of the Gardaí, a School Attendance officer or a member of the Catholic Protection and Rescue Society presented evidence. While a parent or guardian was required to attend, the Report contends that these parents were "usually uneducated and, in an age of deference, dominated by the circumstances of the proceedings" and therefore "were unlikely to be able to make the best of any case against committal".[509] As the facts provided by the person presenting the case were "seldom contested [,] …the issue of whether

they had to be proved beyond reasonable doubt scarcely arose".[510]

In the cases of children who were sexually abused, as detailed in the Ferns, Murphy (Dublin) and Cloyne Reports, attitudes to sexual crime and the inadmissibility of the uncorroborated evidence of young children in courts further diminished the likelihood of a conviction. Diarmaid Ferriter reveals attitudes towards children's testimony, as featured in a 1932 Department of Justice memo. It argued that the testimony of children could not be trusted:

> It is understood that many competent authorities have grave doubts as to the value of children's evidence. A child with a vivid imagination may actually live in his mind the situation as he invented it and will be quite unshaken by severe cross examination.[511]

In evidence to the Carrigan Committee (1930-31), Dermot Gleeson, a district justice from County Clare, suggested that in cases of child sexual abuse "the rules of evidence regarding the admission of extraneous evidence might be enlarged" whilst also noting that the form of caution given by the judge to the jury with regards to relying on the uncorroborated evidence of a child often resulted in the acquittal of those whose guilt was apparent.[512] Hannah Clarke, an inspector for the NSPCC felt that "men who assaulted little girls under 10 years appear to be well aware of the loophole of the inadmissibility of the uncorroborated evidence of their victims".[513]

Carol Smart's examination of the development of discourses on child sexual abuse in the political, medical, legal and psychoanalytic spheres between 1910 and 1960 in the United Kingdom, undermines the conventional wisdom that people have only become aware of child sexual abuse in the late twentieth century. She argues that "the idea that agencies, professionals and government did not 'know' about sexual abuse … does a disservice to campaigners and feminists who … fought hard to extend the definition of adult-child sexual contact as harmful".[514] Smart examines the recommendations of the report of the Departmental Committee on Sexual Offences against Young Persons (1924-5) which recognised the harm done by

requiring children to repeat the details of the offence in various venues and by having the child faced by the accused when giving evidence. It also suggested that the police use specially trained women doctors to deal with female children.[515]

Smart identifies the legal profession as "one of the main obstacles to the report's attempt to make the criminal justice system more child-centred" given the opposition of the contemporary Lord Chief Justice and the Director of Public Prosecution to the report, and comment in the Law Journal which referred to "children who lie or who are pressured into making false allegations" and expressed horror at the idea that "women policemen" and women doctors would be used in these cases – it was considered a disadvantage to a falsely accused male, "as they would be determined to convict him".[516] Smart asserts that,

> …the place where the most unreconstructed notion of the child as 'vicious' or mendacious was constantly reiterated appears to have been in the courts…The practices and judgements of the courts seemed to exist in a kind of cultural isolation from the debates going on elsewhere in society about child sexual abuse… Of course the courts could not just change their practices at will, but a reading of the cases from 1920 to 1960 shows that nothing of significance changed in this important site. The reiteration of the need for corroboration and the standard disbelief in children's testimony seemed to drown out the campaigning efforts of the feminists and reformers.[517]

She tentatively concludes "that it was the criminal trial and its attendant procedures which prevented any wide-scale reconceptualisation of the harm of child sexual abuse".[518] In Ireland today, there are still difficulties inherent in the criminal justice system for those who have been victims of sexual crime.

For a discussion of the Irish criminal justice system and sexual crime today see Deirdre Kenny (Advocacy Director, One in Four),'Barriers to the Criminal Justice System' on page 264.

The Voice of the Child

You have the situation that the child probably had been proved before a police court to be a notorious liar… Nevertheless some great abuse may have crept in and you are in this dilemma that it is impossible to satisfy your mind that the allegations made by the children have absolutely no foundation.

Minister for Education Tomás Derrig speaking in the Dáil in 1942 about the inherent difficulties in evaluating complaints. See The Ryan Report Vol. IV, 3.91

The Ryan, Ferns, Murphy (Dublin) and Cloyne Reports reveal the consistent absence of the voice of the abused child. It is clear that inspectors from the Department of Education rarely spoke to children in residential institutions[519], while in 1962 a report carried out by three officials of the Department of Education asserted,

> Complaints about the treatment of children in industrial schools are not infrequent but from experience I would say that the majority are exaggerated and some even untrue.[520]

Witnesses who gave evidence to the Commission to Inquire into Child Abuse commented on the fact that disclosure often resulted in being punished for "telling tales"[521] and reported being deterred from disclosing abuse for reasons including

> threats of harm to themselves, their siblings or family, general fear and fear of further punishment, threats of being transferred to a more restrictive institution, the authority of an older person, bullying and the anticipated disbelief of others.[522]

One witness described how they "couldn't tell anyone, no one believed you, you were told to shut up".[523] The Murphy (Dublin) Report describes how the

> The vast majority of those who were abused as children complained when they were adults. In almost all cases they said

that they did not complain as children because they did not think they would be believed or because the abuser had told them not to tell anyone.[524]

Conclusion

The low status, and even perceived criminalisation, of at risk or abused children led to their incarceration in residential institutions which were sites of further abuse. While these children were unrepresented in court, the evidence of those abused in the community was usually inadmissible, as the criminal justice system failed to give sufficient weight to the voice of the child. That this voice was usually ignored is evident in Department of Education inspection reports, while the perception of children as liars and as ones whose voice could not be trusted was most acutely felt by children themselves, who were often afraid to tell adults of the abuse they suffered.

Contributors' Responses

Thomas Patrick Doyle, M.A., M.Ch.A., J.C.D., C.A.D.C., Canon Law Expert and Advocate.

Canon Law as an essential enabling factor in child abuse

The Murphy Report described how officials of the archdiocese of Dublin and other Church authorities had repeatedly claimed to have been, prior to the late 1990s, on 'a learning curve' in relation to the matter of child sexual abuse by clergy. Having completed its investigation, the Commission stated that it did not accept the truth of such claims and assertions. The Commission was correct to reject these claims. In fact, attempts by Catholic Church authorities to deal with the sexual violation of children reaches back to the early 4th century when the Synod of Elvira in southern Spain (309 CE) provided the first actual Church legislation.[i]

The sexual violation of children, minors and adults by Catholic clergy is not a tragic phenomenon that suddenly began in 1984 and reached a peak in 2002. It is not a temporary crisis that was largely caused by the deviant influence of social and cultural change and increased secularisation.[ii] Criminal sexual activity by the clergy is as old as the Church itself. Its history is found in sources that are primarily from the Church's own legal tradition, known as Canon Law, which in itself is clear evidence that the hierarchy knew about the problem, considered it seriously wrong, and made repeated attempts to stop it.[iii] Church law acknowledges the reality of child sexual violation by the clergy because it is explicitly listed as a canonical crime.

Throughout the centuries the popes and gatherings of bishops condemned sexual violation of the young by clerics with various forms of legislation and punishments. The problem was apparently not buried in deep secrecy as it has been in our era because most legislative efforts were openly publicized. By the post medieval period Church authorities were cooperating with civil authorities in dealing with accused clerics who were first tried in Church courts, defrocked or dismissed from the clerical state and then turned over to the secular arm for trial and punishment, which in some locales

included execution.[iv]

By the mid-sixteenth century the Church was faced with a new genre of sexual violation of the laity; solicitation for sex in the act of sacramental confession. Annual confession became mandatory with the Council of Trent and individual confession soon took on a new meaning as some people availed themselves of it quite frequently. This frequency was encouraged by the guilt-inducing spirituality so predominant in the period and by the firm belief engendered in the laity that the absolution of the priest was absolutely necessary for salvation. In the sacrament of confession the Catholic was at his or her most vulnerable, expected to reveal in detail his or her deepest secrets and most unacceptable behaviours. The Church's stringent teachings on sexuality provided plenty of subject matter for believing Catholics who had been consistently taught that any sexual expression, even thoughts and desires, were mortally sinful.[v]

Some priests began to take advantage of the vulnerability of penitents, and what probably began as a form of auricular voyeurism escalated to all forms of sexual improprieties not excluding intercourse, oral sex, sado-masochism and anal sex.[vi] These transgressions became officially referred to as solicitation in the confessional and in 1621, Pope Gregory XV issued the first universal legislation against it.[vii] Priests who were denounced were theoretically tried before one of the tribunals of the Inquisition, which had its early beginnings in Southern France in the mid-12 century and endured until it was replaced in 1860 by the Supreme Sacred Congregation of the Holy Office, today known as the Congregation for the Doctrine of the Faith.

The historical background of the solicitation issue is important in the study of sexual violation of children because the legislation against solicitation included certain sexual crimes, which were to be handled by similar procedures.

Sexual violation of minors was included as a specific canon in the first Code of Canon Law of the Church, issued in 1917. The canon in question (canon 2359) not only explicitly condemned molestation of minors but

assigned severe mandatory penalties up to and including dismissal from the clerical state. By the Code, specific cases presented to the Church for resolution were theoretically processed using the procedural law section. In 1922 the Holy Office issued a decree entitled Crimen sollicitationis which amounted to a major development in the way the official Church responded to charges of sexual abuse by clergy. The decree was essentially a set of special procedures, which were mandatory for processing cases of solicitation. Two elements are of primary importance in understanding the Church's attitude to sexual abuse. First, all parties involved in the processing of a case, including the bishop, all court officials, witnesses and complainants were subjected to the highest form of official ecclesiastical secrecy, The Secret of the Holy Office. The gravity of the obligation of secrecy was significantly enhanced because the penalty of automatic excommunication was imposed on any cleric who broke the secrecy, absolution from which was reserved to the person of the pope. All lay participants were also bound to the same secrecy but the judge had the option of imposing the threat of excommunication. This extreme secrecy had the effect of keeping knowledge of case documents buried. But it also was a major contributing factor to the culture and policy of secrecy that enshrouded sexual abuse up to the present day.

The second important feature of this decree is that it included as crimes to be processed using the same procedures and with the same secrecy, three specific sexual offenses: sexual relations between clerics and other males, bestiality and sexual abuse of minor boys and girls.

For reasons that can only be speculated upon, this decree was repeated almost verbatim in a new issuance in March of 1962 under the signature of Cardinal Alfredo Ottaviani and with the approval of Blessed Pope John XXIII. The existence of this decree remained largely hidden from the public because it, like its predecessor, was sent to the world's bishops with the command that it be kept strictly confidential. Like its predecessor, it was a significant indicator of Church policy toward sexual abuse by clerics and that policy, whether it was strictly in keeping with the canonical demands of the text, or

exaggerated and extended, served to embrace deep secrecy within the entire Catholic culture. In many ways this secrecy is at the root of the many ways Church officials have tried to bury cases and to direct victims to never speak of what happened to them.

Although the Code of Canon Law and both versions of Crimen sollicitationis made investigation of reports of sexual molestation mandatory for the bishop, and, depending on the outcome, prosecution of the offender in Church courts, in practice compliance with these obligations was extremely rare. The most common way bishops responded to reports, when the victims had the courage to come forward, was to bind everyone involved to secrecy using any means needed, including threats of excommunication. The perpetrating cleric was often chastised and then sent to a new assignment in the same diocese, in another diocese or even in another country. A minority of the offenders were sent to special facilities for professional treatment after which they were generally placed back in ministry. Evidence from the many civil cases between 1986 and the present in the U.S., Canada, Ireland and the U.K. points to a significant degree of recidivism among such clerics.

When the extent of sexual violation of children and minors became known in the period between the 1980's and the present, many looked to the Church's legal system, Canon Law, and questioned why it had not been used more aggressively to control and contain the widespread phenomenon of the sexual violation of vulnerable children and adults by clergy in all ranks. While the Code criminalises molestation of minors and provides for mandatory action upon reception of a report, a closer look at this unique legal system shows that it has actually enabled the culture of cover-up and denial. Rather than provide for the prosecution of the rights of the offended, the Code actually works against them.

While the sexual molestation of children and minors is the result of psycho-sexual factors[viii] , the explanations as to why mature men sexually abuse minors is of secondary importance to the far more insidious issue, which is the culture of deceit, cover-up and disdain for victims so evident

among the hierarchical leadership of the Church.

In many ways what we have seen is a violent clash of cultures: the elite, secretive clerical sub-culture confronted by the open secular and in Catholic terms, lay culture. This clash was inevitable because the Church is officially a stratified society and not a Church of equals. The Church, according to an encyclical issued by Pope Pius X in 1906, "is in essence an unequal society, that is to say a society comprising two categories of persons, the shepherds and the flock...." while the "sole duty" of the multitude is to allow itself "to be led and to follow its pastors as a docile flock".[ix]

While the governmental structure of the Church is described as "hierarchical" in actual practice the Church is monarchical, since all power rests with the pope as absolute ruler of the entire Church and then with the bishops as nearly absolute rulers of their dioceses. The official Church teaching holds that this hierarchical-monarchical structure, with all power in the hands of celibate male bishops, cannot be altered in any way because it is of divine origin, which is, directly willed by God.[x] The bishops, according to the official teaching, are the essential members of the institutional Church, in essence, its pillars. Since the Body of Christ or the People of God can exist in no other way than as a hierarchical structure, which depends on the bishops for its existence, it follows that this structure must be defended and protected at all cost. It is not facetious to say that the bishops see themselves as the most important and essential members of the Church and consequently their security, image, trust and power is all-important.

Added to the official conviction of the necessity of the existence of the clerical ruling class is the fundamental teaching on the nature of the priesthood. The priest is not simply the community "holy man" but one who has been joined to Christ and ontologically changed by reason of ordination. The dogma that the priest takes the place of Christ when he utters the words of consecration at Mass has been blown way out of proportion to the point that a common belief is that priest is always an "other Christ" and therefore entitled to respect, deference, unquestioned trust and obedience. Since the

priest is God's special person, to offend him, accuse him or insult him even in a trivial manner, risks divine wrath. Herein we find the source of the irrational fears grounded in even more irrational beliefs that plague the victims of the clergy. This fear has immobilised countless victims which has effectively allowed abuse to continue through the decades and even centuries. All of this is officially grounded in traditional Catholic dogma and given practical effect by the Church's Canon Law.

The criticism so frequently leveled against the clergy that they believe themselves to be above the law is more than a derisive accusation. It is an attitude grounded in the nature of the priesthood itself. As custodians and ministers of the sacraments the priests (and bishops) are the earthly guarantors of eternal salvation for lay Catholics. For centuries Church law extended the "privilegium fori" or "privilege of the forum" to clerics accused of crimes. Their sacred state demanded that clerics be exempted from prosecution in the secular courts. Rather, they were to be tried in the Church's own courts by other members of the clergy and not lay persons. This privilege is found in the 1917 Code of Canon Law, which stated that no cleric could be brought before a secular court. The Code also imposed the penalty of excommunication on anyone who took a cardinal, archbishop or bishop before a civil court. It also threatened with undetermined penalties those who sued clerics in civil courts.[xi] The concept of the privilege of the forum applied to both criminal and civil suits. In practice it depended on the cooperation of the secular authorities. More to the point however is the attitude that served as the foundation for the privilege. Although the revised Code of Canon Law (1983) dropped the canons that referred to the privilege of the forum, the attitude of superiority and the notion that clerics, especially bishops are above secular law is far from extinct. There is abundant evidence from the media and from the many civil cases involving clerics accused of sexual abuse that bishops never referred suspected sexual crimes by clerics to civil authorities until very recently, when they have been forced to do so.

There is an obvious conflict between the fundamental principles that

support the Church's legislation on the criminality of sexual violation of minors (or anyone for that matter), on the right to legal process and the bishop's obligation to prosecute clergy offenders, and the consistent manner with which sexual offenses and offenders have been historically dealt with by the popes and bishops. The preservation of the hierarchical governmental system and the clerical subculture has taken obvious precedence over the pursuit of justice and pastoral care for the victims of the clergy. The nature of the canonical system itself and the government it supports renders objective justice for the victims of clerical crimes nearly impossible. The hierarchical system does not provide for any separation of powers and hence there are no "checks and balances" as we have grown accustomed to in the common law tradition. Canon Law did not fail the victims of clerical sexual violation and hierarchical spiritual abuse because their precedence and protection were never a priority in the canonical system. The legal system itself and the governmental structure it serves are programmed not to respond to the needs of the "least of my brothers and sisters" as the Lord phrased it, but to the needs of those who are convinced that without their security and power, there would be no church.

i Included among its 84 canons was one that condemned sodomia, commonly understood to be the sexual violation of young boys and another that condemned all illicit sexual activity by bishops and priests.

ii In a pastoral letter to the Catholics of Ireland Pope Benedict recently made a connection between social change and both child abuse and the responses to this abuse by Irish church authorities. He described how "In recent decades, however, the Church in your country has had to confront new and serious challenges to the faith arising from the rapid transformation and secularization of Irish society. Fast-paced social change has occurred, often adversely affecting people's traditional adherence to Catholic teaching and values. All too often, the sacramental and devotional practices that sustain faith and enable it to grow, such as frequent confession, daily prayer and annual retreats, were neglected. Significant too was the tendency during this period, also on the part of priests and religious, to adopt ways of thinking and assessing secular realities without sufficient reference to the Gospel. The programme of renewal proposed by the Second Vatican Council was sometimes misinterpreted and indeed, in the light of the profound social changes that were taking place, it was far from easy to know how best to implement it. In particular, there was a well-intentioned but misguided tendency to avoid penal approaches to canonically irregular situations. It is in this overall context that we must try to understand the disturbing problem of child sexual abuse, which has contributed in no small measure to the weakening of faith and the loss of respect for the Church and her teachings." *See Pastoral Letter of the Holy Father Pope Benedict XVI to the Catholics of Ireland*, 19 March 2010.

iii See Thomas Doyle, Richard Sipe and Patrick Wall, *Sex, Priests and Secret Codes*, Bonus Books, Santa Monica, 2006.

iv For an example of this process see R. Sheer, "A Canon, a Choirboy and Homosexuality in late 16th Century Italy: Case Study," *Journal of Homosexuality*, 2, 1991, pp. 1-22.

v If one died in a state of mortal sin there was certain damnation to eternity in hell.

vi The violations were both heterosexual and homosexual. See Stephen Haliczer, *Sexuality in the Confessional: A Sacrament betrayed*, Harper Collins, San Francison, 1995, p. 95.

vii Gregory XV, Universi dominici gregis, 30 August 1622.

viii This includes the presence of recognized disorders such as pedophilia and ephebophilia as well as severe sexual and emotional immaturity

ix Pius X, "Vehementer Nos," February 11, 1906. See www.vatican.va .

x *Catechism of the Catholic Church*, Vatican City, 1992, nn. 771, 874-887.

xi James McGrath, *The Privilege of the Canon*, Catholic University Press, Washington D.C., 1946.

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A Civic Republic?

We know what happened. We know what failed, who suffered and what the long-lasting and inter-generational consequences have been. In fact we have known all of this for quite some time. In 2009, the Ryan Report confirmed accounts of abuse that have been in the public domain since the 1980s. Similarly, the diocesan reports exposed a cover-up of sexual abuse by Catholic priests that been discussed in the media since the 1990s. No amount of telling and retelling of the facts can adequately reveal the pain and anguish of the persons affected – their sense of personal loss, their anguish at not counting enough to warrant action by the authorities and their feeling of unbelonging in a country that claimed to be a Republic.

The facts can be clinically parsed and expressed in the language of violations – violations of personhood and violations of rights. And it is good that we have at our disposal a universal language of rights and justice that gives the victims some sense that their grievance – which is always experienced in isolation – touches a raw nerve that shames all who claim to be interested in justice. The language of rights and the commitment to justice that lies behind all rights provides this essential bridge between personal experience and the public domain. In this sense the personal is always political. In a sense, rights express the appropriate terms of social-coexistence. The victims have a right to ask, what was it in our political community and in our culture that allowed such violations to go unnoticed (or at least unacknowledged) and unpunished. Did the violations have deeper wellsprings beyond the evil and sadism of the individual perpetrators? Were there more deep-seated factors that explained – if not contributed to causing - the violations.

All violations – whether mass violations or highly individualised violations – have a context and a political economy all of their own. We cannot fully understand the violations without unearthing the blind spots of the body politic

in the past. And we certainly cannot effectively protect future generations without fixing these flaws.

This report is timely in many respects. In five years time we will mark, remember and perhaps celebrate 100 years of the Proclamation of the Irish Republic. It would be a travesty if this were simply an occasion for self-congratulation. The occasion would be best used as an opportunity to mould our future. To do this, it will be necessary to stand back and examine how and where we went wrong. For the failures were not simply failures to vindicate rights, to adhere to the rule of law and to ensure democratic processes worked; rather they undermined the very idea of a Republic. While the Proclamation spoke of a Republic, which guaranteed religious and civil liberty, equal rights and equal opportunities, the reality for thousands of Irish children was discrimination, deprivation and abuse.

The sheer weight of history – certainly the many personal histories of the victims of abuse – would surely justify one in questioning whether there ever was a coherent moral and political vision underpinning the State. As Irish Republicanism has been traditionally linked to nationalism there has been a greater focus on political legitimacy and independence rather than on the other aspects of republicanism, such as forms of government and relationships of citizens.

Cynicism, no matter how superficially plausible, gives us nothing to retrieve and nothing on which to build a better future. But what if we took this latter idea of a Republic – of a civic Republic – seriously? Does it offer a fresh perspective on what went wrong and what the future might hold? I believe it offers much.

For one thing it adds a prism through which to understand the violations themselves. It affords us an occasion to think through why these violations were so significant. In truth the violations point us to some deeper flaws in our system, flaws that can be represented as breaches of rights but which cannot simply be reduced to breaches of rights, failures of the rule of law and the blind-spots of the democratic process. This is not to say that one should only

look on violations of the rights of individuals as a platform for a more abstract discussion of political ideals. That's a mockery of justice. But it is to say that we should not miss the systemic flaws that themselves created the space for many of these violations to have occurred and to go unpunished.

First of all, and at its most basic level, as the phrase Res-Publica itself suggests, certain matters are supposedly always matters for public concern, debate and resolution. Of course this begs the existence of some line separating out that is public from what is purely private, which is never easy. And importantly, what is private is never wholly beyond the reach of public concern and regulation in order to protect vital public interests as well as vulnerable persons. Looking back, it is remarkable how little clarity existed in Ireland on this most vital of distinctions. It is as if the lines between public and private were deliberately blurred. It was as if a no-man's land was created to effectively carve out islands of immunity from public scrutiny.

For much of its history the State worked though intermediaries in the social field, which effectively meant through faith-based organisations. The 'subsidiary' role of the State was to intervene in private affairs only where they were shown to be incapable of resolving inherent tensions. Although set against social intervention, this still left a chink for Governmental action. But even that limited and limiting rationale for State engagement was not adhered to and the minimal oversight role one might expect the State to perform with respect to the operation of private entities that were subsidized out of taxpayer funds just didn't happen. A cordon sanitaire was created. This is exemplified by the system of industrial schools and reformatories. While technically the State had legal responsibility to inspect, certify and finance these institutions, Catholic religious orders managed them with minimal interference from the State. In failing to monitor the schools effectively, the State facilitated abuse that became endemic in the system.

What happened was the transfer of public space into private hands. This privatisation of public responsibilities was not forced – it was done voluntarily by the State. Our forefathers handed over a slice of our political community.

We were all diminished as a result. A common excuse was that if this weren't done then no social provision, no education, would have been possible. This, at best, is an effort at retrospective rationalisation. The State always had a choice and it voluntarily surrendered its sovereignty.

Secondly, the indecent muddle between public and private – and indeed between the private sphere and the 'voluntary' sector – had real ramifications. A philosophy of separate spheres took hold. Instead of a flexible line that protected private initiative whilst still allowing space for the assertion of the public interest, it ossified into a rigid separation between public and private. This itself was a perversion of the notion of 'subsidiarity'. It deflected the attention of the authorities (especially the regulatory authorities) away from the activities of the private or 'voluntary' services. So not only was a slice of the political community carved out – it was allowed to function almost in a parallel slipstream. This, despite the fact that much of its activity was subvented by the taxpayer. To all intents and purposes, a State within the State had been created. Hence the interesting spectacle of the writ of canon law running alongside the law of the land – with no acknowledgement of a contradiction.

Thirdly, this separate spheres philosophy – one conceded at an early stage by the new State – had real repercussions for the relative underdevelopment of a civic culture that might, in ordinary circumstances, have been relied upon to spot and put an end to abuses. It is often said that a Republic depends on civic virtue to help it though its difficulties. Decoded, this simply means that people have the insights, skills and willingness to reach beyond themselves and their own interests to add their voice to the resolution of difficult issues. Public policy therefore advances through a process of public reason and deliberation. Real issues are confronted and not shunted aside. The public process does not proceed on the basis of suppositions and certainly not on the basis that some issues are permanently off the table. One of the purposes of the State (in as much as the State has purposes) is to instil the skills of civic virtue through the education system. Thus animated, the democratic process can both identify issues and resolve them before they

become a crisis – much less a festering sore over the decades.

Maybe this can help make the ensuing puzzle a bit more understandable. Many, many people knew of the abuse perpetrated on children in institutions over the decades. Very few people translated their moral outrage (if they felt it thus) into tangible action. Those that did deserve our utmost praise. In a sense they were the carriers of our conscience. But the majority remained silent. Perhaps one result of slicing off a large corner of our communal political life was that some issues truly became non-issues. Some issues were carved out – and away – from public scrutiny. Although it was possible to see violence as a violation of rights, the failure to do so did not raise any contradictions. It was as if it was 'normal' to see some issues through a different lens. This impoverished our political landscape. It deflected issues away from the gaze of the public interest. It amounted to a surrender of the public interest.

Fourthly, the phenomenon of non-issues is closely attended by the phenomenon of non-people. This is perhaps the strangest of all since it is an explicit breach of the Republican principle of the inherent equality of all citizens. That was supposed to be the chief distinguishing feature between the envisioned Republic and our former political attachment. However, the odious class-based distinctions of the past were not only continued but arguably cemented into place. The Nazis had a term for this – 'untermenschen' – people who were beneath being human. Effectively, gradated strands of persons were set out in our culture. Violations against some counted for less relative to others. This reflected a form of social determinism – an attitude that persons cannot transcend their circumstances, that personal destinies were largely a function of life circumstances. It is but a short step from this to an attitude that losses should be allowed lie where they fall and that the State (really the collective political community) has no moral obligation to create opportunities for all persons to transcend their life circumstances.

People will long debate where this fatalistic form of social determinism came from in Irish society. But there is no doubt that it stunted lives and delayed the development of progressive ideas about the positive role of

Government in helping people realise their latent potential. The loss to Irish society – not to mention the economy - was enormous. But for our purposes here it had the effect of inuring people to abuse toward others, of immunising them against abuse and of hardening the collective conscience. In a sense it created a 'disappeared' class (or set of classes) in Ireland.

The current focus on the rights – and the violations of the rights – of the victims of abuse is relatively recent. It hasn't come about all by itself. It has been nurtured into life by courageous individuals who had the temerity to believe that they were worth more than the rotten self-images projected by the system. It was nurtured into life by NGOS which held a mirror up to our professed values and pointed to the harsh contradictions which many people were comfortable ignoring. But is has also come about because the edifice that held the mythology into place has collapsed. Slowly but surely, the line that polices public from private has become clarified. No islands of immunity can be allowed to persist. All matters private (or 'voluntary') are susceptible to public regulation in the public interest. No State within the State can be tolerated. No parallel system of law can hold sway alongside the law of the land. Just as important, the connection that ordinary citizens should feel between a perception of injustice and a willingness to speak out should become more pronounced. We are not just morally responsible for our own lives. In a civic Republic we also share a degree of collective moral agency – of pride in our collective successes but also shame at our collective failures. We cannot simply blame the State or the Churches – we too share the blame. The hope is that as clarity and integrity is restored to the public/private distinction that the Irish citizenry will feel impelled to speak out, take responsibility and not wait for others to act. An ethic of inaction only reinforces itself. It is questionable if we yet have a political culture that encourages or inculcates civic virtue and responsibility. Doubtless the continued existence of an education system funded by the State and controlled by faith-based groups has some indeterminate chilling effect on instilling an awareness and ethic of openness and tolerance toward others. It is certainly a matter of legitimate

public concern whether such an admixture of Church and State provides optimal conditions for the instilling of civic virtue in a Republic. It seems Thomas Jefferson's 'wall of separation' between Church and State (a wall that actually serves the interests of both) has yet to land on these shores.

Most importantly, the exposure of abuses has led to ordinary people puncturing the assumption that some people count for less than others. There is no space whatever for gradations of citizenship, no tolerance whatever for the existence of 'non-persons' in a Republic. That there was tolerance for the 'disappeared' in Ireland showed us just how large the gap was between our aspiration to be a Republic and the reality. We owe it to the victims not just to right their wrongs but also to acknowledge just how far short we have fallen as a political community and to re-dedicate ourselves to the creation of an open, responsible and accountable Republic - one that, in the words of its inaugural document, guarantees religious and civil liberty, equal rights and equal opportunities to all its citizens.

Elaine Byrne, Lecturer, Journalist and Political Analyst

We did know

> For some time past I have been receiving complaints from parents having children in Greenmount Ind[ustrial] Schools … They look cold and miserable looking … Now I am a particular friend of the Bros' in Greenmount and have no wish to do any injury to them and their good work … I do hope this matter will be treated in confidence as I do not wish it to be known that it was I brought this matter to notice.

This letter from a Garda to the Department of Education in 1949, about his concerns regarding St. Joseph's Industrial School, illustrates the implicit rules Irish society operated within. Although questions were asked, they were not asked. Instead, a subservient mindset accepted a culture of secrecy, which blindly embraced perverse notions of superiority.

This fear of offending the powerful facilitated and enabled the abuse of children.

The common misperception regarding child abuse by the religious is that there were no whistleblowers. Somehow this narrative has acted as a comfort blanket for wider Irish society – a society rocked by revelations that have undermined our naïve assumptions about authority. The Ryan and Murphy reports have exposed an uncomfortable history of how power operated in Ireland since the foundation of the State. The absolute authority of the Catholic Church rested on the assumption that it was above reproach, without question and beyond criticism.

If no one individual shouted stop and if no one raised their head above the parapet and suggested that agents of the Church should be questioned, the responsibility was shared by an entire society. Therefore nobody could be held responsible because everyone was responsible. There are no consequences for anyone. This cycle of blame inevitably concluded that it was always someone else's fault.

Alcoholism is a disease with denial as its embedded defence mechanism. Denial punishes those who seek to challenge such behaviour. It is easier to avoid than to acknowledge; to ignore than to confront. Eventually, the problem grows into the large white elephant in the small room that everybody walks around and kneels under while pretending that everything is perfectly normal.

It is this pretence that enables and allows the alcoholic to function. Because the enablers and facilitators subconsciously accept this behaviour, they inevitably become responsible for it. They are part of the problem. The refusal to recognise the fundamental difference between right and wrong ultimately poisons all those in contact with the alcoholic, while excuses are made for this behaviour in order to protect a reputation.

Enablers and facilitators of abuse become obsessed about "the maintenance of secrecy, the avoidance of scandal, the protection of the reputation … ". All other considerations are subordinated to these priorities. This enabling phenomenon has many forms but always the same outcome; it allows the alcoholic to avoid the consequences of their actions and prolongs the destructive behaviour. Similarly it gave impunity to priests and those religious who abused children, and prolonged a fundamentally flawed system of industrial schools and reformatories.

The Murphy (Dublin) Report, for instance, outlined the context in which Fr Donal Gallagher, from the Dublin parish of St Peter's in Phibsboro, was able to continue a 20-year career of paedophilia unchecked. When girls from St Mary's School for the Deaf complained that Gallagher kissed them during Confession, the school principal "felt that perhaps Fr Gallagher's approach reflected the newer approach to the sacrament of reconciliation [Confession] and took the matter no further". Ten years later, separate allegations by children from that same school evoked this written response by a Garda sergeant, "Fr Gallagher is a professional man and strikes me as a sincere and genuine individual. I can see no useful purpose to be gained by the prosecution of Fr Gallagher at this late stage".

Those in positions of authority, Gardaí, teachers, civil servants, judges,

journalists and politicians, were deliberately deaf to those who desperately wanted someone to listen. Those whose voices had some authority failed to challenge the status quo and speak out on behalf of the voiceless.

We did know, but we chose not to listen.

There are many examples of this. Former social worker Frank Crummey has written of the threats of physical violence and the social ostracisation his family endured when he first spoke up about child abuse by the Christian Brothers some 40 years ago.

The Ryan Report found that the Department of Education's attitude to the repeated complaints of abuse victim Tim O'Rourke "was not about how to investigate his complaint, but about what to do about a troublemaker who had complained". As O'Rourke told Prime Time in 2009: "I felt I was being totally ignored, that I had no rights whatever, that children who were being sexually abused at the time counted for nothing ... five years passed, 10 years passed and it's now 27 years".

The Ferns Report described how in 1984 Fr Gerard McGinnity was removed as senior dean at St Patrick's College Maynooth, when he tried to draw the attention of its Bishop trustees to seminarians' concerns about the behaviour of then college vice-president Micheál Ledwith.

Michael O'Brien's extraordinary five-minute outburst on the May 2009 edition of Questions and Answers was a turning point in the public response to the Ryan Report. In a controlled rage, this older man from rural Ireland, articulated a sense of deep pain and anguish that 2,600 ugly pages of a report could never capture:

> Eight of us from the one family, dragged by the ISPCC cruelty man. Put into two cars, brought to the court in Clonmel. Left standing there without food or anything, and the fella in the long black frock and the white collar came along and he put us in to a van ... Two nights later I was raped.

Even more revealing was O'Brien's response to the follow up question put by the presenter, John Bowman, as to why he didn't report the abuse in later life:

"Because I would have been made an outcast."

Attitudes towards whistleblowers have traditionally been hostile, and informing has been perceived as having traitorous qualities within Irish culture. "Informers" are regarded as weak of integrity and character. Those that did complain have traditionally been condemned as informers by Irish society, rather than commended for their acts of citizenship. The implications of revealing such truths can be professionally and personally costly.

But it was not just the Murphy and Ryan reports into the abuse of children in the Dublin diocese and in State institutions that have exposed the dysfunctional nature of power in Ireland. So too have the Morris tribunal into Garda corruption and the McCracken, Mahon and Moriarty tribunals into political corruption. So too have the Finlay, Lindsay, Laffoy, Lourdes, Ferns, Barr, Dunne, Madden and other inquiries and tribunals sponsored by the State. The moral bankruptcy of our financial institutions and professions also lies bare.

Sheenagh McMahon experienced devastating personal repercussions when she revealed in 1999 that her husband, Detective Garda Noel McMahon, had planted homemade explosives, later claiming them as significant IRA explosives finds. This led to the establishment of the Morris tribunal.

In the 2006 Lourdes Hospital Inquiry Report, Judge Maureen Harding Clarke noted the resentment towards the four nurses who exposed the systemic wrongs in Drogheda: "We heard of comments to the effect that the whistleblowers would never get a job in Ireland, that they would be sued for defamation and would generally come to a bad end." Judge Harding Clark listed 11 categories of people who did not complain about Dr Neary's actions and remarked, "No one made a formal complaint and no one questioned openly."

Reacting to the 2004 Morris tribunal findings, the then Minister for Justice Michael McDowell described Garda non co-operation as a "hedgehog culture", where Gardaí feel loyalty primarily to their colleagues and co-operation is withheld from internal Garda inquiries: "The way to survive, in other words, was

simply to put your head down and be uncooperative." McDowell believed that this was encouraged in part by a management culture that was very stern on anyone who admitted any fault.

A 1946 Dáil exchange between the Taoiseach, Éamon de Valera, and Eamonn Coogan TD, Fine Gael, on the establishment of the Ward corruption Tribunal perfectly illustrates the long-held perception of whistleblower by Irish people:

Coogan

I have information which might perpetrate another crisis in this House.

de Valera

If that is so the Deputy should give it to me.

Coogan

If, again, I can get immunity for some of the people who may speak. If the Taoiseach presses me perhaps I can interview certain individuals.

de Valera

I do not press the matter. It is your simple duty.

Coogan

I do not want to become a common informer.

Over the last decade, the Organisation for Economic Cooperation and Development (OECD) and the Council of Europe body, the Group of States against Corruption (Greco), have criticised the Government's failure to introduce legislation that would protect public officials and private sector workers who report wrongdoing. The Financial Action Task Force (FATF), the European Commission and the Comptroller and Auditor General have all highlighted various shortcomings in corporate governance structures in Ireland throughout the 2000s. Whistleblowing legislation and a culture that welcomed such actions would perhaps have checked the excesses of corporate failures throughout the Celtic Tiger years.

In response to the findings of the 2004 reports on the facilitation of tax evasion at National Irish Bank and Allied Irish Banks (AIB), the Irish Financial Services Regulatory Authority advocated for a change in cultural practice given hostile attitudes to whistleblowing. No action was taken. Some three years later in May 2008, as the economic crisis was preparing to hit Ireland, the Director of Corporate Enforcement, Paul Appleby, drew attention to the absence of legislative provisions to facilitate whistleblowers within company law.

Some three years later, the Fine Gael/Labour coalition government have now included provisions for whistleblowing protection in the Criminal Justice Bill 2011, which will prevent whistleblowers from being sacked or penalised for reporting transgressions. Undoubtedly this is to be welcomed even if the horses have long since bolted.

However, legislation facilitating whistleblowing within the public, private and political spheres is one thing. A cultural mind-set that accepts and embraces the exposure of wrongdoing is another entirely. The key whistleblowers whose actions contributed largely to establishing tribunals invariably lived outside the state. It was 'outsiders', living outside the consensus of an enabling culture, that told the truth.

It was Eugene McErlean, from Northern Ireland, who as the former head of the AIB internal audit blew the whistle in mid 2000s on fraudulent practices within the financial sector. A junior midwife from England exposed the irregular obstetric practices of Dr Michael Neary which led to the Lourdes hospital inquiry in 2006.

Patrick McGuinness, the former senior accountant for the beef baron Larry Goodman was a key witness for the Beef Tribunal between 1991-94. McGuinness was living in Canada and went to considerable pains to ensure his legal representation was from outside the Irish state. Mr. Justice Liam Hamilton noted that "counsel on behalf of the Goodman group of companies took the unusual course of making a submission regarding the credibility of Mr McGuinness", who they described as a "sub-class of witness".

The producer for the World in Action documentary, Susan O'Keeffe, was

employed by ITV and living in Britain when she was prosecuted for refusing to name her sources to the Beef Tribunal in 1995. O'Keefe was subsequently acquitted and was the only person, apart from two low-ranking Goodman employees, brought before the courts as a result of the Tribunal. In February 1989, some two years prior to the ITV documentary, two RTÉ journalists ran a television story stating that an unnamed Irish company "has become involved in a meat fraud investigation" in Iraq and that "the Government's export credit insurance facilities may have been abused" by using it to cover non-Irish meat. Pádraig Mannion, presenter of the Daily Farm Diary and Joe Murray, head of all agricultural programming on TV and radio, were brought before an internal RTÉ disciplinary hearing and found guilty of negligence and incompetence, thereby damaging their professional reputations.

A fear and deference towards authority and a corrosive culture of secrecy has dominated every structure of this State. The same equivocation that allowed for the abuse of children allowed for corruption in Irish institutions and professions. It was easier to believe in authority than to take personal responsibility to seek out the truth for ourselves. This was a learned behaviour, dutifully passed down by successive generations without challenge. We enabled and facilitated it because we choose to condone, deny and ignore. We did know. And we did this to ourselves, over and over again.

i This tribunal followed allegations that parliamentary secretary, Dr Conn Ward, was engaged in fraud and tax evasion. Ward subsequently resigned.

Colin Gordon, Chairman of Food and Drinks Industry Ireland (FDII)

Lessons for Corporate Governance

So many abused and so many abusers. There were those who knew and those who chose to ignore. There were whispers, suspicions and eventually investigations, inquiries and reports. And yet it seems as if we have learned nothing, done nothing and advanced nowhere.

In this whole, shocking and numbing episode, we have focused on the role of the Catholic Church, given that it was agents of that church that abused children in institutions and in the community. In pleading a lack of understanding of abuse, combined with the cover up and transfer of abusers, and its legalistic approach to abuse victims, the Catholic Church has shown itself to be self-serving and seemingly above any law, moral, Canon or civil.

But what role does wider society have here? How could so many people have known what was going on, or at least suspected the dangers, without earlier action being taken? In a society with all the outward signs of structure and order, an independent judiciary, a wide body of enacted laws and such an international outlook, it hardly seems credible that the horror of large scale child abuse could have happened at all, let alone last for so many decades. Furthermore, while we were 'discovering' the horrors of this abuse, Irish citizens witnessed episode after episode of (what we now can call) political and corporate corruption; scandal after scandal involving so many different aspects of civil society.

Apart from the inquiries into child abuse, the Kerry Babies, Flood, Moriarty, McCracken and Beef Tribunals, the DIRT Inquiry, and tax amnesty after tax amnesty, have all identified plenty of wrong-doing, highlighted corruption, and made recommendations. But still we seem not to change. There seems to be no sense of responsibility or accountability. And that is the real horror. The crimes, mistakes and wrongs effectively go unpunished. What will be different this time?

We need to take a hard look at ourselves. Despite all the checks and balances and millions of Euros spent on investigations, too often many act in an immature and self-interested way. Will the Ryan Report become just another scandalous report marking another milestone of failure in our society? It appears that no one has taken effective responsibility for what happened, which indicates that nothing is being learned from past mistakes. This time all of us must act. In order to prevent repeating past mistakes, everyone must play a role in improving our society by demanding accountability.

Politicians, those in the media, civil servants, educators, health providers, members of the judiciary and police all have a role to play. And Business. Each must ensure that proper learnings, as to how we function as a society and what we accept as a better way of behaving, are taken to heart and acted upon. While there are learnings from each of the reports for all sections of society, the Nyberg Report on the recent banking crisis holds additional learnings for Business and regulators. Nyberg described poor use of apparently good regulation, a silence among all the main players so as not to upset the equilibrium, and a sense that if no-one is being caught, then no-one will be caught; features which also exist in the reports on child abuse.

Business cannot exempt itself from the need to learn from its own mistakes, to behave differently and to be conscious of its role in the development of our wider society. In an environment where so many of our previously elevated and protected pillars have fallen, it is imperative that all sectors now review their internal governance structures and see if they each can provide a new road map for a better Ireland.

Tony Judt's recent book, *Ill Fares the Land* (2010), addresses the importance of adopting a holistic approach to deal with what he calls "our present discontents", a reference to an obsession with wealth and the rise of inequality in the West. If a main purpose of Business is to create wealth then all the more focus must be put on Business for proper behaviour, full governance and a holistic, societal view. This is a complex process as it necessarily involves many parties - shareholders, government, customers,

and competitors. It also requires a long-term approach. While all these things are well rehearsed in business text books and graduate programmes, with so many recent examples of possibly dubious corporate practice and seriously poor judgement, there is an obvious need for putting good theory into proper practice.

Accountability goes to the core of Business. Governance and accountability are a very real and constant struggle. For proper governance, Business must put in place the systems, processes, checks and controls that ensure it is doing, and is seen to be doing, the right thing for the sake of wider society. There are plenty of regulators, such as the Central Bank, Financial Regulator, Office of the Director of Corporate Enforcement, Association of Compliance Officers, Law Society, Irish Stock Exchange, Institute of Chartered Accountants, and there are plenty of regulatory procedures. However, despite all the regulators and regulations, recent tribunals and investigations into business scandals reflect poorly on the ability of Business to cope with this constant struggle. Consider that:

- In October 2008 the EU referred Ireland to the European Court of Justice for failing to implement the Money Laundering Directive, which should have been enacted by December 2007.[i]
- Less than 60 named individuals have ever been disqualified from acting as directors.[ii]
- The extra regulations introduced in the wake of the banking crises only apply to financial institutions, not the wider cohort of business organisations.
- The July 2007 European Commission Report on the implementation of 2003/568/JHA, the EU Council's framework decision on combating corruption in the private sector, shows that Ireland failed to implement legislation on this issue.

Business is not corrupt per se; nor is Business wrong-doing systemic. So you cannot compare the evidence revealed in the Ryan Report with the behaviour of business people. However, I believe that each wrong and failure,

anywhere in society, lowers the level of minimum acceptable behaviour for everyone in our society. Therefore we all need to work, in our own way, to lift that level, to identify and call out failings and to constantly struggle to prevent the many abuses and incidents of corruption we have recently witnessed, from happening again.

"No great improvements in the lot of mankind are possible, until a great change takes place in the fundamental constitution of their modes of thought" .

John Stuart Mill.

i See http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1522&format=HTML&aged=0&language=EN&guiLanguage=en (accessed 29 July 2011).

ii See the Office of the Director of Corporate Enforcement.

Dr. Eddie Molloy, Director of Advanced Organisation and Consultant in strategy and large-scale change

Public Servants also need to be Accountable

What emerges strongly from the Report of the Commission to Inquire into Child Abuse (the Ryan Report), is the anonymity of those who worked in the relevant government departments. There was little or no accountability among those who had responsibility for industrial schools and reformatories. While Ireland's public service may have evolved and changed over the years, it remains fundamentally flawed, particularly in regard to transparency and accountability, that is, personal accountability – with consequences.

In May 1999 the then Taoiseach, Bertie Ahern, issued what he described as a "sincere and long overdue" apology on behalf of the State and its citizens for a failure "to intervene, detect the pain of the victims and come to their rescue".[i] This apology stressed the State's inaction once the pain was noticed, but ignored the State's direct role both in placing children in institutions via the courts and health boards, and in inspecting those institutions. Ahern also announced that the Government believed that victims of abuse were gravely wronged and that it must do "all it can do now" to overcome the lasting effects of their ordeals.[ii] The establishment of the Commission to Inquire into Child Abuse was announced on the same day. Yet despite the Taoiseach's strong words, the Commission faced many obstacles and difficulties, some of which were raised by agents of the State.[iii]

The Commission experienced problems with the Department of Education and Science, the very department that had legal responsibility for industrial schools. Eighteen months after the establishment of the Commission, its Chair, Justice Mary Laffoy, expressed her frustration with the Department for failing to provide much of the documentation essential to the inquiry. She had been "worn out" by expressions of contrition from the Department, and thought it "beggared belief" that eighteen months into the Commission's work, the Department was still not dealing directly with the Commission's requests.[iv]

Laffoy publicly admonished the Government for not showing a "more obvious willingness" to "speedily address" the issues holding up her work.[v]

In 2002, the Department of Education and Science announced it would review the Commission's mandate. No further action was taken for the next nine months. This unreasonable delay compelled Laffoy to resign. In her resignation letter she noted that the victims "deserve to see the inquiry, which they were promised over four years ago, concluded within a reasonable timeframe"[vi] . Despite her many public expressions of concern, the Minister for Education and Science, Noel Dempsey, declared that he was "completely and totally surprised" with Laffoy's decision, which he said came "out of the blue"[vii] Ultimately, the Commission continued under the new chairmanship of Justice Seán Ryan, however, the difficulties faced by Laffoy demonstrate how the efficacy of the Commission had been undermined by civil servants. Justice delayed is justice denied.

While the Ryan Report revealed the many failings of the Department of Education – failure to investigate complaints; deference to agents of the Catholic Church; and the absence of proper procedures– it also revealed a prevailing culture that did not prioritise industrial schools and the children resident therein; in fact Reformatory and Industrial Schools Branch occupied "a lowly place in the Department's hierarchy".[viii] The problems Laffoy faced suggest that the defence of the Department's financial resources and reputation had priority over justice for the adults these children became. Furthermore, the Ryan Report described the Department as having a reputation of secrecy and this behaviour was reflected in the lack of transparency with regard to its dealings with the Commission.[ix]

The Ryan Report also revealed the Department's failure and unwillingness to regulate services provided by a powerful interest group, in this case the Catholic Church; deference to the Church meant that the lines of responsibility and accountability were incredibly blurred. The absence of clear structures to deal with evidence of abuse as it surfaced meant that problems were mishandled or not handled at all. It also described the Department as

conservative and "as producing little by way of policy", while noting that "its main concern lay with curricular content rather than wider social justice issues...".[x]

It is apparent from the experience of Justice Laffoy and from the Ryan Report that little had changed in the years since the Cromien Report, a review of the Department of Education and Sciences' systems and staffing needs, published in 2000. In the area of policy formation, Cromien found that "there is a vagueness, caused by the absence of clear structures, about where in the Department policy is formulated and whose responsibility it is to formulate it".[xi] It noted that "policy evolves haphazardly" and that the lack of clarity in policy formulation often led to policy being determined elsewhere, either through negotiations with interest groups, under national agreements or, indeed, in the courts, through criticism of the lack of adequate provision for e.g. children and young people with special needs.[xii]

Such major deficits in policy making and co-operation with statutory enquiries and lack of transparency and accountability are not unique to one department. We have many reports highlighting similar failures in other departments and State bodies. How come these failures are so pervasive? For example, how did officials learn to rely on oral exchanges rather than keep accurate written records? This practice was uncovered in the Ryan Report in relation to a case of sexual abuse in Ferryhouse, Clonmel. [xiii] The State was also criticised in the Wright Report (2011),[xiv] which reviewed the performance of the Department of Finance over the past ten years. That report suggested that warnings about the impending collapse of the Irish economy were only given orally. The practice of 'hear-no-evil-see-no-evil' revealed in the Nyberg Report (2011)[xv] on the banking crisis, and the culture of deference mentioned by Regling and Watson[xvi] in their report on the same topic, reveal that these are common problems within government departments.

We have not been short of reports and inquiries revealing widespread shortcomings, and given that there was a long period where we were not short of money to implement significant reforms, we must ask why there has been

persistent failure to act when we knew, year-in, year-out, what needed to be done to rectify matters? This long-standing failure to deliver reform represents a damning indictment of the senior management of large swathes of the public service.

More than any other element, the ethos and value system that exist in the public service needs fundamental reform. The 2008 OECD Review, *Towards an Integrated Public Service*, highlights that "despite the reforms, the overall political and managerial systems in Ireland are still based on a compliance culture that emphasises controlling inputs and following rules" [xvii] . It also asserts that future reform is not necessarily about changing structures and systems, but it is primarily about getting people "to think and work outside of institutional boundaries". [xviii] In brief, but telling, remarks about the culture of the public service, the OECD underscored the vital importance of the values that inform the systems, policies and behaviour and all other aspects of the operation of government departments and agencies. The OECD said:

- "Achieving an integrated Public Service will require mobilising its greatest resource – its core values";
- "An integrated Public Service will depend more on changing behaviour rather than structures";
- "Behaviour is less determined by formal sanctions and incentives than by values that are established in their hearts and minds";
- "... governments have found it crucial to restate traditional and new values to provide an ethical framework for staff behaviour";
- "Countries are placing renewed emphasis on rethinking their core values in public management reforms ... many countries are formalising core values".[xix]

Parallels with the institutional reform challenges faced by the Catholic Church are striking. Dr Monica Applewhite, a leading expert on child safeguarding who worked with the National Board for Safeguarding Children

in the Catholic Church (NBSCCC), has stated that "the idea of being fully accountable and disclosing to an outside entity is very frightening for leaders in any area, but most assuredly to religious leaders who have not been asked to do this in the past".[xx] Those most likely to resist implementing the necessary changes are the people at the top: bishops; ministers; senior officials; managers; board members; and others who have reached the top of their respective organisations. In *No Lions the Hierarchy* (1994), Joe Dunn argued that the Vatican favoured conservative rather than liberal or reforming bishops. Similarly, many of those who have risen to high positions in the public service have done so not just because of their competency, but also because they were unlikely to have ever questioned the prevailing culture. Culture is formed and locked in by a critical mass – not necessarily a majority – of powerful individuals at the apex of any system and it is these leaders who ultimately are responsible for the bitter fruits of a dysfunctional culture.

Which values are fundamental to a public service that is 'fit for purpose'? Traditionally public service has been defined "by a unique set of common values including impartiality, integrity and honesty".[xxi] Given the current crises of confidence in many of Irish society's long-established institutions, these important values have clearly faded, and they must be reaffirmed. A system in which incompetence, culpable impotence and even criminal negligence carry no sanctions, and where discretionary rewards intended for exceptional performance are dished out indiscriminately can no longer be accepted. The vital importance of the value system, as reflected in the culture of the organisation and in the moral character of individuals, has been unequivocally asserted by Matthew Elderfield, the Financial Services Regulator, who has declared that directors and senior executives of banks will have to demonstrate their "track record" in regard to two criteria "competence and *probity*". Is there any reason why the same criteria should not be applied to senior public servants? The values of impartiality, integrity and honesty should be reflected in the hiring process, training, reward system and promotion of all public service employees.

The embedding of a new value system is not easy and it requires the establishment of an environment safe for divergent voices and whistleblowers, the likes of whom were effectively silenced when they tried to raise concerns about the industrial schools system.

A key lever in achieving cultural renewal is that all those officials with significant powers must be named and held accountable for their decisions and indecisions. As mentioned previously, the Ryan Report paints an unsettling picture of the anonymity of those who worked in the relevant Government departments and agencies, and the absence of consequences or sanctions for those who failed to act appropriately. Accountability without consequences is meaningless and we have seen the devastating impact of a culture of impunity on many areas of Irish life.[xxii] The new legislation envisaged by Minister Pat Rabbitte must be introduced so that the advice of senior officials, including the Attorney General, can be published, preventing ministers from hiding behind the 'I acted on the best advice' mantra.

The Irish State relies on "the principle of ministerial responsibility, in which civil servants are but bearers of their minister's views and decisions and each minister is accountable to the Oireachtas for all actions taken by his or her department".[xxiii] Ministerial responsibility is therefore "a convenient fiction", as civil servants exert significant influence and no one is held responsible for their actions.[xxiv] Speaking at the McGill Summer School in July 2010, current Minister for Communications, Energy and Natural Resources, Pat Rabbitte, suggested that the 1924 Ministers and Secretaries Act be revised to clarify the respective roles of the Minister and the Secretary General.[xxv] He asserted that the Ministerial/Departmental pact involves the denial of public personal responsibility and accountability by civil servants and "an excessive fascination with the role of the Minister". He argues that "we need a more appropriate distinction between the functions of Ministers and their officials". Although ignorance of potential and real problems is not an appropriate excuse for a Minister, Rabbitte stated that "nobody seriously believes that Ministers should be accountable for every letter that goes missing…". He went on to

call for legislation that allows the Minister to delegate specific Ministerial powers to individual officers. The officer would be accountable both within the Department and to the Oireachtas for the exercise of those powers. Delegation Orders should spell out the function of the Minister in relation to supervision of the exercise of the delegated power:

> If the Minister takes a decision personally, he or she should say so and account for it. If the decision is taken by the department, under a delegated power, then the relevant, named official should say so and account for it. The Minister would then have to account for the degree of supervision he or she exercised over the department in relation to the exercise within it of delegated powers. Senior Civil Servants are major players within our political system and they should get credit for their achievements and they should take the blame when their decisions turn out badly.[xxvi]

It is imperative that everyone takes personal responsibility for their actions. Ministers and senior civil servants have the power to make significant changes and to lead by example in establishing this cornerstone of all well-functioning institutions. Right now, they are faced with a moment of truth. They can choose to shoot the messenger and close ranks, or they can face up to the painful truths laid bare in the endless stream of highly critical reports and recommit themselves to the core values of public service - in order to serve the public good.

In conclusion, the recently published Cloyne Report revealed more painful truths for this society. It demonstrated that child protection guidelines introduced by the Catholic Church were not being followed and that the Vatican was unsupportive when it came to reporting cases of child sexual abuse to the civil authorities. Taoiseach Enda Kenny criticised the Vatican in trenchant terms for this attitude, and for the Church's failure to co-operate with the Commission of Investigation's inquiries into Dublin and Cloyne. This critical eye should also be turned by the Government on itself and on the anonymous officials who ran, and in many cases continue to run, departments and state

agencies. Both the evidence of the Ryan Report and the lack of cooperation Justice Laffoy received from the Department of Education demand it, if we are ever to really learn from these events.

i See *RTÉ News*, 6.00, http://www.rte.ie/news/1999/0511/abuse.html

ii Ibid.

iii Obstacles were also raised by some of the religious orders involved. The Commission stated that the Orders had adopted an "adversarial and legalistic" approach to the inquiry, noting that "insofar as they are cooperating with the investigation in practice they are doing no more than complying with their statutory obligations and doing so reluctantly, in the case of some respondents, and under protest, in the case of others". See *The Irish Times*, 6 September 2003.

iv *The Irish Times*, 9 September 2003.

v *The Irish Times*, 6 September 2003.

vi Justice Mary Laffoy to Dermot McCarthy, 2 September 2003.

vii *The Irish Times*, 3 September 2003.

viii *Commission to Inquire into Child Abuse*, Report, vol. iv, pp 2-3.

ix Ibid., vol. iv, p. 4.

x Ibid.

xi Department of Education and Science, *Review of Department's Operations, Systems and Staffing Needs*, Department of Education and Science, 2000, p. 3.

xii Ibid. pp 2-3.

xiii This refers to St. Joseph's Industrial School.

xiv *Strengthening the Capacity of the Department of Finance, Report of the Independent Review Panel* ,2010.

xv *Misjudging Risk: Causes of the Systemic Banking Crisis in Ireland, Report of the Commission of Investigation into the Banking Sector in Ireland*, 2011.

xvi Klause Regling and Max Watson, *A Preliminary Report on The Sources of Ireland's Banking Crisis*, Government Publications, Dublin, 2011.

xvii Richard Boyle & Muiris MacCarthaigh, *Fit for Purpose? Challenges for Irish Public Administration and Priorities for Public Service Reform*, Institute of Public Administration, Dublin, 2011. See 'Foreword'.

xviii Ibid.

xix *Ireland, Towards and Integrated Public Service*,OECD, 2008.

xx *The Irish Catholic*, 2 June 2011.

xxi *Fit for Purpose?*, p. 4.

xxii Ibid.,

xxiii Richard Breen, Damian F. Hannan, David B. Rottman and Christopher T. Whelan (eds), *Understanding*

Contemporary Ireland, State Class and Development in the Republic of Ireland , Gill and Macmillan, 1990, p. 32.

xxiv Ibid.

xv Pat Rabbitte TD, 'Reform of political system not simply a matter of changing electoral system', 20 July 2010.

xvi Ibid

Andrew Madden, Author and Campaigner

Not before Time

As I think back to 1994 when I first started moving information into the public domain about the sexual abuse I had experienced as a child at the hands of one of our local priests, and the fact that I had recently just been financially compensated by that priest, I ask myself what made that difficult for me to do and what, if anything, made it easy.

I was living in London when I first gave information to the *Irish Press* newspaper. I didn't want them to identify me in the article; I was concerned about having to face people I knew when I was next in Dublin and was worried about what that might be like. A few days later I was doing a radio interview on foot of the *Irish Press* article. I didn't use my real name but I knew some people would recognise my voice. I was torn between wanting to do the right thing and being somewhat mindful of the consequences for myself. But I knew I had to do something. Living in London as I started the process probably helped a lot more than I realised at the time.

Several months later there was further media interest and I allowed my identity to be revealed. By then I had become very uncomfortable with sending out the message that I might have some reason to hide or something to be ashamed of, and I didn't want that. I was also disappointed at the rather muted reaction to the *Irish Press* article; I had after all made it clear that the same priest was still a priest in a Dublin parish, with the access to children that such a position obviously gave him. Not too many people seemed interested in hearing that.

By late 1995 things had changed. The local priest who had sexually abused me as a child, Fr. Ivan Payne, had been identified by RTÉ and was now known to be the subject of new allegations of child sexual abuse some fourteen years after I had first reported him to the Archdiocese. It was interesting to note the response from some of the people in the parish of Sutton in Dublin where Fr. Payne had been for those fourteen years.

An elderly parishioner in Sutton told the *Irish Independent*,: “I can’t believe he did this, he was the best of priests. He married, christened and buried people and even since he left he’s been invited back to do weddings because he was so well liked”.

A sixteen-year-old girl said vague rumours about the priest had been circulating since the previous year: “But I don’t think anyone believed them and I still find it hard to believe now. He was one of the nicest priests I’ve met and he was really easy to talk to in confession”.

Another teenager, a boy of eighteen, talked about how active Fr. Payne was in the community: “He was very involved in the youth club and other groups so most people would have known him and he was very popular with everyone”.

Despite this evidence of a priest active in his parish, the'Catholic Press...' Office was telling the media that during Fr. Payne’s time in Sutton he spent 'virtually all of his time’ at Archbishop’s House. Another Mass-goer advised on the RTÉ evening news that only those without sin should cast the first stone.

I was astounded by the lack of anger at the Catholic Church from the people in Sutton for sending them a priest who had previously admitted to the sexual abuse of a child.

An RTÉ film crew was inside the church for 10:30am Mass the following Sunday morning in St. Fintan's parish in Sutton. Although they were there with the permission of the parish priest, at the start of Mass the congregation called on the crew to leave and they were escorted from the building. The sermon apparently focused on the Church’s handling of the Fr. Payne case, though all the congregation seem to have been told was that the money they put into the collection on a Sunday morning had not been used in the loan made to Fr. Payne to help him pay compensation to me. Their money was safe. No such assurances were forthcoming from the priest or the Catholic Church generally about the safety of their children. The congregation, who had escorted the RTÉ film crew out of the Church, applauded.

Looking back, it would appear that the practising Catholics of Sutton were

having difficulty adjusting to the reality of what their Church had done. How difficult must it have been for people locally who had been sexually abused by Fr. Payne to observe their community's appalling response to the unfolding news of his past.

In 1998, Fr. Payne was convicted of the sexual abuse of nine boys between 1968 and 1987.

This made it clear that the Catholic Church authorities had decided to move Payne to a new parish after I had reported him to the Archdiocese in 1981, which left him free to carry on sexually abusing children - and that he had done just that. So how many times had the Catholic Church in Ireland done this? How many priests like Fr. Payne were out there with access to other people's children? How many priests with a record of sexually abusing children had the Catholic Church in Ireland moved onto pastures new? These were among the questions I wanted answered and the only way that could be achieved was for the Government to set up an independent statutory inquiry.

As the Government had remained completely silent about the revelations to date, I decided to write to then Taoiseach Bertie Ahern requesting the setting up of such an inquiry. To my amazement, Mr Ahern was of the view that such an inquiry was not possible because the Catholic Church was not a public body and an inquiry could only investigate matters of urgent public concern. The sexual abuse of children by Catholic priests seemingly didn't qualify as a matter of urgent public concern for Mr Ahern. I had let it be known in the national media that I had written to Mr Ahern and that he had declined to set up an inquiry. But to make matters worse, there was little public reaction to his decision to turn a blind eye to what the Catholic Church was doing.

By this time I was well used to the fact that my identity was known and this was not an issue for me at all. This was largely due to the fact that I was so angry about the Catholic Church's blatant disregard for child protection and this anger was compounded by the indifference of the Taoiseach of the day. I believed that this indifference was motivated by self-interest and by a desire not to alienate 'the Catholic vote'. I think it is true to say that another

reason for not caring that my identity was now known lay in a total disregard for the consequences for myself. I really did not care what anyone thought about what had happened to me as a child or what anyone thought about me being compensated and going public. In addition to the need to expose the Catholic Church's dangerous practices, it was important to me that people understood what was happening to a child who was being sexually abused, why a child might not tell anyone, and that the effects of that sexual abuse did not end when the abuse did. That was my focus and my motivation; all I was concerned with was how best to advance it.

Between 1998 and 2002, the Government resisted growing calls for an inquiry in to the Catholic Church's handling of allegations of sexual abuse by priests, even though the Commission to Inquire into Child Abuse (initially known as the Laffoy Commission) had been established to examine allegations of the abuse of children in residential schools. The Commission was established following the broadcast of the three-part television documentary *States of Fear*, produced by Mary Raftery.

The role of the media proved very significant in keeping the spotlight on these issues. RTÉ's broadcasting of the Prime Time Special *Cardinal Secrets* in October 2002, which described the mishandling of allegations of child sexual abuse against priests in the Archdiocese of Dublin, triggered such a strong response from the media and the public that Government had no choice but to announce an inquiry.

Along with others, I continued to avail of the media's help to keep the need for the inquiry in the public domain, as the Government took a full three years and six months to set it up. It was disappointing to note that a small number of those of us who had been sexually abused as children by priests were the driving force behind the setting up of that what was to become the Commission of Investigation into the Catholic Archdiocese of Dublin, or the Murphy Inquiry. We received the support of the Fine Gael and Labour parties, who were in opposition at that time, for the legislation that was needed to establish the inquiry. Other than that, it was us and the media. The Catholic

hierarchy, the priests, practicing Catholics the length and breadth of the country, parents, teachers, and most of the relevant non-governmental organisations all stayed silent.

Since then we have had the publication of the Ferns, Ryan, Murphy and Cloyne Reports and many voices have been raised in abhorrence at their findings and revelations. After the first three of these Reports were published, there were some voices that couldn't help but disappoint. They were, of course, the voices of those charged with, and indeed privileged to have, the responsibility to speak from Government for the people of this country. And they failed dramatically. The same deference which so informed previous reluctance not to interfere in any way with a powerful institution like the Catholic Church, regardless of what criminal activity was being conducted or covered up, now informed responses, most notably of former Taoisigh Bertie Ahern and Brian Cowen.

Ahern's wish not to cross the line between politics and religion did not reflect the anger and sadness that many people felt on viewing the BBC documentary, *Suing the Pope*, which detailed the sexual abuse of children by Fr. Sean Fortune in the Diocese of Ferns, and elsewhere, and the extent to which senior Catholic Church figures knew of his crimes. Nor did Brian Cowen's ready acceptance of non co-operation from the Papal Nuncio and the Vatican with the Commission of Investigation into the Archdiocese of Dublin properly reflect the wider public's anger on hearing that news.

Today, of course, it is all very different. That failure to properly articulate how the people of Ireland really feel has ended. It ended in the Dáil on Wednesday 20 July 2011 when Taoiseach Enda Kenny responded to the publication of the Cloyne Report saying: "The rape and torture of children were downplayed or 'managed' to uphold instead, the primacy of the institution, its power, standing and reputation". Mr Kenny went on to say: "I am making it absolutely clear, that when it comes to the protection of the children of this State, the standards of conduct which the Church deems appropriate to itself, cannot and will not, be applied to the workings of democracy and civil society

in this republic. Not purely, or simply or otherwise. CHILDREN… FIRST". Not before time. Similarly, the announcement of new child protection legislation that followed the publication of Cloyne was also not before time. While words are powerful, effective implementation of proper child protection measures must now be our priority.

Rosaleen McDonagh, Pavee Point Travellers Centre and Playwright

Holy - House

Jessica Ward rolled over in the bed, stretched out and turned on the radio. *Morning Ireland* was full of it. Jessica turned it off again. The sun was strong, shining in the window. Even at eight o clock in the morning the day already felt like it was going to be too much. Jessica turned in the bed and stared at the radio like it was a television. No images, no sounds. She tried to empty her mind and make it vacant but her head felt crowded. Music, a change of station maybe that would help. The radio on again and then off. Her usual pattern. It seemed to be lost to her. Routine, structure, just couldn't be found anywhere that morning.

A third attempt. This time she swung her legs to the floor. Reaching for the mobile phone, pushing the buttons, she reminded herself the PIN number. Even that felt difficult. Changing her mind about the phone, saying, 'No', suddenly Jessica was aware that she was talking to a phone that hadn't been turned on. She craved for sleep. She craved for comfort. She craved for a different day.

After her shower her skin felt rough. As if there was an outer layer growing around her body. Something that would protect her. Something that couldn't bruise, that wouldn't bleed. That couldn't be stretched or pulled. A layer of skin that would never be damaged. Moisturising or caring for her body was something she wasn't able to do. She didn't value it so what was the point of all those products.

Even though it was a hot day she wanted to be covered up. To hide every bit of flesh, to become invisible. A few degrees lower and she might get away with a coat. A coat would protect her. Cover her up. It being early June, the heat, a coat would melt her body. Settling on a hoodie with clips in her hair so the hood would stay in place. Anything to hide her, her head, her face. Being visible was dangerous. Pulling the cuffs of her sleeves over her hands, gripping

them she found some strength. Her ankles and her feet were well covered with a long linen skirt. No shoes. Jessica hated shoes. As a child, they made her wear big orthopaedic shoes to correct her feet. If she was bold, the nuns would hit her with those big brown heavy orthopaedic shoes. If she could get away with not going out today that would be a great option but she didn't have an option. He'd be waiting.

On the street there was an atmosphere, a mixture of silent euphoria and quiet remorse. A sense that the whole country let itself breathe after years of holding its breath. Jessica felt she was suffocating still. She planned her route, side streets, away from the crowd and away from that march. The march where everybody wanted atonement. Where survivors were held up as the voice of a nation. People wept over narratives from different individuals, whose stories were all over the radio talk shows and newspaper articles. Jessica didn't have a narrative. A story to share. A moment of rage. A moment of forgiveness. Jessica knew she was nothing.

Her mind wasn't her own, looking around her, lost in her thoughts she had taken the wrong route. Jessica Ward turned head on into the march. Needing to hide, she went into a shop. The air on the street felt dirty. It felt angry. She felt contaminated. The shop was well known for selling delicate delph and jewellery. For a split second Jessica Ward wanted to do a pirouette in her wheelchair. Wanting to hear the noise of breaking glass. Anything that would interrupt this heavy atmosphere.

With this momentary tension inside her, gasping she pushed the rage from her heart right down into her belly. Another push to keep it down and let the air out, not the words. She knew she had to get out of the shop in case she did anything. Draw attention to herself. Back on the street she stayed on the footpath, the crowd were coming towards her on the way to government buildings. They wore white ribbons. A symbol of social solidarity. The march was nearly over. They'd walked the streets from the Garden of Remembrance all the way down to the Dáil. Jessica was trying to make her way up O'Connell Street. The path was crowded. With her head down, she found it difficult to

notice when the footpath ended. Her fear of falling, moving to the edge to avoid people was frightening. She didn't want to hear the speeches. The ridicule. The blame. The disassociation. All she felt was shame. That shame was her compass. Her reference point that told her she or her kind didn't belong here.

Children's shoes were used as a symbol. A loss of innocence. Barefoot, she put her feet back on to her footstep worried that somebody would brush off them. Bruising or marking her body was something Jessica had to be mindful of. Her height in her wheelchair made her lower. Even the brush of an elbow or a woman's handbag often marked Jessica. People said it was because of what happened to her. She was left black and blue on the inside.

Mid way down the street a woman touched Jessica's face and asked her, 'Which school were you in?' Jessica just moved on through the crowds. "Special School – Special class for Travellers" was what she had wanted to reply to the woman, but no words would leave her Mouth. People couldn't hold their silence. They were settled and able bodied. Their power and status gave them the right to talk and intrude with no regard for her privacy or pain. The collectivity of emotion. Sharing the blaming. The accusing, the speculating. Again for Jessica, it was too much. Banners and tears. Jessica felt nothing. The woman's intrusive touch, the false familiarity, the demanding assumption. The tone of her voice. Too little and far too late. Jessica didn't want sympathy. She didn't want to be asked to remember what had happen to her.

Finally onto O' Connell Street, Jessica Ward's breathing became freer. She was away, away from the crowd, away from those sad stories and away from herself. The collusion, people attempting to put a distance between the past and the present, Jessica wondered were we all as a nation inculcated in this horrible mess. Her phone, the text read, I'm here, waiting for you. X

Jessica didn't respond. It would take too much time. He knew she was coming.

The second part of her journey would bring her to the pro cathedral. On a day like today, it was odd that the holy house ruled by Rome was where they would take real refuge. Away from the crowd and the silent noise which is the

loudest noise of all. It rings in your ears. Up the ramp and in the doors she whispered 'Thank God I'm here.'

She moved mid way up the church. His shadow. They met some years back, at an Alcoholics Anonymous meeting. He stood up: I'm Brian, I'm a Traveller, I've a drink problem but it's not a cultural thing. When he finished, she moved forward in her chair: I'm Jessica, I'm a Pavee beoir and I drink too much and can't manage my life because settled people interfered with me. That was it. They found each other. Not in a romantic way that would have been too hard. Neither of them were strong enough to offer each other that. There were no more Alcoholics Anonymous meetings, they had each other. Both of them understood what they were living with. Their friendship was a secret like everything else in their lives. The drinking had stopped but the pain, the loneliness and isolation had continued.

They had made the arrangement two days before. Somewhere private, out of the way. Easy. Accessible. Somewhere where they wouldn't have to talk. Where they could just be. Somewhere where there would be no condemnation of their hiding. Somewhere where judgements wouldn't be made. Somewhere that the word survivor didn't have a victorious element to it. Where there was no expectations of having overcome something so huge. They'd agreed on a place where it was perfectly safe to feel sad and cry at what had been taken from them.

He was kneeling at the back towards the statue of Saint Therese. The little flower. Looking at him, the stories he told her, the secrets he had. What was done to him by a priest. Nearly twenty years ago. He never told anyone. Like Jessica, he came from a big family. Travellers at least in those days, families like Jessica's and Brian's fulfilled their religious duties. Religion meant everything to them. The church could always count on its Traveller parishioners, even if the rest of the parish didn't want them in their town. The West of Ireland. Being a Traveller meant they had a special relationship with the priest. When nobody else would help them, when they were being evicted, when they were being stopped going into a shop, when the school didn't want

them, the priest was who they turned to. There was a price to be paid and Brian paid that price. He wasn't an altar boy. He was just somebody that a priest took a shine to. Nobody questioned it. The priest was helping a little Pavee. Being brought to the priest's house. Brian said the priest didn't have to lie very much. The family were just so delighted to have the priest on their side. Brian's older brother Paddy Jason was getting married. The wedding was put on. Both families were happy with the arrangement.

The priest said he'd organise the local hotel. He'd give his word there'd be no trouble. He'd vouch that he'd known both families and that it was just a quiet family wedding. Brian was page boy. The priest called to the trailers that were parked outside the town at all hours of the day and sometimes early evening. He'd have his chat with the women, then with the men, then he might play a bit of handball with some of the young people. Travellers and Brian's family loved that priest for being on their side. For mixing with them. Even after what he had done to Brian, the family still wanted the same priest to do his mother's funeral.

15 years on, a broken marriage, an alcohol addiction and a huge secret. In those days men didn't talk about being raped. Not Traveller men. Who would you tell? How would you find the words? Who'd believe you over a settled priest? Was it your own fault? Brian never even told his own family, he often asked Jessica did she think that it was possible that it happened to some of his brothers as well. What could Jessica say? In the reports, Travellers were barely referenced. Nowadays, it was called Traveller ethnicity. The world had moved on. Ireland had moved on. This very day, Irish people felt they were cleansing themselves or disassociating themselves from the past.

Jessica and Brian knew neither of them could move. Forward or backward. Past or present. What was done to them had left them stuck. Now they were adults, a man and a woman, that were damaged. It wasn't just the mess that it caused. The debris was all over their lives. Both of them not being able to make things work, avoiding intimacy or honesty with everyone. Sitting beside Brian, she drew a breath.

The quietness and darkness of the church, the comfort of all the candles, the lovely statues, the wide open aisles. Yes, this was a good idea. Brian looked up and took her hand. Both of them, in the stillness of the church, kept pace with each other's breathing. The quietness - on a day like today there was nowhere else to go.

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The Power to Censor: The Catholic Church, the Media and Child Sexual Abuse

The media in Ireland has played a significant role in exposing child sexual abuse scandals involving the Roman Catholic Church. From the early 1990s onwards media coverage has been important in increasing public awareness and facilitating a wider discussion about the causes and consequences of clerical child sexual abuse and the abuse of children in institutions managed by religious Orders. In addition, media attention has facilitated debate about the handling of abuse revelations by both the Church authorities and the Irish State.

Widespread public awareness of child sexual abuse by Roman Catholic clergy emerged following media coverage of the Brendan Smyth case in 1994.[i] The following year Andrew Madden became the first person in Ireland to publicly tell his story of abuse by a priest in *The Sunday Times*. Television documentaries such as *Dear Daughter* (1996) and *States of Fear* (1999) were important in exposing the treatment of children in religious run institutions, while *Suing the Pope* (2002) and *Cardinal Secrets* (2002) highlighted the failure of Catholic Church leaders to protect children from known abuser priests. The media played a significant role in airing subsequent calls for inquiries and in calling on the State to strengthen child protection legislation.

The media's recent record, as just described, has largely been positive. But this record cannot alone be used to judge the media's interaction with these events. The Ryan Report showed how, just like other institutions, the media's record is less impressive when a broader sweep is taken of recent Irish history. Indeed, for several decades the overwhelming majority of media editors and reporters, and the mangers of these organizations, participated in what was a conspiracy of silence taking in religious Orders, the political class,

the Gardaí, the judiciary and the wider public.

The media in Ireland failed over many years to expose serious crimes perpetrated against innocent children. Why? Some have pointed blame at "cowardly editors [who] were so in fear of the church and State [that] they were not prepared to go against these authorities".[ii] In an era when reporting was not as robust as it is today and the power of the Roman Catholic Church held great sway over whole areas of Irish life, that power was undoubtedly used to censor material which would have been damaging to the Church's reputation and authority.

The Media Environment

Up until the 1960s, the Irish media sector was small in size while its content was fairly homogeneous. Throughout the period covered by the Ryan Report Ireland was served by four main newspaper groups and a State-owned radio broadcast service. Radió Éireann was essentially a passive medium in terms of news and current affairs output. Firmly under governmental control as an arm of the Department of Posts and Telegraphs, it studiously avoided controversy. Nevertheless, Archbishop John Charles McQuaid maintained a close watch on the development of the new radio service believing that as the studios were in his dioceses the service came under his control.

Interventions were motivated by a desire to ensure that broadcasts reflected and promoted the Catholic faith. However, little direct interference was needed:

> The hierarchy knew it could rely on officials in Posts and Telegraphs and Radio Eireann and that nothing would be broadcast that might be inimical to its interests. In the unlikely event that problems developed, they were handled through informal channels.[iii]

The national radio service was simply not a place for open discussion of controversial subjects. Programmes that facilitated a 'national conversation'

and which challenged perceived norms only started to appear in the radio schedule in the early 1970s.

During the initial decades after Independence, the media sector in Ireland was essentially defined by print - this was very much a world in which newspapers dominated.[iv] All the national newspapers, the *Irish Independent*, the *Irish Press*, *The Irish Times* and the *Cork Examiner*, devoted considerable editorial space to political news, and unlike the national radio service, they were not subject to direct governmental control. They displayed considerable similarities in their selection of news stories while analysis and commentary sections did not feature as prominently as they do today. The main newspapers were by and large conservative in their outlook, in that they reflected the views of their readers, and wider Irish society. In marking its fifth anniversary the *Irish Independent* invited several senior Roman Catholic clergymen to contribute special messages. Archbishop John Charles McQuaid told the newspaper editor that his publication had been marked by, "your policy of distinctive loyalty towards the Church".[v]

Media and the Church

The failure to report in a systematic manner from the 1930s to the 1970s on the industrial school system or to expose endemic abuse suffered by thousands of children is not easy to explain. Undoubtedly, a journalistic culture, which followed a less proactive approach to newsgathering than is the norm today, had an influence. Indeed, it was only in the late 1940s that investigative reporting made regular appearances in the mainstream British press - and then only in one newspaper, *The People*.[vi] Their Irish counterparts had no tradition of investigative reporting and there was no tradition of exposing wrongdoing. In this regard, it was not just wrongdoing by the Catholic Church that was ignored as well into the 1960s political journalism operated at a "quieter pace" than would be evident in subsequent decades.[vii]
Alongside this journalistic culture, 'the matter of ignorance' has been offered

an explanation for the failure to report on the industrial schools and the treatment of thousands of children. In the words of one newspaper journalist: "That the Christian Brothers were indulging in their passion for sexual abuse on their captive boys was something that I admit would not have occurred to me".[viii] It is, however, hard to explain away the absence of media attention by arguing that nothing was known. The industrial school system featured periodically in newspaper articles on court proceedings, in reports of local authority meetings, and in human-interest stories.[ix] In addition, extensive reporting of committal hearings, in the Children's Courts in Dublin and elsewhere, featured in national and regional newspapers.

This type of coverage was, however, "varied and inconsistent" and would seem to have been dependant upon the presence of a freelance reporter to supply copy to newspapers. There is no evidence that any newspaper adopted a deliberate policy of covering court proceedings on a regular basis. The position of specialist correspondent - beyond having a reporter covering parliamentary affairs at Leinster House - only began to emerge in the 1960s. Yet, even the absence of a reporter 'watching this beat' is not sufficient to explain why the stories were not followed up on in greater detail, or worse, not reported at all.

As noted in the Ryan Report: "Serious cases of sexual or physical abuse were not reported, even if they came to light by way of a court case".[x] For example, when an employee at Marlborough House, a remand home run by the Department of Education, was convicted in January 1951 of sexually abusing two boys there was no media reporting of the case. Thirteen years later, the *Connacht Tribune* published a story about head shaving in industrial schools, which was picked up by the British Sunday newspaper, *The People*, but failed to make the Irish national newspapers.

In these cases it is likely that a local freelance reporter would have filed the same copy to all national newspapers. The failure to publish such material may well be due to the power of Church authorities to control the flow of information considered damaging to its reputation and influence. As in

its relationship with Radió Éireann, sufficient evidence exists to suggest that there was an informal relationship that stopped the publication of controversial articles.

This 'power to censor' existed over many years. For example, following the death of a child "owing to careless supervision" in an industrial school in Rathdrum, a departmental inspector visited the school in January 1948 and sought to convey the seriousness of the situation to the resident manager. The response reveals the influence of Church figures over key newspaper staff:

> I drew her attention to the bad impression that would be likely to be created regarding the conduct of affairs in her school on anybody who would read the inquest proceedings in the newspapers. She told me that the matter had been taken care of in Carysfort and that there would be no report in the press. [xi]

The Church hierarchy was also able to lean on newspaper staff to censor whatever little reporting - "sparse coverage" according to the Ryan Report - there was about the industrial school system. Brian Quinn, who was editor of the *Evening Herald* from 1969 to 1976, recalled one episode when this 'power-to-censor' was successful:

> I witnessed one of the worst of the Christian Brothers break into the office of the manager and demand that a court case that mentioned Artane should not be used. Before the manager could lift a phone he would push open the editorial door to tell us the manager had instructed that the case be dumped.[xii]

These examples of direct 'power to censor' were matched by indirect censorship in newspapers 'outside the flock, as it were, in publications such as *The Irish Times*. On the handful of occasions when the newspaper published stories to the dislike of the Catholic Church they made little wider impact. For example, a series of articles on veneral disease in July 1949 was "greeted with dismay in higher Catholic circles, and the subject was almost completely boycotted by the Catholic press". [xiii]

There was a similar reaction following the publication of a four-part series on

industrial schools in February 1950. The articles have been described as very critical but well-informed, and proposed closing the institutions. "They are the unwanted, the neglected and the outcast children of Ireland," the opening articles asserted.[xiv] The series, however, made minimal impact: "there was little reaction to the articles, which seem to have gone largely unnoticed in official and political circles as well as among the general public". [xv]

It may, however, be possible to speculate that the articles did not go unnoticed and, as in the earlier examples, editorial intervention ensured there was no 'pick-up' by other mainstream newspapers. It is not an outlandish conclusion given what is known about the Church's system of informal interventions with media organisations at that time.

The ability of the Church to intervene in editorial coverage reduced from the 1960s onwards. The nascent changes in Irish society also impacted on Church-media relations with increasing editorial independence and a greater willingness to challenge figures in positions of authority. The arrival of the national television service and programmes such as *The Late Late Show* were "associated with encouraging more frank and open discussion" of contentious matters.[xvi]

The powerful relationship which McQuaid and other clergy enjoyed with the media sector was coming to an end although the development of a more robust culture of journalistic practice was not a linear process. An eight-part series in *The Irish Times* in 1966 offered revealing insight into "the social background of Ireland's delinquency problem and the system of dealing with young offenders".[xvii] The series, the work of journalist Michael Viney, was a fine example of the move away from a passive reporting style and a willingness to adopt much greater scrutiny of those in positions of authority. Yet, despite the evidence unearthed "the series was met with an eerie silence from other Irish newspapers, which declined the opportunity to mine the rich lode, which, in might seem, had been opened up by Mr Viney".[xviii]

By way of contrast, from the late 1990s television had become pivotal to telling the story of child sexual abuse: "it has been the sight and sound

of survivors of child abuse on television that has most obviously driven the Church and State into significant admission and major reactions".[xix]

Conclusion

The best works of journalism are often those that challenge the prevailing majority ethos. The mainstream media in Ireland in the period covered by the Ryan Report was, however, not in this tradition and was not defined by a culture of exposing wrongdoing. But reporting on the industrial school system and the treatment of children in residential care did not require work of an investigative nature. Whatever about exposing the physical and sexual abuse of children in care, a great deal of information about the system itself - and related questions about its appropriateness - was in the public domain from court reports and other sources. There was most certainly a public interest justification in pursuing and publishing such stories. That this did not happen diminishes Irish journalism - irrespective of the great broadcast and newspaper work of more recent times. The explanation for these failures is multi-faceted. There is, however, strong evidence to conclude that there was an acceptance of Church authority to censor and, in many cases, a culture of deference was willingly supported by editors and other media managers.

i H. Goode, H. McGee, and C. O'Boyle (eds.), *Time to listen. Confronting Child Sexual Abuse by Catholic Clergy in Ireland*, Liffey Press, Dublin, 2003, pp.6-11.

ii J. Harkin, 'Letter to the Editor', *The Irish Times*, 27 May 2009.

iii R. Savage, R, *A loss of innocence? Television and Irish Society 1960-72*, Manchester University Press, Manchester, 2010, p.169

iv For example, in 1953 the Irish Independent had a circulation of 203,206; the Irish Press 198,784, The Irish Times 35,421 and the Cork Examiner 45,917. In the Sunday market the two big sellers were the Sunday Independent (395,507) and the Sunday Press (378,454). See J. Horgan, *Irish Media: A Critical History Since 1922*, Taylor and Francis, London, 2001, pp. 62-63.

v Ibid., p. 66.

vi R. Greenslade, 'Subterfuge, set-ups, stings and stunts: how red-tops go about their investigations,' in H. De Burgh, *Investigative Journalism* (second edition), Routledge, London, 2008.

vii Michael Mills, 'Presentation to the Brendan Corish Seminar' in B. Halligan (ed.), *The Brendan Corish Seminar Proceedings*, 11 March 2006, Scathan Publications, Dublin, 2006, p.13.

viii B. Quinn, 'Letter to the Editor', *The Irish Times*, 11 May 1999.

ix See *Commission to Inquire into Child Abuse, Report, Vols. I-V*, Government Publications, Dublin, 2009. In particular, see David Gwynn Morgan, 'Society and the schools', Vol. 3.

x See *The Report of the Commission to Inquire into Child Abuse.*

xi See *The Report of the Commission to Inquire into Child Abuse.*

xii B. Quinn, 'Letter to the Editor', *The Irish Times*, 11 May 1999.

xiii Horgan, *Irish Media*, p.62.

xiv *The Irish Times*, 3 February 1950.

xv See *The Report of the Commission to Inquire into Child Abuse.*

xvi Diarmaid Ferriter, *Occasions of Sin: Sex and Society in Modern Ireland*, Profile Books, London, 2009, p.374.

xvii M Viney, *The Irish Times*, 27 April to 6 May 1966.

xviii See *The Report of the Commission to Inquire into Child Abuse.*

xix C. Kenny, 'Significant Television: Journalism, Sex Abuse and the Catholic Church,' in *Irish Communications* Review, 1, 2009, pp.63-76.

Deirdre Kenny, Advocacy Director, One in Four

Barriers to the Criminal Justice System

One in four Irish men and women disclose that they have been sexually abused. While Irish society has relied upon the criminal justice system to address crimes of sexual violation, this system does not adequately address the needs of victims. Therefore, those who experience sexual crime have been reluctant to report. The SAVI report (2000) established that in the case of childhood sexual abuse, 5.6 per cent of men and 9.7 per cent of women reported to the Gardaí.

Article 8 of the Universal Declaration of Human Rights states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law". The right to an effective remedy where fundamental rights have been violated is dependant upon freedom to report the crime as well as access to an effective criminal justice system to prosecute it. Furthermore, what is generally considered an effective remedial outcome in terms of exposure and punitive containment of the offender, does not necessarily meet the needs of those who have endured the violation of their human rights. In fact, the formal nature of the judicial remedy may cause further pain and suffering.

The Ryan, Ferns, Murphy (Dublin) and Cloyne Reports revealed that horrendous crimes have been committed against children in this society for decades. The records indicate that these crimes were endemic in our society, that there was denial that such abuse existed and little understanding of its impact on victims. While the general public reacted with genuine outrage to the revelations in these reports, very few of these offences have come before the courts.

With this history of low reporting rates and few prosecutions it is evident that in Irish society many barriers stand in the way of dealing with these crimes in an effective and responsible way. Judith Lewis Herman describes how

crimes of sexual and domestic violence are still effectively crimes of impunity:

The barriers to effective remedial action are both formal and informal. The legal structure in which offences are investigated and potentially prosecuted is rigidly formal. Prosecuting crimes of childhood sexual abuse present complex legal challenges. These include:

- Forensic difficulties posed to the accused by the delay in reporting.
- The lack of findings of fact.
- The very nature of the crime means there are rarely witnesses and disclosures are often made many decades later.
- This delay in reporting is a classic feature of child abuse and was recognized by the Supreme Court in 2006 (H v DPP IESC 55).
- The passage of time can be seen to prejudice a person's right to a fair trial.
- Independent evidence that the crime occurred can be difficult to obtain and Judges are often required to give warnings to juries that in the absence of corroboration it is dangerous to convict.

These are the many challenges faced by the DPP. Despite their practice to prosecute those cases that they judge there to be the best chance of success, quite a number of prosecutions end in an acquittal. It could be considered poor use of the DPP's use of discretion if a prosecution was brought in a case where the evidential base was so weak that there was no prospect of a conviction, especially when one considers the rigours of a trial the complainant would face.[i]

It is apparent the criminal justice system is not designed to remedy the traumatic experience of childhood sexual abuse. It addresses in only a very narrow way the crime that is committed. There is no doubt that some historic cases can never achieve the high burden of proof required by our criminal

courts. But if we are to encourage reporting of these crimes, a humane process, supportive of victims is needed. Greater understanding of sexual violence and its impact will go a long way to effect changes that ensure that victims are treated with dignity and respect.

Denial exists on a social as well as an individual level... We need to understand the past in order to reclaim the present and the future. An understanding of psychological trauma begins with rediscovery of the past. [ii]

The informal barriers are often more complex, as they reflect the challenges victims face personally in dealing with trauma but also societal attitudes to sexual violence. While the laws of our society establish sexual abuse of children as a crime, Catholic Church and State institutions made it impossible, through their collusion in secrecy and denial, for victims to make known the harm they suffered and the crimes that had been committed. This refusal to take responsibility for these crimes allowed the cycle of abuse to continue. Covering up the truth entrapped not only the individuals in an endless cycle of denial and repetition but also society itself.

Even though it is now recognised that people who have experienced sexual violence as children need social acknowledgement and support, this legacy of denial and secrecy still remains a barrier to the reporting of these crimes. Victims fear not being believed. Disbelief and denial are known to protect us from the pain of acknowledging the truth, whereas action to prevent such terrible things from happening to another generation signifies understanding and acceptance. While our society is emerging from the state of denial, it has not yet evolved the means to provide victims with what they need.

While genuine outrage followed the publication of the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports, society has not yet truly faced up to their implications. After decades of similar reports our child protection services are not properly resourced or supported by adequate legislation. A

person reporting such a crime can hardly be expected to trust society to truly acknowledge the harm they have experienced when that same society continues to allow children to be at risk.

When the truth is fully recognized, survivors can begin their recovery. But far too often, secrecy prevails and the story of the traumatic event surfaces not as a verbal narrative but as a symptom.[iii]

The criminal justice system by its nature creates a barrier to the reporting of crimes of sexual violence. If victims are not to be further isolated there is a necessity for voluntary organisations like One In Four to provide advocacy and to support them as they traverse the system. In our work we witness the re-victimisation of complainants in the court room. It is not uncommon that procedural requirements such as seeing the perpetrator, recalling the abuse and cross-examination evoke feelings of anxiety, isolation, confusion, exposure, powerlessness and intimidation. In my experience men and women who have been sexually abused in childhood have an overwhelming need to speak about what has happened to them and to be acknowledged by their family and community. At the same time they struggle with feelings of self blame and shame, and are fearful of exposure, judgment and isolation. Ideally they need to tell their stories in their own way in a safe and supportive setting.

While our understanding of the nature of justice is instinctive, it is further informed by the media. Victims can then be deeply disappointed by the reality of the rigid formalities within our judicial system. The needs of victims of sexual crime are often entirely at odds with the requirements of the legal system. The complainants often have to overcome a history of denial and suppression of their experience to be able to face a legal system that requires the court to challenge their credibility in a very public way.The experience of abuse can be re-stimulated by the experience of an authoritarian setting that requires submission to complex rules which may not be easily understood and over

which the individual has no control.

If we are to effectively address crimes of sexual violation we must first face up to our past. It is time we focused on understanding the needs of those who have suffered abuse in our society. We must get to grips with the dynamics of abuse and to take action to ensure that both the reporting systems and courts reflect an understanding of sexual violence and its impact. Reforms in Scotland and the United States have seen the positive effects of a specialist approach to the investigation and prosecution of sexual crimes and the establishment of special victims units.

For victims of sexual violence remedial action extends beyond criminal prosecution, however, the courts are the only formal facility we have to expose the perpetrator and acknowledge the harm has been done. While legislative reform to protect the victims' rights is crucial maybe it's time for a new innovative approach such as restorative justice schemes.

i C. Hanly, *Rape and Justice in Ireland: A National Study of Survivor, Prosecutor and Court Responses to Rape*, Liffey Press, Dublin, 2009, p.368.

ii Judith Lewis Herman, 'Justice From the Victims Perspective', in *Violence against Women*, vol.11, no. 5, 2005.

iii Ibid.

1 Alexander J. Humphreys, *New Dubliners*, Routledge & Kegan Paul, London, 1996, pp. 52-3.

2 Ibid.

3 The Murphy (Dublin) Report, 1.90.

4 *Bunreacht na hÉireann, Constitution of Ireland*, Article 44.5.

5 Coldrey argues that this applies to the Christian Brothers prior to the establishment of care facilities for its own elderly members. See Barry Coldrey, '"A strange mixture of caring and corruption": residential care in Christian Brothers orphanages and industrial schools during their last phase, 1940s to 1960s', *History of Education*, vol. 29, no. 4, 2000, pp 343-355, p. 349; The Ryan Report Vol. IV, 4.217, ft. nt. 212.

6 Coldrey addresses the international dimension to his analysis and cites an English example from the 1930s. He describes how a Home Office Inspector visiting St. Joseph's Industrial School in Manchester expressed concern about staff inadequacy: "Many years ago, there is no doubt that this, like other Roman Catholic Orders, considered that a secondary staff was good enough for this school. The staff is still weak. Therefore, the school is going so badly … some definite and prompt action must be taken". See Coldrey, '"A strange mixture of caring and corruption"', p. 349.

7 William Utting has described how the residential care of children "is commonly regarded as an unimportant, residual activity", dominated by historical attitudes towards looking after children. This denotes it as women's work in which "the skills are inherent or intuitive and the commitment of the work force is exploitable". See Department of Health and Children, *Report on the Inquiry into the operation of Madonna House*, Government Publications, Dublin, 1996, p. 96.

8 Brendan McConvery CSsR, 'The shaping of religious life' in Tony Flannery (ed.), *Responding to the Ryan Report*, Columba Press, Dublin, 2009, p. 29.

9 Many industrial schools operated by the Sisters of Mercy were misleadingly referred to as orphanages, considering the majority of children housed in these schools were not orphans. Raftery and O'Sullivan refer to the 'orphanage' myth and argue this misnomer elicited sympathy and support for both the children and the religious, whilst highlighting the charitable nature of the latters' work. See Mary Raftery and Eoin O'Sullivan (eds) *Suffer the Little Children, The Inside Story of Ireland's Industrial Schools*, New Island, Dublin, 1999, p. 12.

10 Margaret Lee, 'Searching for reasons: A former Sister of Mercy looks back' in Flannery, *Responding to the Ryan Report*, p. 47.

11 Ibid., p. 46.

12 The Ryan Report Vol. IV, 4.217, ft. nt. 212.

13 Lee, 'Searching for reasons', p. 44.

14 Robbie Gilligan, 'The "Public Child" and the Reluctant State', *Éire-Ireland*, vol. 44, 1 & 2, Spring/Summer 2009, pp 265-290, p. 272.

15 Willie Walsh, 'Reflecting on the Ryan Report', The Furrow, vol. 60, no. 11, pp 579-58, p. 583.

16 Ibid.

17 Lee, 'Searching for reasons', p. 51.

18 Coldrey, ' "A strange mixture of caring and corruption" ', p. 348.

19 Ibid., pp. 348, 355.

20 Ibid., p. 348.

21 The Ryan Report Vol. IV, 1.23.

22 The Ryan Report Vol. I, 6.31.

23 The Resident Manager, a member of the religious order, was the most senior figure of authority in industrial schools and reformatories.

24 The Ryan Report Vol II, 3.391 - 3.396.

25 The Ryan Report, 3.6.8 (p. 127).

26 In 1960 an organisation and management survey indicated that collecting and accounting for parental monies accounted for 25 per cent of the RISB's time. The branch employed two part time 'parental money collectors'. See the Ryan Report Vol. IV, 1.13.

27 Documents supplied by Bernadette Fahy.

28 The Ryan Report Vol.IV, 2.277.

29 The Ryan Report Vol. II, 8.113.

30 The Ryan Report Vol. IV, 1.15.

31 Ibid., 2.145.

32 The Ryan Report Vol. IV, chapter 2.

33 Ibid., p. 87.

34 £600 was directed to St. Mary's Secondary School from the £2616 state grant afforded St. Joseph's Industrial School. See the Ryan Report Vol. IV, p. 65.

35 Michael Pierse, 'Reconsidering Dermot Bolger's grotesquery: Class and Sexuality in The Journey Home', *Irish University Review: A Journal of Irish Studies*, Autumn-Winter 2010, retrieved 19 August 2011, <http://findarticles.com/p/articles/mi_hb162/is_2_40/ai_n56420030/ >; The Ryan Report, 7.265 - 7.266.

36 Pierse, 'Reconsidering Dermot Bolger's grotesquery'.

37 The Ryan Report Vol. IV, 2.220; The Ryan Report 'Executive Summary', p. 17; Raftery and O'Sullivan, *Suffer the Little Children*, pp 95-99.

38 The Ryan Report, 'Executive Summary', p. 17.

39 The supreme authority is the General Chapter (a legislative body) that is held every six years. When it is not in session authority is vested in the Superior General and the General Council. This council appoints Provincials (there are two Irish Provinces) who in turn appoint Superiors to Communities. The Visitor, who wrote a report for both the Council and the Superior General, carried out visitations. See the Ryan Report Vol. I, 6.18 - 6.23.

40 Ibid.

41 Ibid.

42 The Ryan Report Vol. II, 7.592

43 The Ryan Report, 'Executive Summary', p. 21. For examples of how physical abuse was tolerated in institutions managed by the Christian Brothers see The Ryan Report Vol. I, 7.187; 8.52-8.62.

44 This is a pseudonym.

45 This is a pseudonym.

46 The Ryan Report Vol. I, 8.86-8.89

47 Ibid.

48 Ibid., 7.148 - 7.179.

49 Tyrrell commit suicide by setting himself alight in 1967. His autobiography was later found amongst the papers of Senator Owen Sheehy Skeffington. He had been involved with the London branch of the think tank Tuairim, which produced a study of residential institutions entitled 'Some of our Children', 1966. See Peter Tyrrell, Founded on Fear, Edited by Diarmaid Whelan, Irish Academic Press, Dublin, 2006.

50 The Ryan Report Vol. I, 8.106

51 Ibid., 8.107-8.108.

52 The Report details two cases where laymen sexually abused children in Artane. The first incident happened in the 1960s, the man being a former resident. When the boy who was abused told a Brother what happened to him, the Gardaí were called. Similarly in the second case the Gardaí were informed when a layman, described by the complainant as 'a man who was a friend of the Brothers', abused one of the boys. According to the Report cases of this nature, as so far as they feature Christian Brothers, 'undermine the position adopted by the Congregation in relation to sexual abuse; namely that it was seen as a moral failing rather than criminal behaviour on the part of the Brother and was dealt with as such. No ambiguity existed in the case of lay offenders. To assert, as the Congregation has done, that it was ignorant of the full implications of sexual abuse of children is not consistent with its response to these lay offenders. The Congregation was aware of the criminal nature of this conduct and took swift and effective action, which makes its failure to do so in the case of its own brethren all the more difficult to excuse'. See ibid., 7.478 – 7.492.

53 The Ryan Report Vol. I, 'Executive Summary', pp. 21-2.

54 This is a pseudonym.

55 This is a pseudonym.

56 A day/boarding school for orphans.

57 Similarly Br Dacian, who admitted to being sexually abusive and who was the subject of a sexual abuse complaint in the early 1960s at St. Joseph's Industrial School, Salthill, was transferred to a day school in Dublin for nearly ten years, and then, later in the 1970s was sent to work in Letterfrack for a year. See The Ryan Report Vol. I, 8.433 - 8.450.

58 Marie Keenan, 'Them and Us': the Clergy Child Sexual Offender as 'Other' ' in Flannery, *Responding to Ryan*, p. 211.

59 Ibid.

60 Seán Fagan, 'The Abuse and Our Bad Theology' in Flannery, *Responding to Ryan*, p. 24.

61 The Murphy (Dublin) Report,10.19.

62 Ibid.

63 The Ferns Report, pp 32-3.

64 Ibid.

65 This is a pseudonym

66 The Cloyne Report,,12.2, 12.3.

67 Ibid.

68 The Murphy (Dublin), 10.11.

69 In the diocese of Ferns, Bishop Donal Herlihy (1964-83) transferred two priests to the diocese of Westminster in the United Kingdom for a period before allowing them return to teaching, chaplaincy and managerial roles. See the Ferns Report, pp 247-8.

70 In other cases the medical professional was not provided with the full details of the allegations or complaints made against the person in question or details of previous psychiatric/ psychological assessments were withheld. Decisions to return priests to ministry were then ostensibly made with the backing of a report made by a medical professional who did not have the full details of the case. See ibid., pp 158-63, 251.

71 The Cloyne Report,1.59.

72 Ibid., 9.142.

73 Ibid.,15.22.

74 Ibid., 21.89.

75 Ibid., p. 258.

76 The Murphy (Dublin) Report, 1.23.

77 Church and General agreed a policy of insurance with the archdiocese of Dublin in 1987 and this policy was subsequently made available to other dioceses on the same basis. The Murphy (Dublin) Report notes that this insurance policy did not have most of the normal commercial requirements for insurance policies – there was no proposal form nor risk assessment and the policy was on a "claims made" basis. At that stage there was knowledge of approximately twenty priests against whom child abuse allegations had been made, or about whom there were suspicions or concerns. However, while all Irish bishops took out insurance between 1987-1990 to protect the diocese against claims that could result from clerical child sexual abuse, it was not until 1994 that the bishops established "a committee to advise on the appropriate responses to an accusation, suspicion or knowledge of a priest or religious having sexually abused a child". See ibid., 9.35, 9.36. 3.39.

78 Ibid., 1.33.

79 Ibid., 1.36.

80 This inquiry directly followed the screening of the RTÉ documentary, *Prime Time: Cardinal Secrets*. Produced by Mary Raftery this programme investigated abuser priests in the archdiocese of Dublin. Dearbhail McDonald reported on the difficulties faced by the Gardaí in their investigation. See The *Sunday Times*, 28 November 2004.

81 If there were vague and undetermined or uncertain indications of the crime the bishop was to order that the documents be placed in the archive to be taken up again if anything should occur at a later date. If there were indications in relation to the crime that were quite serious but not yet sufficient to warrant establishing an accusatory process, the bishop had to order that the accused be warned in a fatherly manner or most gravely adding, if necessary, 'an explicit threat of a process if a new accusation is made'. This material was to be kept in the archive, and the behaviour of the accused monitored. If there were arguments to hand that there were certain, or at least probable, reasons for the setting up of an accusatory process he was to order that the accused should be cited. The document also contained instructions as to what should happen if a priest who was found guilty of the alleged crime, or had even received a warning, was transferred to another territory. The bishop of the place to which the priest in question was being transferred was to be warned as soon as possible about the priest's history and juridical status. While one witness referred to the 1922 version of Crimen Solicitationis as a 'well thumbed' document during the time of Archbishop John Charles McQuaid, Cardinal Connell informed the Commission that he had never read it. See the Murphy (Dublin) Report, 4.21, 4.25-4.28.

82 Ibid., 4.30.

83 Ibid. 4.38 - 4.39

84 In the code of canon law, the procedures available to a bishop for dealing with an allegation of an offence are dealt with. Where a bishop receives information, "which has at least the semblance of truth", that an offence has been committed he must set up a preliminary and purely administrative investigation about the facts and circumstances of the case (Can. 1717.1-3). If, after this preliminary investigation (which after 1996 is conducted according to the Framework Document), the bishop believes that the facts warrant a penal process, he must then determine whether this would be expedient having due regard to Canon law. Under Canon 1722, the bishop can, at any stage of either a judicial or extra-judicial process 'prohibit the accused from the exercise of the sacred ministry or some other ecclesiastical office or position … or even prohibit public participation in the blessed Eucharist'. The Ferns Report describes how "although there are many commentaries on Canon law, they are only a form of legal opinion. Of more importance are the rulings and interpretations that come from the Roman authorities. In the end however, there is only one authentic interpreter of Canon law and that is the Pope. This presents a problem for lay people and clergy seeking to determine what the Canon law position is on any given subject". See the Ferns Report, pp. 38-39.

85 The Murphy (Dublin) Report, 1.25; 1.26.

86 The Ferns Report, pp. 247-8, 251.

87 Ibid., p. 38.

88 Ibid., p. 251.

89 Donald Cozzens, 'Culture that Corrodes' in John Littleton and Eamon Maher (eds), *The Dublin/Murphy Report: A Watershed for Irish Catholicism?*, Columba Press, Dublin, 2010, p. 145.

90 Louise Fuller, 'Disturbing the Faithful: Aspects of Catholic Culture under Review' in Littleton and Maher, *The Dublin/Murphy Report*, p. 167.

91 Interview with Willie Walsh, 23 March 2010.

92 Lindsey Earner-Byrne, 'Child sexual abuse, history and the pursuit of blame in modern Ireland' in Katie Holmes and Stuart Ward (eds), *Exhuming Passions: The Pressure of the Past in Ireland and Australia*, Irish Academic Press, Dublin, 2011, pp. 51-70, p. 61.

93 Ibid.

94 The Ferns Report, p. 255.

95 The Murphy (Dublin) Report, 1.56.

96 Ibid., 1.57.

97 Ibid., 1.58.

98 Ibid., 1.66

99 The Cloyne Report, 1.17.

100 Ibid.,1.53.

101 Ibid., 1.47.

102 The Ferns Report, p. 254.

103 The Murphy (Dublin) Report, 1.15.

104 Ibid. , 1.34

105 The Ferns Inquiry noted that that Bishop Comiskey was out of the country from September 1995 until February 1996. See the Ferns Report, pp 227, 230.

106 This is a pseudonym.

107 The Murphy (Dublin) Report, 58.21, 58.22.

108 Ibid.

109 The Ferns Report, p. 263.

110 *Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse: Child Sexual Abuse: Framework for a Church Response*, Veritas Publications, Dublin, 1996.

111 The Ferns Report, p. 40.

112 This included the appointment of a delegate and deputy delegate to oversee and implement the procedures for handling the allegations; it was specifically mandated that every complaint be recorded and carefully examined and the duty of promoting awareness and understanding of child sexual abuse among the priests of the diocese was expressly conferred on the delegate. See the Ferns Report, p. 42.

113 The Cloyne Report, 1.28 .

114 While canon law does give an episcopal conference the power to declare binding norms in certain circumstances and after approval from the Holy See, the Framework Document was not a norm and therefore was not binding. See the Murphy (Dublin) Report, 3.42; 3.43

115 Ibid., 7.13.

116 This letter was the subject of a recent television documentary, *Would you believe? Unspeakable Crimes*, in January 2011. However, as early as 1986, it seems that Bishop Comiskey had an awareness of a lack of support from the Vatican to remove priests from ministry pending an investigation. In the case of serial abuser Seán Fortune, Comiskey said that he did not feel that he could institute canonical proceedings against him because of warnings from the Vatican that bishops had to proceed very carefully and make sure they had hard evidence before removing a priest. Bishop Comiskey said he knew Fr Fortune was litigious and that he would undoubtedly appeal to Rome if he was removed without a concrete allegation being made against him". See the Ferns Report, p. 158.; The Cloyne Report, 1.18

117 *Would you believe? Unspeakable Crimes*, aired 17 Jan. 2011, RTÉ 1.

118 The Cloyne Report,1.18.

119 The Murphy (Dublin) Report, 2.23.

120 Ibid.

121 The Cloyne Report, 4.23.

122 Ibid., 2.11.

123 Ibid., 1.18.

124 The Murphy (Dublin) Report,13.49.

125 Ibid., 3.40-3.43.

126 See *Our Children, Our Church: Child Protection Policies and Procedures for the Catholic Church in Ireland* ,(Veritas Publications, Dublin, 2005,), 8.6.

127 Ibid., 8.10.

128 The Cloyne Report, 1.2; 1.5.

129 Ibid., 1.22.

130 Ibid., 1.43.

131 Ibid., 1.23.

132 Ibid., 1.23,1.44

133 Ibid., 1.57.

134 Ibid., 1.41.

135 For examples see ibid., 10.47, 21.93.

136 *The Irish Times*, 15 July 2011.

137 This is a pseudonym

138 Patrick later left the priesthood. See the Cloyne Report, 21.60.

139 Ibid., 21.29.

140 Ibid., 21.18.

141 Ibid., 21.16-18.

142 Ibid.

143 Ibid., 21.50.

144 Ibid., 21.73.

145 *The Irish Times*, 15 July 2011

146 This is a pseudonym

147 Ibid., 15.28.

148 Ibid.

149 Ibid.

150 The Ryan Report, 'Executive Summary', p. 16. Italics inserted.

151 Ibid., p. 19.

152 Children Act 1908, s. 46 (3).

153 Children Act 1908, s. 47.

154 The Cussen Report (1936), which represented the State's first inquiry into residential institutions, recommended that the minister should have power "to remove Resident Managers who were derelict in their duties", and this was enshrined in the Children Amendment Act (1941). According to the 1941 Act, "[i]f the Minister is satisfied that the Resident Manager of a certified school has failed or neglected to discharge efficiently the duties of his position or that he is unsuitable or unfit to discharge those duties, the Minister may request the managers of the school to remove such Resident Manager from his position and the managers shall comply with such requests (unless withdrawn) within one month after receipt thereof". See the Ryan Report Vol. IV, 1.52-1.53.

155 This Act, however, despite the recommendations of the Cussen Report, did not give the minister power over the selection of a manager or approval of appointees. While this had been included in the original bill introduced to the Dáil, opposition by the Resident Managers' Association had resulted in its removal. See the Ryan Report Vol. IV, 1.54.

156 The Resident Manager had the power to make internal rules for the management of the school and for discipline within the school, but these rules were subject to the approval of the minister for education. See the Ryan Report Vol. IV, 2.04,2.07; Children Act, 1908, s. 54.

157 Ibid., vol. iv, 1.05.

158 Ibid., vol. iv, 1.01.

159 Ibid., vol. iv, 1.230.

160 Ibid.

161 This refers not only to residential care for children but also to facilities and services for people with disabilities and mental health challenges. A history of these services is the subject of a monograph in preparation, by Andrew Power et al.

162 Gilligan, 'The "Public Child" and the Reluctant State', p. 270.

163 The subsidiary principle was first articulated by Pope Pius XI (1922-39) and it allowed for State support for but not control of welfare. For an analysis of how McQuaid tried to ensure that Catholic bodies provided welfare services for Catholics, undercutting the work of non-Catholic service providers, see Lindsey Earner-Byrne, *Mother and Child, Maternity and Child Welfare in Dublin*, 1922-60, Manchester University Press, Manchester, 2007, pp 90-108, 106, 92-3, 123, 149.

164 Gilligan, 'The "Public Child" and the Reluctant State', p. 270.

165 Finola Kennedy, *From Cottage to Creche: Family Change in Ireland*, Institute of Public Administration, Dublin, 2001, p. 151.

166 Interview with Barry Desmond, 14 April 2011.

167 Una Crowley and Rob Kitchin, 'Producing 'decent girls': governmentality and the moral geographies of sexual conduct in Ireland (1922-37)' in *Gender, Place and Culture*, vol. 15, no. 4, 2008, pp 355-372, p. 355-7.

168 Anthony Keating, 'Church, state, and sexual crime against children in Ireland after 1922' in *Radharc*, vol. 5/7, 2004-2006, pp. 155-180, pp. 157-8,160.

169 The Constitution recognises the family based on marriage, and not the non-maritial family.

170 Moira J. Maguire, *Precarious Childhood in Post-Independence Ireland*, Manchester University Press, Manchester, 2009, p. 4.

171 Ibid.

172 Ibid.

173 'Hiding in plain sight – The social justice demands of today', address by Emily O'Reilly, Ombudsman at The Sisters of Charity's Conference, Dublin Castle, 30 June 2009.

174 Keating, 'Church, state, and sexual crime against children', p. 173.

175 The Ryan Report Vol. IV, 1.03.

176 Ibid., 1.116.

177 Furthermore, during the period from Dr Anna McCabe's retirement as medical inspector in the mid 1960s to Graham Granville's appointment as 'Child Care Advisor' in 1976, the Department did not have an inspector with professional expertise. In the interim the only inspector was the 'Administrative head' of the RISB. See ibid.,1.12, 1.121, 1.137.

178 This school, managed by the Christian Brothers, differed from industrial schools in that its residential component was for those deaf children from around Ireland who could not travel on a daily basis to the school and therefore the children came to the school voluntarily. While officials of the Department of Education inspected the primary and secondary school at St. Joseph's, no inspection of the residential areas were undertaken. Representatives of the Provincial and General Councils of the Christian Brothers carried out annual inspections which did include the residential quarters of the boys, while officials from Northern Ireland regularly visited the school in respect of children admitted from the Education Board in Northern Ireland. See the Ryan Report Vol. I, 13.13, 13.14.

179 While Marlborough House was certified by the Department of Justice, the Department of Education was responsible for its management. In its submission to the Commission the Department of Education indicated that "the records show that there were no formal or regular inspections of Marlborough House". See ibid., 16.12, 16.13.

180 There have been six separate investigations by An Garda Síochána into allegations of sexual abuse of the residents by members of

staff of Lota. Two Brothers of the Congregation were convicted of crimes of sexual abuse in the period 1952 to 1984. In 2002, evidence was taken from three complainant witnesses and three respondents, two of whom had been convicted of sexual abuse offences, and a third Brother of Charity respondent who admitted a single incident of sexual abuse while working in Lota. Department of Education officials inspected the education provided at the national school at Lota, while those of the Department of Health inspected the premises. The latter, however, was only in relation to direct funding of capital development projects. From enquiries made within the Department of Health and the Health Service Executive (formerly the Southern Health Board in the case of Lota), the Investigation Committee was informed that officials were not aware of any inspections having been carried out by the Department of Health or Health Board staff "on institutions for persons with intellectual difficulties between the period 1939 and 1990", including Lota. Furthermore, Lota did not come within the remit of the inspectors of the RISB. Therefore, no government department saw itself as responsible for overseeing the conditions and quality of care in the school. See the Ryan Report Vol. II, 5.02-5.04; 5.40-5.44.

181 Keating, 'Church, state, and sexual crime against children', p. 164

182 The Ryan Report Vol. I, 8.38.

183 The Ryan Report Vol. II,11.35, 11.39.

184 Ibid., 11.42.

185 This is a pseudonym.

186 This is a pseudonym.

187 The Ryan Report Vol. I, 15.471,15.472.

188 The Ryan Report Vol. I, 15.473.

189 Keating, 'Church, state, and sexual crime against children', p. 164.

190 The Ryan Report Vol. II, 11.124.

191 Ibid., 13.106.

192 Concern with regards to under-nourishment and weight loss, overcrowding and a lack of fire escapes on the premises at St. Michael's Industrial School were communicated to the Superior of St. Teresa's Convent (Sisters of Mercy) in 1944. Ultimately a statutory request to remove the Resident Manager was issued by the Department of Education with a strongly worded letter, noting that the "Minister cannot allow this state of affairs to continue", and that if St. Michael's was to continue as a certified industrial school it would be necessary "to effect a radical improvement in the feeding and care of the children". While the Superior requested that the manager be allowed stay on and promised that things would improve, the Minister refused to withdraw the statutory request and a new manager was appointed. That same year McCabe was dissatisfied with the condition of the boys she found at Ferryhouse whom she found to be underweight. She blamed the aging manager who, according McCabe, was "gradually becoming senile" and "suffered from a rheumatic disability". Subsequently the Chief Inspector wrote to the Provincial of the Rosminian order asking for the appointment a successor and ultimately a younger man was appointed. See the Ryan Report Vol. IV, 1.61; The Ryan Report Vol. II, 8.39-8.44; the Ryan Report Vol. II, 3.385-3.396.

193 The Ryan Report Vol. II, 8.46.

194 The Ryan Report Vol. IV, 1.145.

195 The Ryan Report, 'Executive Summary', p. 19.

196 Keating, 'Church, state, and sexual crime against children', p. 164.

197 Gilligan describes the 'public child' as 'a child whose private world has in some sense become public business, attracting attention because concern has been aroused about his or her care or safety'. See Gilligan, 'The "Public Child" and the Reluctant State', p. 265.

198 Lindsey Earner-Byrne, 'Child sexual abuse, history and the pursuit of blame,' p. 63.

199 Ibid., pp. 64-5.

200 Ibid.

201 Ibid.

202 The Ryan Report Vol. IV, 1.150.

203 Furthermore, in no case could it be inflicted upon girls over fifteen years and in cases of girls less than fifteen years this form of punishment was only to be inflicted "in cases of urgent necessity". The Ryan Report Vol. II, 6.106-8.

204 Ibid.

205 The Ryan Report Vol. I, 7.62.

206 In the case of Letterfrack, the Ryan Report concludes that the Department of Education was at fault in that it failed to ensure that the statutory punishment book was properly maintained and reviewed at every inspection. See the Ryan Report Vol IV,1.151; The Ryan Report Vol. I, 8.264.

207 The Ryan Report Vol II, 2.45.

208 Ibid., 2.115.

209 The Ryan Report Vol., I,15.119.

210 The Ryan Report Vol. II, 3.128.

211 Ibid., 3.113;

212 Ibid., 3.139

213 Ibid., 3.138.

214 The Ryan Report Vol. IV,1.186.

215 Ibid.,1.182-1.184.

216 This is a pseudonym.

217 This is a pseudonym.

218 The Ryan Report Vol. I, 7.80.

219 Ibid., 7.81.

220 Ibid., 15.169-15.171.

221 Ibid., 15.172.

222 The Ryan Report Vol. I, 11.41-11.45.

223 Ibid.,11.46,11.47.

224 Ibid., 11.48-50.

225 Ibid., 11.58.

226 *'Report on Reformatory and Industrial Schools Systems*, 1970: Motion', Seanad Éireann Debates, vol. 76, 15 November 1973.

227 Kennedy, Cottage to Creche, p. 252.

228 Ibid.

229 This is a pseudonym.

230 The Ryan Report Vol. I, 11.102.

231 Ibid., 11.95.

232 Ibid.,11.107.

233 Keating, 'Church, state, and sexual crime against children', p. 164

234 Ibid.

235 This is a pseudonym.

236 According to the Report, the manager 'had caught one of their Brothers in bed with a boy'. See the Ryan Report Vol. II, 3.272.

237 This is a pseudonym

238 This is a pseudonym. See the Ryan Report Vol. II, 3.271.

239 This is a pseudonym.

240 The Ryan Report Vol. II, 3.273-3.279.

241 Ibid.

242 Ibid.

243 Ibid., 3.285.

244 Ibid., 3.284.

245 This is a reference to children considered 'offenders'.

246 The Ryan Report Vol. I, 8.519-8.528.

247 These criticisms included the negative remarks of some District Justices in relation to industrial schools and reformatories that were published in newspapers. See the Ryan Report Vol. IV, 1.23.

248 Granville was appointed as the Department of Education's 'Child Care Advisor' in 1976.

249 The Ryan Report Vol. II, 8.105.

250 Ibid.

251 The Ryan Report Vol. IV, 1.64.

252 Ibid.,1.96.

253 Ibid.

254 The Ryan Report Vol. I,16.33.

255 The Ryan Report Vol. I,16.09.

256 Anthony Keating, 'A case study of neglect' in *Studies: An Irish quarterly*, vol. 93, no. 371, 2004, pp 323-355, pp 333-4.

257 Ibid.

258 Interview with Des O'Malley, 29 March 2011.

259 Ibid.

260 The Murphy (Dublin) Report, 1.100.

261 Ibid., 1.92.

262 This is a pseudonym.

263 The Murphy (Dublin) Report, 13.5; 1.92

264 Ibid., 1.93

265 For an example of this reluctance see the Ferns Report, pp 231-2; 253.

266 The Report describes how '[A] systemic change occurred within An Garda Síochána from November 1999 whereby a paper trail evidencing such correspondence has now been supported with a computerised system which records all incidents that An Garda Síochána deal with from the time of the initial contact made to it by a complainant or witness until a particular offender is dealt with by the court. This is known as the PULSE system. It is a system which is available online to all networked Garda stations throughout the country. See the Ferns Report, pp 60-6; 257.

267 The Cloyne Report,1.63.

268 Ibid.,1.64 – 1.66.

269 Ibid.

270 The Ryan Report Vol. ii, 4.212.

271 Ibid.

272 Ibid.

273 This is a pseudonym.

274 This is a pseudonym.

275 This is a pseudonym

276 This is a pseudonym,

277 The Ryan Report Vol. II,14.272-14.322.

278 Ibid., 14.301

279 Ibid.,

280 Tade died whilst serving a four-year sentence imposed on him by the Circuit Criminal Court in 1999 having pleaded guilty to seven counts of indecent assault against three former residents, including the boy who made the complaint in 1977. See ibid., 14.304 – 14.305

281 Ibid., 14.332

282 While the Health Service Executive has taken on the functions of the former health boards, the Ferns and Murphy Reports refer to the former health boards.

283 The formal title of the Kennedy Report is *Reformatory and Industrial Schools Systems*, Report, 1970 (Dublin, 1970).

284 The Ryan Report explains the role of health authorities in committing children to industrial schools:
"Until it was repealed in 1991, the statutory authority of a health authority or board to place a child in an industrial school was section 55 of the Health Act, 1953 (or its precursors). By this provision, a health authority was empowered to provide for the assistance of child by boarding the child out [fostering], by sending him to an industrial school approved by the minister for health or, where the child was not less than 14 years of age, by arranging for his employment … In addition to a means test, the child had to be either an orphan or had to have been deserted by his parents or parent; and in the case of an illegitimate child, whose mother was dead or was deserted by the mother, or the parent/guardian had to consent". See the Ryan Report Vol. I, 3.46, 3.48

285 The Murphy (Dublin) Report, 6.20.

286 The Ryan Report Vol. IV, 4.119.

287 Ibid., 4.120

288 Ibid., 4.102.

289 Ibid., 4.105.

290 Ibid., 4.112.

291 The Murphy (Dublin) Report, 6.20.

292 The Ryan Report Vol. II, 8.247-8.249.

293 Department of Health, *Child Abuse Guidelines: Guidelines on Procedures for the Identification, Investigation and Management of Child Abuse*, 1987.

294 Cationa Crowe, 'The Ferns Report: Vindicating the Abused Child' in *Éire-Ireland*, vol. 43, no. 1 & 2, 2008, pp. 50-73, p. 54.

295 Moira J. Maguire, 'The Carrigan Committee and Child Sexual Abuse in Twentieth-century Ireland' in *New Hibernia Review*, vol. 11, no. 2, 2007, pp. 79-100, p. 86.

296 Eoin O'Sullivan, "This otherwise delicate subject": Child Sex Abuse in early twentieth century Ireland, in Paul O'Mahony (ed.) *Criminal Justice in Ireland*, Institute of Public Administration, Dublin, 2002, pp.181-2.

297 Similarly a sexual assault on what were termed in the legislation 'imbecile women', was also considered a misdemeanour. See ibid., p. 182.

298 Although in cases of men less thanw twenty-four years of age who were first time offenders, this defence could still be used. See ibid., p. 187.

299 Ibid., p. 189.

300 James Smith, 'The politics of sexual knowledge: The origins of Ireland's containment culture and the Carrigan Report (1931)' in Journal of the *History of Sexuality*, vol. 13, no. 2, 2004, pp 208-233, p. 222.

301 Maguire, 'The Carrigan Committee', p. 84.

302 O'Sullivan, ' "this otherwise delicate subject"', p. 190.

303 Ibid.

304 Ibid.

305 Maguire, 'The Carrigan Committee', p. 90.

306 Ibid. p. 92

307 O'Sullivan, "this otherwise delicate subject", p. 191.

308 Mark Finnane, 'The Carrigan Committee of 1930-31 and the 'Moral Condition of the Saorstát' in *Irish Historical Studies*, vol. 32, no. 128, 2001, pp 519-536, p. 525.

309 Smith, 'The politics of sexual knowledge', p. 210.

310 Maguire, 'The Carrigan Committee', p. 94.

311 The 1935 act raised the age of consent in carnal knowledge cases to seventeen years, and the age of consent to sexual intercourse in

any case to fifteen years. See Maguire, 'The Carrigan Committee', p., 98; Finnane, 'The Carrigan Committee of 1930-31', p. 521.

312 Finnane, 'The Carrigan Committee of 1930-31', p. 536.

313 Similarly Crowley and Kitchin contend that while sexual conduct was the focus of regulation prior to independence, [during the period 1922-1937] "there was an intensification and deepening of the disciplining regime as the state built for itself new institutionalised power, at the same time bolstering the power of the Catholic Church and heads of family to regulate subjects". See Crowley and Kitchen, 'Producing 'decent girls'', p. 355; Smith, 'The politics of sexual knowledge', pp 209, 228.

314 Smith, 'The politics of sexual knowledge', p. 224; Maguire, 'The Carrigan Committee', p. 98.

315 Maguire,'The Carrigan Committee', p. 98.

316 The Ryan Report Vol. V, 'Ferriter Report', p. 21.

317 The Cloyne Report, 6.43.

318 In 2009 it was decided to seek further information and the HSE wrote to all bishops requesting additional information, including the names of complainants. It is intended that these will be cross referenced with names known to the Gardaí. See ibid.

319 The Cloyne Report, 6.45

320 Ibid., 6.46.

321 Ibid.

322 Ibid., 6.48

323 Ibid., 6.50

324 Ibid.

325 Ibid.

326 *The Irish Times*, 15 July 2011.

327 The Murphy (Dublin) Report, 2.2; The Cloyne Report, 6.52; 21.65

328 The Cloyne Report, 6.57.

329 Ibid., 6.64

330 Having examined the relevant documentation provided by the diocese, Elliott concluded that "serious deficits emerged in the stated management of these cases" and noted that "the lack of appropriate preventative action by the diocese on foot of allegations received is the most striking feature of the cases". See *Report on the Management of two child protection cases in the Diocese of Cloyne*, 2008; The Cloyne Report, 6.70, 6.72.

331 Ibid., 6.85- 6.86.

332 Ibid., 6.87.

333 Ibid., 6.88, 6.90.

334 Ibid., 6.94.

335 Ibid. 6.109.

336 Ibid. 6.106.

337 Ibid., 6.107.

338 Ibid.

339 The Murphy (Dublin) Report, 6.6. 1.98

340 Ibid. 2.19

341 Ibid.,

342 Ibid. 6.6, 1.98

343 Ibid., 6.6.

344 The Murphy (Dublin) Report, 1.97.

345 While the Health Boards/HSE was/is obligated "to promote the welfare of children in its areas who are not receiving adequate care and protection' by the terms of the Child Care Act 1991, it was not given any new powers to intervene in specific situations. The Commission of Investigation notes that "when introducing the Bill in 1988, the Minister for Health talked about the 'imaginative use' of the new provisions". The Commission asserts that the "legal provisions need to be clear and unambiguous with little scope for, and no requirement to use, imagination". It also "agrees with the Ferns Report" which takes the view that the "powers conferred on the health boards by the 1991 Act are designed to protect a child from an abusive family situation". It cites the case of MQ V Robert Gleeson and others in which Mr Justice Barr took the view that health boards had an implied right and duty to communicate information about a possible child abuser if, by failing to do so, the safety of some children might be put at risk. Before making such a communication, the health boards had certain duties to the alleged perpetrator. This judgement has been viewed quite differently by the Ferns Report and the health boards/HSE. The Ferns Report was clearly concerned about the legislative basis for this wide-ranging duty to communicate while the health boards/ HSE concerns relate to restrictions on their ability to communicate because of the requirements to inform the perpetrator. See the Murphy Report 1.97, 6.25, 6.27, 6.31.

346 Ibid., p. 50.

347 Ibid., p. 257.

348 The Cloyne Report, 1.69

349 See chapter three, p.297

350 'Hiding in plain sight – The social justice demands of today', address by Emily O'Reilly, Ombudsman at The Sisters of Charity's Conference, Dublin Castle, 30 June 2009.

351 *The Irish Times*, 10 Nov. 2005.

352 Subsequent to the establishment of the Commission, the Residential Institutions Redress Act (2002) established a compensation scheme, in the form of the Redress Board. An indemnity agreement between the religious orders and the Government was put in place that same year. Eighteen congregations, represented by the Conference of the Religious of Ireland (CORI) agreed to contribute €128 million to the Residential Institutions Redress Fund. In return the Government granted an indemnity to those congregations party to the agreement. The Ryan Report notes that the indemnity deal "was not based on any apportionment of responsibility for abuse". Subsequently a larger sum was contributed by a number of religious orders. See Ryan Report Vol. I, 1.65-1.74.

353 *The Irish Times*, 25 May 2009.

354 Eugene O'Brien, ' "The boat had moved": The Catholic Church, conflations and the need for critque' in Littleton and Maher, *The Dublin/Murphy Report*, p. 94.

355 Ibid; See Karen Coleman, 'Culture of deference to power is a toxic legacy' in *The Irish Times*, 11 October 2010.

356 The Ryan Report, Vol. IV, 4.03.

357 Eoin O'Sullivan's chapter, 'Residential child welfare in Ireland, 1965-2008: an outline of policy, legislation and practice: a paper prepared for the Commission to Inquire into Child Abuse', examines the evolution of policy, legislation and practice in relation to child welfare from the mid 1960s to the present. See ibid., 4.90.

358 Gilligan describes how it took a further five years for the whole Child Care Act of 1991 to be given full effect. He asserts that "this further delay was the result of a fiendish power now routinely given to ministers to bring sections of new statutes into force separately, at their discretion. One might say this allows them to 'have their cake and eat it too', politically and administratively. They can claim the credit for reform without having to feel the pain of actual enforcement. The discrepancy is usually lost on the public and even the media, whose eyes generally glaze over in the face of such apparently tedious technicalities. In all, it took twenty-two years from the point that the coalition Government Minister for Health appointed his task force until the full implementation of the Child Care Act of 1991". Gilligan, 'The "Public Child" and the reluctant state', p. 287.

359 The Murphy (Dublin) Report, 1.99.

360 The formal title of the Waterhouse Report is *Lost in Care, Report of the tribunal of inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974.*

361 Matthew Colton, Maurice Vanstone and Christine Walby, 'Victimization, Care and Justice: Reflections on the experiences of victims/survivors involved in large-scale historical investigations of child sexual abuse in residential institutions' in *British Journal of Social Work*, 32, 2002, pp 541-551, p. 549.

362 Ibid.

363 Willie Walsh, former Bishop of Killaloe, suggests that in relation to clerical abuse "people knew more than bishops or priests". He gave the example of a father who protected his son, an altar boy, by taking him from the church once he had served mass. At the time he never told anyone of his suspicions that the priest in question was an abuser. In later years he told Willie he didn't know why he didn't tell anyone. When I asked Willie why he thought this man never made his concerns known, he referred to a "total imbalance of power" between people and the Church and said the man may have gotten "a hostile reaction" if he had made his concerns known. See Interview with Willie Walsh, 23 Mar. 2010.

364 Michael R. Molino, 'The "House of a Hundred Windows": Industrial Schools in Irish Writing' in *New Hibernia Review*, 5: 1, 2001, pp 33-53, 33

365 Kennedy, *From Cottage to Creche*, p. 166.

366 Lee, 'Searching for reasons' in Flannery, *Responding to the Ryan Report*, p. 44.

367 Marianne Benkert and Thomas P. Doyle, 'Religious Duress and its impact on victims of clergy sexual abuse', p. 14.

368 Kennedy, *From Cottage to Creche*, p.171.

369 Benkert and Doyle, 'Religious Duress', pp 23- 4.

370 Ibid. p. 7.

371 Ibid. p. 25.

372 Tom Mooney, *All the Bishops' Men, Clerical Abuse in an Irish Diocese*, Collins Press, Cork, 2011, p. 60.

373 *The Wexford People*, 26 October 2005.

374 The Murphy (Dublin) Report, 28.34, 28.35.

375 Kennedy, *From Cottage to Creche*, p. 171.

376 Earner-Byrne 'Child sexual abuse, history and the pursuit of blame', p. 56.

377 For an example see the Murphy Report, 17.4.

378 The Cloyne Report, 27.4

379 Ibid.

380 Harry Ferguson, 'Abused and Looked after children as 'moral dirt': Child Abuse and Institutional Care in Historical Perspective' in *Journal of Social Policy*, vol. 36, no. 1, 2007, 123-139, p.129.

381 Ibid.

382 Ibid. pp. 129-130, 137.

383 Tyrrell, *Founded on Fear*, p. 101.

384 Ibid.

385 Crowley and Kitchen, 'Producing "decent girls"', p. 367.

386 Ibid., p. 369.

387 Eoin O'Sullivan and Ian O'Donnell, 'Coercive confinement in the Republic of Ireland: The waning of a culture of control' in *Punishment and Society*, 9, 27, 2007, pp 27-48, 43.

388 Ibid. 32-33

389 Ibid., p. 33.

390 Ferguson, 'Abused and Looked after children as "moral dirt"', p 137.

391 Ibid. 127.

392 Ibid. p. 137.

393 Earner- Byrne, 'Child sexual abuse, history and the pursuit of blame,' p. 57.

394 The term "witnesses" refers to those who gave testimony and documents to both the Investigation and Confidential Committees.

395 The Ryan Report, 'Executive Summary', p. 14.

396 The Ryan Report Vol. III, 9.168.

397 Ibid.

398 The Report asserts: "Until very late in the day, the contribution made by the Oireachtas or the news media towards supervision, or even education of the public, in regard to the Schools, appears to have been negligible. Pressure groups were rare and usually ineffective … All these pools of unknowing reinforced each other". See the Ryan Report Vol. IV, 3.124.

399 Ibid., 3.121.

400 The Ryan Report Vol. II,4.61-62.

401 The Ryan Report Vol. IV, 3.119.

402 Ibid.

403 Ibid., 3.120.

404 Ferguson, 'Abused and looked after children as "moral dirt"', p. 129.

405 O'Sullivan asserts that one must 'be mindful, that while a range of euphemisms did exist to describe child sexual abuse, an understanding of the physical and psychological consequences of such sexual activity was underdeveloped, and it was the morality of both the adult and the child that was the focus of concern'. See O'Sullivan, '"this otherwise delicate subject"', pp 180-1.

406 Maguire, 'The Carrigan Committee', p. 98.

407 *The New Ross Standard*, 26 October 2005

408 *Irish Independent*, 27 October 2005.

409 *The Irish Times*, 23 May 2009.

410 John Banville, 'A century of looking the other way', *The New York Times*, 23 May 2009.

411 Frank Crummey suggests that this may have been the case for Catholic women who were reluctant to go against the Church's teachings on contraception. See *Crummey V Ireland, A thorn in the side of the establishment,* Londubh Books, Dublin, 2009, p. 120.

412 The Ferns Report, p. 93.

413 The Murphy (Dublin) Report, 24.50.

414 The Ryan Report Vol. IV, 3.94 – 3.97.

415 Four articles by "a special correspondent" in 1950 were "very critical of the system and proposed radical changes to do away with institutions". Michael Viney's series, 'The Young Offenders', highlighted many inadequacies in the system, in particular the significant number of children with intellectual disabilities housed in Daingean. Ibid., 3.103 – 3.107.

416 Ibid., pp 227-8.

417 Earner-Byrne, 'Child sexual abuse, history and the pursuit of blame,' p. 61.

418 For examples see *The Irish Times*, 23 May 2009; 25 May 2009; 28 October 2005; *Irish Independent*, 1 June 2009.

419 *The Irish Times*, 23 May 2009.

420 *The Irish Times*, 27 May 2009.

421 *The Irish Times*, 30 May 2009.

422 The poll was undertaken by Red C on the 25-27 July 2011. See annex 2 for further details.

423 *The Irish Times*, 3 June 2009

424 *Irish Independent*, 1 June 2009.

425 See the Cloyne Report for examples: 14.09, 17.4, 26.3.

426 The Ryan Report Vol IV, 4.03.

427 The Ryan Report Vol V, p. 9.

428 The Ryan Report Vol IV, 3.30.

429 The Ryan Report Vol. III, 3.09.

430 Ibid. table 5.

431 The Ryan Report Vol. I, 2.15.

432 Ferguson, 'Abused and Looked after children as "moral dirt"', pp. 135, 136.

433 The Ryan Report Vol. V, 'Ferriter Report', p. 11.

434 The Ryan Report Vol. IV, 1.133.

435 Earner-Byrne, 'Child sexual abuse, history and the pursuit of blame', p. 52.

436 Ibid., p. 61.

437 Richard Breen, Damian F. Hannan, David B. Rottman and Christopher T. Whelan (eds), *Understanding Contemporary Ireland, State Class and Development in the Republic of Ireland*, Gill and Macmillan, Dublin, 1993, p. 17.

438 Pierse, 'Reconsidering Dermot Bolger's grotesquery'.

439 The Ryan Report Vol. V, 'Ferriter Report', pp. 29-30.

440 The Ryan Report Vol. I, 8.112.

441 The Ryan Report Vol. V, 'Ferriter Report', p. 30.

442 Ibid.

443 Ibid., pp. 30-31.

444 The Ryan Report Vol. III,11.43.

445 Sarah-Anne Buckley, 'Child neglect, poverty and class: the NSPCC in Ireland,1889-1939 – A case study' in *Saothar: Journal of the Irish History Society,* vol. 33, 2008, pp 59, 67.

446 The SAVI Report discusses the phenomenon of revictimisation as it pertains to children who are sexually abused. See *The SAVI Report, Sexual Abuse and Violence in Ireland* (Dublin, 2002), xxxiv; Ferguson, 'Abused and Looked after children as "moral dirt"', pp 127, 128, 137.

447 The Ryan Report Vol. I, 8.65.

448 The Ryan Report Vol. III, 7.236.

449 Bernadette Fahy, *Freedom of Angles*, Dublin, O'Brien Press, 1999, p. 122, cited in Molino, 'The "House of a Hundred Windows"', p. 50.

450 Molino, 'The "House of a Hundred Windows"', p. 42.

451 This is a pseudonym.

452 The Ryan Report Vol. II, 14.50.

453 Ibid.,14.100.

454 The Ryan Report Vol. I,, 3.10

455 See Smith 'The politics of sexual knowledge', p. 232.

456 Smith describes how religious orders have yet to provide access to records of the Magdalen asylums as they pertain to the twentieth century, which means that questions with regards to the release of those like the girl in this case remain unanswered. See Smith 'The politics of sexual knowledge', p. 232.

457 The Ryan Report Vol. IV,1.80.

458 Ibid., 1.78.

459 Ibid., 1.81

460 Ibid.

461 The Ryan Report Vol. I, 13.13, 13.14.

462 Ibid., 13.147.

463 As mentioned above there have been six separate investigations by An Garda Síochána into allegations of sexual abuse of the residents by members of staff of Lota. Two Brothers of the Congregation were convicted of crimes of sexual abuse in the period 1952 to 1984. In 2002, evidence was taken from three complainant witnesses and three respondents, two of whom had been convicted of sexual abuse offences, and a third Brother of Charity respondent who admitted a single incident of sexual abuse while working in Lota.

464 The Ryan Report Vol. II, 5.02-5.04; 5.40-5.44.

465 Ibid., 5.230.

466 John Sweeney, 'Attitudes of Catholic religious orders towards children and adults with an intellectual disability in postcolonial Ireland', in *Nursing Inquiry*, 17, 2, 2000, pp. 95-110, pp. 96, 101.

467 This abandonment, according to the Attorney General, was the result of "constitutional obstacles". Annie Ryan, *Walls of Silence, Ireland's policy towards people with a mental disability*, Red Lion Press, Kilkenny, 1999, p. 44.

468 Sweeney describes how for Catholic religious orders "the psychiatric notion of intellectual disability as a medical problem was supplanted by an educational paradigm of moral guidance". Sweeney, 'Attitudes of Catholic Religious Orders', pp. 96, 101.

469 The Ryan Report Vol. I, 7.600.

470 Ibid.

471 Ibid., 7.601.

472 Ibid., 7.602-603

473 The Ryan Report Vol III, 7.236.

474 Ibid.

475 Ibid.

476 The Ryan Report Vol. IV, 4.93.

477 Ibid.

478 Itinerant Settlement Committees were established in every local authority area in 1969 following a recommendation in the Commission on Itinerancy. See ibid., 4.305, ft. nt. 360

479 Ibid., 4.305.

480 Aoife Bhreathnach, *Becoming Conspicuous, Irish Travellers, Society and the State 1922-70*, University College Dublin Press, 2006, p. 2.

481 Jane Helleiner, ' "For the protection of the children": the politics of minority childhood in Ireland' in *Anthropological Quarterly*, vol. 71, no. 2, 1998, pp 51-62, p. 57.

482 Breathnach asserts that prior to the Commission on Itinerancy (1960-3) which advocated settlement and absorption as the solution to Traveller poverty and the problem of illegal campsites, the "extent to which Travellers were ignored by government was perhaps unparalleled in the history of Irish welfare provision". This meant that Travellers were relatively more reliant on Catholic charitable organisations. In her biography, Nan Donohue reveals how Travellers were often afraid of engaging with the existing welfare infrastructure, in this case NSPCC inspectors, for fear that their children would be taken from them. Furthermore, Helleiner describes how "threats of child removal for truancy were … used by police as a means of moving Travellers out of a given district". See Breathnach, *Being Conspicuous*, pp 143-4; Helleiner, ' "For the protection of the children" ', pp 56-7.

483 Helleiner, ' "For the protection of the children" ', p. 56.

484 The Ryan Report Vol IV, 4.305.

485 Bhreathnach, Being Conspicuous, p. 11; See Census 2002, 'Irish Traveller Community', Volume 8 (http://census.cso.ie/Census/TableViewer/tableView.aspx?ReportId=1583)

486 Rosaleen McDonagh, 'Article 6' in Donncha O'Connell, *60 years, 30 perspectives: Ireland and the Universal Declaration of Human Rights*, New Island, Dublin, 2009, p. 39.

487 Ibid., p. 42.

488 The Ryan Report Vol IV, 4.307, ft nt 265.

489 *The Irish Times*, 1 June 2009.

490 Raftery also refers to abuses in Madonna House and Cualann.

491 *The Irish Times*, 1 June 2009.

492 Ibid.

493 Moira J. Maguire and Séamus Ó Cinnéide, ' "A good beating never hurt anyone": The punishment and abuse of children in twentieth century Ireland', in *Journal of Social History*, vol. 38, no. 3, 2005, pp. 635-652, pp 635-6.

494 Ibid., pp .637, 649.

495 In 1929 the failure of the Department of Education to deal effectively with complaints from parents against three teachers in a national school Co. Mayo ultimately resulted in the withdrawal of 120 of the school's 133 pupils being withdrawn in protest. See Ibid., pp 640-1.

496 Ibid., p. 650.

497 Ibid.

498 The poll was undertaken by Red C on the 25-27 July 2011. See annex 2 for further details.

499 Ferguson, 'Abused and Looked after children as "moral dirt"' p.132.

500 Ibid.

501 Ibid., pp 133-4.

502 Ibid. p.132

503 Ibid., p.134.

504 The Ryan Report Vol. I, 3.23, 3.25.

505 Ferguson, 'Abused and looked after children as "moral dirt"', p. 134.

506 Ibid., p. 137.

507 Ibid., pp. 137-138.

508 While the paucity of records available makes it impossible to know the extent of the Society's role in committing children to industrial schools, 37 per cent of the total number of complainants who testified about their time in the fifteen industrial schools investigated by the Investigation Committee, were committed by the NSPCC/ISPCC. The Ryan Report Vol. V, pp 4-5.

509 The Ryan Report Vol. I, 3.28.

510 Ibid., 3.24, 3.28

511 The Ryan Report Vol. V, 'Ferriter Report', p. 17.

512 Moira J. Maguire, 'The Carrigan Committee' p. 91.

513 Ibid.

514 Carol Smart, 'Reconsidering the Recent History of Child Sexual Abuse, 1910-1960' in *Journal of Social Policy*, 29, 1, 2000, pp 55-71, p. 56.

515 Ibid., pp 60-4.

516 Ibid., p. 65.

517 Ibid.

518 Ibid., p. 66.

519 The Ryan Report, 'Executive Summary', p. 19.

520 The Ryan Report Vol. I, 7.251.

521 The Ryan Report Vol. III, 13.93.

522 Ibid., 9.261.

523 Ibid.

524 The Murphy (Dublin) Report, 1.103

Chapter 3

Lessons for Today

The Ryan, Ferns, Murphy (Dublin) and Cloyne Reports identified catastrophic problems and abuses in the way in which non-State actors – in this case agents of the Catholic Church – interacted with children. The Ryan Report reveals that staff members in residential institutions were untrained and unsuitable for this work, while internal management structures failed to regulate staff by failing to deal with complaints and evidence of abuse appropriately. Similarly the Ferns, Murphy (Dublin) and Cloyne Reports cited internal management failures, as abuser priests were transferred, canon law structures which could have been used to suspend suspected abusers were ignored, and a culture of secrecy and of poor record keeping allowed for the continuation of child abuse in these dioceses.

Deference to a private and voluntary organisation meant that agents of the State failed to use the ample legal powers at their disposal to intervene in residential institutions. There was a failure to inspect some institutions at all, and a failure to demand changes when inspections highlighted problems. The Department of Education mismanaged and dismissed complaints and often deferred to Resident Managers rather than investigate complaints appropriately. In the case of an incident of sexual abuse in St. Joseph's Industrial School, Ferryhouse, Clonmel, it is apparent that there were no official procedures to deal with cases of this kind and officials failed to record events and failed to inform the Gardaí. In the case of Marlborough House, a State run remand home, the Ryan Report demonstrates that complaints were used as a way of monitoring the institution and no regular inspections occurred. This indicated the low priority that children in care represented for the Department. Deference to the Church also influenced some members of the Gardaí and led to their failure to handle complaints of abuse appropriately, while the Ferns, Murphy (Dublin) and Cloyne Reports indicate that HSE workers do not to have the necessary powers of intervention to carry out effective child protection practices.

It is to be hoped that nothing on the scale of what was revealed in the Ryan Report - the physical, emotional and sexual abuse of at least 30,000

children placed by the State in institutions operated by Catholic religious orders from 1936 to 1999 – can ever happen again. But life for many children in Ireland today is far from perfect. Government, voluntary agencies and civil society need to learn from what has happened in the recent past. We need to be honest about why such dreadful things were allowed to happen to very vulnerable children and why the basic human rights of today's children are still not vindicated by the State.

Children Today

The Ryan Report showed that the some of the most vulnerable children in Irish society were effectively criminalised. These children were of a 'working class' background and were not afforded the same considerations as children of more advantaged socio-economic groups. That they were looked down upon in society and were stigmatised for having experienced residential institutions is confirmed by the fact that many subsequently emigrated from Ireland.

For most children today, life is good. But too many children remain marginalised and disadvantaged, and some will face a lifetime of inequality. The annual 'Report card' published by the Children's Rights Alliance is a useful yearly snapshot of the progress of Government commitments to children in areas such as education, health, material well being and child protection. Children remain the group most at risk of poverty in Ireland. One in every six children lives in relative poverty (where the family income is less than 60 per cent of the national median income per adult of €231.20 per week)[1], and 8.7 per cent of children live in consistent poverty, i.e. in families that cannot afford basic necessities like food, warm clothing or heating.[2] One in six pupils in Ireland has poor reading skills.[3] Across early childhood education and care, literacy and early school leaving, the very different experiences and opportunities available to children depend on their socio-economic circumstances. In 2007/08 just 102 members of the Traveller community completed the Leaving Certificate, a rate of less than 20 per cent compared with a national average of approximately 84 per cent.[4] Ireland does not have

For a discussion of attitudes to poverty and child neglect see Martina Deasy (Mananger of Arklow Springboard Family Support Service), 'Dealing with Child Neglect' on page 325.

a formal juvenile penal policy, and there is little preventive or early intervention work done with children with offending behaviour. The inhabitants of our prisons and juvenile detention centres mirror the socio-economic inequality outside the prison gates. It is estimated that for males aged 21 to 30 years, early school leavers have an imprisonment rate of 46.6 per 1,000 compared with 1.6 per 1,000 for those who completed their Leaving Certificate.[5]

Children who experience homelessness either alone or with their families, experience multiple infringements of their human rights, including their rights to health, education, and play and leisure.[6] According to a 2007 study of 18-25 year olds experiencing homelessness by the Children's Research Centre at Trinity College, Dublin, some Government policies may inadvertently accelerate children's descent into homelessness due to the sudden withdrawal of services for this age group upon reaching the age of 18.[7] It established that one of the main pathways to youth homelessness was in coming out of the State care system, i.e. foster care, residential care placements or a residential setting for young offenders.

Despite the Government's recruitment of 200 additional social workers in 2010, they are still "being forced to ignore hundreds of potentially serious child protection concerns due to heavy workloads and under-staffing".[8] More than 23,000 children were on HSE waiting lists for speech and language therapy in 2010, with almost 4,000 of those waiting for more than 12 months.[9] Where the government's mental health policy, *A Vision for Change*, recommends a total of 99 Child and Adolescent Mental Health teams, in November 2010, there were just 55 such teams in operation, with team staffing levels averaged at two-thirds (70.2 per cent) of the recommended level.[10] Children continue to be treated in adult inpatient mental health facilities[11], a practice that has been described as "in-excusable, counter-therapeutic and almost purely custodial" by the Inspector of Mental Health Services.[12] Children in the youth justice system and children in State care are among those at high risk of experiencing mental health issues, yet recent HIQA (Health Information and Quality Authority) reports show that access to child and adolescent mental health

services for these children remains inadequate.

These are just some of the experiences of our children today. A number of system flaws continue to underpin the State response to these concerns:

For a discussion of children's services today see Norah Gibbons (Director of Advocacy, Barnardos), 'The Child Welfare and Protection System in Ireland Today' on page 331 and Lisa Collins (Advocacy and Policy Officer), ISPCC, 'Learning from the Past' on page 337.

Implementing commitments made

The Ryan Report details how a number of inquiries and committees, such as the Cussen Report (1936), the Inter-departmental Committee on the Prevention of Crime (1962) and the Kennedy Report (1970) made a number of recommendations on reformatories and industrial schools that were not implemented in a timely fashion or at all. Similarly verbal commitments to bolster child protection procedures, which followed the Ferns Report, have not been translated into effective action.[13]

Following the Ryan Report, the then Government adopted an Implementation Plan to execute its recommendations and to address the many serious gaps in current child protection and care systems.[14] Its 99 actions were to be implemented by the end of 2011, but many were delayed or stalled. For instance, independent inspection of all residential centres for children in State or foster care was to have commenced by July 2010, and the registration and inspection of all residential centres and respite services for children with disabilities by December 2010, yet neither has begun. In 2010, the then Minister for Children said the actions would now take four years to roll out, but no new timeline was set out by that government. It is unacceptable that the goalposts could so easily be changed with little or no accountability for such a decision.

Similarly, following the publication of the Ryan Report, the then Government promised to improve compliance with the State's child protection guidelines, *Children First*, by enacting legislation to place these guidelines on a statutory basis.[15] Legislation was to have been drafted in 2010, but this did not happen. In a 2010 report, the Ombudsman for Children found poor and inconsistent adherence to *Children First* by the responsible agencies,

resulting in failures to identify or protect children at risk of abuse.[16] The new Government has outlined renewed commitments in this area and a timeframe for implementation.

The creation by the new Government of a separate Department of Children and Youth Affairs and commitments given to strengthening children's rights and reshaping the child protection system are welcome. It is to be hoped that from here on commitments will be accompanied by measurable outcomes and timeframes, and that these will be met.

Accountability for decisions

There needs to be clearer lines of accountability for decisions taken by the executive government – including decisions not to implement commitments previously made. This includes decisions made on resource allocation and expenditure. Where the UN Committee on the Rights of the Child recommends that budgets be specifically and transparently allocated to children's services, in Ireland the breakdown is unclear. Regarding spending on health care generally, the Expert Group on Resource Allocation and Financing in the Health Sector in 2010 noted that there is "no framework that allows for decisions to be taken in an integrated way that links systematically with the overarching principles of the Irish health care system and aligns resources with goals".[17] The UN Committee on the Rights of the Child expressed concern about child health in Ireland in 2006, and recommended that Government take measures to ensure that the resources allocated to existing health care services for children are used in a strategic and coordinated manner. It is also hard to see how the current government can justify its decision to delay indefinitely its plan to commence building the new children's detention facility for 16 and 17 year olds in order to end the unacceptable practice of placing male children in prison with adults in St Patrick's Institution.

Government accountability in Dáil Éireann

The Ryan Report reveals that while concerns about residential institutions were raised in the Dáil, this had no impact. While the Dáil is supposed to hold the government to account, the whip system, whereby TDs vote according to party lines, has ensured the diminution of its powers. The Oireachtas committee system has been a useful method to raise and discuss issues, but it does not have the power or capacity to deliver meaningful accountability over the executive arm of government. The 2011 Programme for Government notes that "in recent years an over-powerful Executive has turned the Dáil into an observer of the political process rather than a central player and that this must be changed".[18] It promises a number of new and important changes in this regard, including a constitutional amendment to give Dáil committees full powers of investigation into issues of public concern and to give key committees constitutional standing. In addition however, the political party system in the Dáil also requires fundamental changes such as reducing the power of the whip and allowing more issues to be decided by free votes.[19]

Making perpetrators accountable

As pointed out in Chapter 1, the Government has an obligation under international human rights law to ensure that private individuals who commit human rights violations are investigated, prosecuted and punished. If the State fails to so do, it is guilty of those human rights violations. Therefore it is essential that the State's criminal laws and justice system should be capable of delivering justice to victims. However, the number of prosecutions and convictions against perpetrators of child abuse would appear to be alarmingly low. In June 2011 the UN Committee Against Torture expressed its concern that despite the extensive evidence gathered by the Commission to Inquire into Child Abuse, the State party had only forwarded 11 cases to the Director of Public Prosecutions (DPP) and eight of these were rejected. The Cloyne Report

revealed that just one priest from the Diocese of Cloyne has been convicted of child sexual abuse. It noted that the DPP decided to prosecute another priest for child sexual abuse but the priest was successful in the Supreme Court in stopping his trial because of his age, his ill health and the delay. The DPP has consistently rejected pleas that reasons for decisions not to prosecute be published.

The rights of the child in law

Recent decades have seen a raft of new laws providing for better protection of the welfare of children, such as the Children Act 2001 and the Child Care Act 1991. But in many ways, Irish law still does not respect or vindicate the rights of children to the degree that is required under the UN Convention on the Rights of the Child. For example, under the Mental Health Act 2001, the voluntary or involuntary status of an admission of a child under 18 years depends solely on what the parents, or a person acting in loco parentis, decide, so children can be admitted and detained against their will under the Act, despite being competent to make their own decisions. Despite concerted calls, the Civil Partnership Act 2010 left unresolved the unequal legal situation of children of same-sex couples. In other areas, government has enacted laudable laws that remain uncommenced. To date, only certain sections of the Education for Persons with Special Educational Needs (EPSEN) Act 2004 have been commenced, primarily those concerned with the establishment of the National Council for Special Education (NCSE). The sections relating to individual education plans and the appeals process have not been commenced. All laws should be screened to ensure their compliance with the rights of the child. But new laws can also serve to ensure that children's needs are not overridden by those of adults. For instance, in 2006 the UN Committee on the Rights of the Child recommended the enactment of legislation to address the inequality experienced by children in accessing healthcare and statutory guidelines for ensuring the quality of children's healthcare services.

Need for legal clarity regarding child protection

The Office of the Minister for Children and the HSE have different views on the powers available to the HSE in extra-familial cases. This difference has been apparent since 2005 and no action has been taken to address it.

The Cloyne Report, 6.14.

It is vital that there be clarity about the application of laws as they apply to children. Yet in many areas in Ireland legal uncertainty has been allowed to remain unresolved. For instance, the Cloyne Report throws into focus the confusion at the heart of the State as to the power conferred on it in the Child Care Act 1991 to protect children from non-familial abuse. The Report noted that a principal social worker told the Commission that there were no statutory powers available to the HSE to intervene in non-familial abuse cases.[20] In addition, in a submission to the Commission, the HSE stated that "the HSE cannot compel alleged offenders to attend for therapeutic intervention or desist from being in the presence of children".[21] However, the Commission stated that in its view the HSE has a statutory duty to promote the welfare of all children, and that it is also clear from decided cases that the HSE may investigate non-familial abuse although there is no specific statutory basis for this. However, it found that it is not clear that the HSE has the necessary power to take action in cases of extra-familial abuse, i.e. to act decisively to prevent further abuse from occurring. Guidance from the Office of the Minister for Children to the Commission stated that its policy position is that the 1991 Act places no limitation on the HSE in relation to its ability to investigate non-familial abuse. It stated that the positive character of the obligation to "promote the welfare of children" set out in the Act means that this is an active rather than a passive function, which "would naturally include a power to take steps to conduct inquiries on foot of information which raises a child protection concern and to take necessary steps to address risks which may be found".[22]

This analysis ignores the fact that powers in carrying out any statutory function are always circumscribed by the right of the individual against whom those powers are being exercised to fair procedures. The Commission concludes that:

> In the case of extra-familial abuse this requires, among other things, that the alleged abuser be made immediately aware of the details of the complaint. It is difficult to see how a social worker who is trying to promote the welfare of a child or children can be expected to be familiar with all the requirements of fair procedures and balance the rights of the alleged victim and the alleged abuser when there are no rules or guidelines available.[23]

If an alleged abuser does not-co-operate with an investigation, the HSE has no power to require him or her to do so. While in *I v the HSE*, the judge said that if the HSE concludes that there is a risk,[24] it is obliged to report that to an appropriate party, he noted that this provision of information should be "minimal and only to the extent necessary to protect children who may be at risk". However, the Commission notes that neither the legislation nor the guidelines clarify who appropriate parties might be (other than the Gardaí).[25]

This is a worrying divergence of views as to the legal competence of the HSE to intervene where children may have been abused or are at risk of abuse. It is a concern that the HSE and the then Department of Health and Children appear to have made little effort to resolve this uncertainty since the enactment of the 1991 Act. The Cloyne Report notes that it was informed by the Office of the Minister for Children that an "in-depth study of third party abuse" to review how the provisions of the 1991 Act in relation to third party abuse were working had been completed in December 2006, and that there was broad acceptance of the Attorney General's advice on the matter. The Commission stated that documentation it received from the Office of the Minister for Children in relation to the group's work did not show any evidence of an "indepth" study. It observed that the officials concerned did note that it would be helpful if the HSE's powers were spelt out more clearly in the Act.[26]

While the Commission recognises that there are major legal issues involved in giving powers to the HSE or any other body to assess or monitor alleged perpetrators who have not been convicted of an offence[27] , it maintains that that statutory provisions in relation to dealing with child sexual abuse should be clear and unambiguous and not be dependent on such interpretation and that the law should be clarified and state what the powers are and how they are to be implemented.[28]

The Commission also revealed that the HSE considers itself to have a very limited role in relation to allegations made by adults in respect of their abuse as children; and that it considers its role to be satisfied that the relevant individuals/organisations are taking appropriate action regarding the management of the alleged perpetrator:

> The primary concern for the Child Protection Services is that the level of risk is assessed, appropriate action is taken as regarding the reporting of the allegations to the Gardai, and that subject to the outcomes of risk assessment and any Garda investigation, that the alleged perpetrator is appropriately 'risk managed'. This action most often involves the removal of the alleged perpetrator from direct contact with children as well as ongoing supervision of the alleged perpetrator. In addition, it is expected that the organisation address any recommendations pertaining to risk assessment,[29] such as attendance at appropriate treatment centres.

Given the absence of any express statutory power to engage with organisations in this manner, or to insist on risk assessment and risk management by them, the Commission considers this statement by the HSE of its role must remain an aspiration rather than a reality.[30] The Commission also noted that the inter-agency review committees suggested in Ferns for the sharing of soft information could not be progressed due to legal issues.[31] In cases of non-familial abuse it is essential that the Gardaí, HSE and relevant parties be in a position to share 'soft information'.

After the publication of the Cloyne Report, the Minister for Children announced that the *Children First* guidelines would be placed on a statutory footing. This means that failure to comply with the guidelines, by which all organisations and individuals must share information relating to child welfare and protection concerns with the statutory authorities, will lead to a range of civil and criminal sanctions. She also proposed that the remit of HIQA include oversight of the HSE's Child Protection services.[32] The Minister for Justice, Alan Shatter TD, subsequently published the draft heads of the National Vetting Bureau Bill, which will put the vetting of people working with children and vulnerable adults on a statutory basis.[33] Legislation that will make it an offence to withhold information relating to crimes against children and vulnerable adults, and allow for the exchange of 'soft information' on abusers, has also been promised.[34]

New legislation and new guidelines are to be welcomed but only if they are clear and add clarity to this very difficult area. If responsibilities in child protection are not clear, then children will not be effectively protected. Children, adults, social workers, organisations, and all of those in the HSE and Department of Health and Department of Children and Youth Affairs must be clear on where responsibility lies, so that effective accountability mechanisms can assess how children are being protected.

Another issue revealed in the Cloyne Report was that the Minister for Children insisted on maintaining legal privilege in respect of the advice provided to him by the Attorney General in relation to the powers available to the HSE to deal with extra-familial sexual abuse, even though this was an issue central to the Commission's work. The Commission pointed out that all other parties to its investigation either waived or did not assert legal privilege: the Church authorities provided the

Commission with its privileged documents and the Gardaí and the HSE did not claim privilege over any documents.[35]

In other areas too, the State has refused to publish legal advice it had received on a matter of significant public interest, making it difficult for civil society to interrogate the basis of decisions made on foot of this advice. During Dáil debates on the deaths of two children in care, the HSE asserted that it could not release the reports on the two cases as it had been advised that there were legal impediments. The Ombudsman has been sharply critical of the HSE's refusal to state what precisely were the legal impediments. During the Dáil debates on the Civil Partnership Bill, the then Minister for Justice referred to constitutional impediments to legislating for an equal right to marry for same-sex couples, and yet again no details of these impediments were ever put in the public domain.

Need to review child sexual offences and legal procedures to protect child victims of sexual abuse.

There are also concerns around the law relating to child sexual offences and legal procedures to ensure that the law properly protects children who have been sexually abused. The child victim needs special protection when going through the criminal process. The Joint Oireachtas Committee on Child Protection made a number of recommendations in this regard[36] and no progress has been made on their implementation to date. There are also measures additional to those recommended by the Committee that would protect the child victim of sexual abuse and there are good examples of such special measures from other jurisdictions.[37]

In terms of child sexual offences, it is important that where children have been abused, the law and the criminal justice process addresses and punishes what actually happened to the child. There are no child specific

offences in relation to rape, sexual assault and aggravated sexual assault. In these circumstances, the DPP has stated[38] that it is sometimes preferable to prosecute the offence as statutory rape.[39] It has been pointed out that the difficulty with this approach is that it does not differentiate between the crime of statutory rape and the crime of rape. It has been suggested that where actual consent as well as legal consent (which refers to the age below which sexual contact with a child is criminalised) is absent, a more serious offence has been perpetrated against the child and that the criminal justice process should acknowledge this.[40] This is of course difficult to address as a child can be manipulated into believing that she or he has somehow consented to sexual activity and this kind of psychological and emotional coercion can be as powerful in this context as physical coercion. Both could be considered equally coercive in certain circumstances and both could therefore be considered as rape. In order to address this, it would be necessary to reform the law of sexual offences, to address the issue of consent generally, and also to provide for protective measures to protect the child witness in the criminal justice trial and process.[41]

Furthermore, there is currently no specific offence of child sexual abuse. This has been recommended by the Law Reform Commission as far back as 1990.[42] It was also recommended by the Joint Oireachtas Committee on Child Protection in 2006.[43] Both the DPP and the Joint Oireachtas Committee on Child Protection[44] have recommended the creation of a specific new offence to restrict sexual activity between a child and a person in a position of trust and responsibility. The DPP suggests that such a person in authority should include relationships between teachers and pupils, doctors (and other medical personnel) and patients, youth leaders, workers in children's homes, clergy, sporting coaches and trainers, and other persons acting in loco parentis towards children.[45] The Oireachtas Committee report states that this new offence should include situations where a child is over the legal age of consent, even where the behaviour is consensual. This is on the basis that a person in trust should know that such sexual activity is inappropriate and it is also

questionable as to whether consent would have been freely given by the child or young person, given the power dynamics at play and the circumstances of the relationship.

For a discussion of how the UN CRC has been embedded in policy and practice in a different jurisdiction see Jackie Murphy (Assistant Director, Tros Gynnal Plant), 'Improving Children's Services – The Welsh Example' on page 343.

Need to place children's rights in the Constitution

Ireland has been a State Party to the UN Convention on the Rights of the Child (CRC) since 1992. The UN Committee on the Rights of the Child which monitors compliance with the CRC has identified four principles as essential for its interpretation and implementation by States: (i) the principle of non-discrimination (ii) the best interests of the child (iii) children's inherent right to life and (iv) children's participation in the decision-making processes for matters that affect them.[46] Yet, today, the Constitution, Bunreacht na hÉireann, still does not recognise these principles, nor, with the limited exception of the right to education[47] , the socio-economic rights in the CRC. Particularly notable gaps are provisions regarding the right of the child to be heard or to have their best interests paramount in decisions that affect them.

It is the rights of the family that are directly protected by article 41 of the Constitution which recognises the family as the natural primary and fundamental unit group of society and guarantees protection for the family as "the necessary basis of social order … indispensable to the welfare of the Nation and the State". In Article 42, the family is also acknowledged as the primary and natural educator of the child. Family rights, child rights and the right to education are thus interlinked under the Constitution and domestic statutes. The family as a unit has a general right to autonomy and to remain free from government interference except in extreme circumstances. It is important to note that the family has been interpreted in a narrow sense, i.e. the marital family with marriage in Ireland being available only to heterogenous couples. Therefore the family protected by these Articles, is exclusively the family based on marriage, not the myriad other forms of family in which children in Ireland live today.[48] This protection for the primacy of the family

is also at odds with explicit protection for the rights of the child. The 2006 decision of the Supreme Court in the "Baby Ann" case[49] raised political and public concern at the primacy of the rights of natural parents over those of the child, and the invisibility of the interest of the child.

The Supreme Court judge, Hon Justice Catherine McGuinness, subsequently remarked that "the only person whose particular rights and interests, constitutional and otherwise, were not represented" in the case was the child.[50]

The Constitution thus leaves children almost voiceless in how their lives are planned.[51]

The Joint Oireachtas Committee on the Constitutional Amendment on Children, in its final report, has outlined the need to address the threshold for intervention by the State in family life and has highlighted that the current proposed wording for the amendment does not address the fact that the threshold is currently too high. They suggest that the proposed amendment should also place a positive obligation on the State to intervene in a proportionate and appropriate manner so that families and parents are supported at an earlier stage. They also suggest that the right of the child to the care and company of their parents should be kept in mind and the State should ensure, that, where possible, vulnerable families are supported to prevent a situation arising where there is a need for the State to intervene by placing children in care. However, they point out that there is a need to rebalance the rights within the Constitution to ensure that children at risk are protected and that the emphasis on the rights of the (marital) family in the Constitution does not undermine the rights and best interests of the child.[52]

A referendum to provide improved protection of the rights of children in the Constitution, as recommended by the UN Committee on the Rights of the Child[53], has been promised since 1997.[54] In 2010, the all-party Oireachtas

Joint Committee on the Constitutional Amendment on Children finally proposed a new Constitutional provision on children's rights. However, the government did not schedule the required referendum in 2010 as promised, and in early 2011 the then Minister circulated unacceptably minimalist wording for this provision. Commitments made by the current Minister for Children to hold the referendum in 2012, and to adopt a comprehensive approach to the amendment in line with the Oireachtas Committee's recommendations, are welcome. (See also Chapter 4, Key Findings, on this theme.)

For discussion on the significance of children's rights see Emily Logan (Ombudsman for Children), 'Children's Rights and the Constitution' on page 352.

Involving children in decisions that affect them

The Ryan Report revealed how children committed to residential institutions were not represented in court, they were rarely questioned or heard by inspectors and that those who spoke of abuse were often labelled liars and story tellers. This led to a situation whereby children were afraid to speak out.

Under the UN Convention on the Rights of the Child, children under the age of 18 years have a right to have a voice in all matters that concern them. Furthermore, in order to understand the needs of children, and devise practical, child-oriented solutions for overcoming obstacles they confront, it makes sense to listen to their views. Yet successive governments have paid insufficient attention to the voice of the child. In a 2007 report, *Barriers to the Realisation of Children's Rights*, the Ombudsman for Children's Office (OCO) too has remarked on "the overarching invisibility of children from governance structures, law and policy, and public debate", which, it says, "is related to and derived from the absence of express rights for children in the Constitution and their explicit protection in law and policy".[55] While attempts were made by the previous government to put in place mechanisms to coordinate all departments' and agencies' responses to children, this did not lead to a mainstreaming of children's rights across all policy areas. In addition, while children and young people are often consulted on children's issues, they are frequently left out of consultations on wider government policy. For instance,

children and young people were not consulted in the development of the national mental health policy, *A Vision for Change*, with the result that its elaboration of child-appropriate services and supports is weak. While the establishment of a new Department of Children and Youth Affairs is welcome, this must lead to the rights and voices of children being heard across all areas of government.

At its most basic level, that the last Government decided to omit from the proposed constitutional amendment the provision that children should have a voice in administrative and judicial proceedings that affect them is regrettable. The rationale put forward by the Department of Justice was one purely of cost, i.e. a fear that children would require lawyers to represent their interests in a wide range of proceedings. In this regard, it would appear that little has been learnt from how the children in the Ryan Report went unrepresented before the courts. Most notably, the voice of the child is not sufficiently represented in many care proceedings. The provision of a Guardian ad Litem in care proceedings is discretionary rather than mandatory under the Child Care Act 1991 and there is no provision for the child to be separately represented in such proceedings. But this also reflects how attitudes have not changed to the degree that one might expect. In many quarters, children are still viewed as objects over the heads of which others can decide their fate, rather than as fully entitled to rights and to have their choices heard. It would cause outrage if the State were to legislate to prohibit adults from having their views represented in such proceedings in order to cut costs. This clearly links with attitudes to children, and particularly certain groups of children, dealt with below. In some ways, certain children may still be viewed as untrustworthy or unreliable informants. (In this regard the results of the public poll on attitudes to children's voices and opinions outlined below are heartening.) For instance, when asked by the UN Committee Against Torture about an OCO study in 2010 profiling the experiences reported by children detained in St Patrick's Institute for Young Offenders, the Secretary General of the Department of Justice observed that the report did not contain their actual experiences

but the experiences reported by these children, saying that these are not necessarily the same.

Deference to a non-State actor

A reluctance to make clear the lines of State responsibility

In 2002 when the extent of the abuse and subsequent cover-up in the diocese of Ferns first emerged publicly, the then Taoiseach, Bertie Ahern, was asked if he had any comment to make. He responded, "I haven't really been following that at all. It's really a matter for the church; it's not a matter for politicians. I'm not going to cross politics and religion".[56] This statement indicated that the State was still not inclined to hold agents of the Church to account and without pressure from those who had experienced abuse there is little to indicate that agents of the State would have been proactive in this matter. Deference to agents of the Catholic Church from members of society generally, from government ministers, and from those who worked in departments combined to create a culture of impunity for agents of the Church. In this case the absence of accountability to an outside power with statutory responsibility for children in this State, had disastrous implications for thousands of children.

In many ways, there are resonances with the deference of the last government to the private banking and financial institutions, and a reluctance to meaningfully regulate and monitor their activities. The economic fall-out from the banking crisis has of course had enormous consequences for the level of resources available to the State for protecting and fulfilling children's rights today.

Role of the Church in today's education system

The Ryan Report dedicates a full chapter to the case of Donal Dunne[57] who ultimately served a prison sentence for abusing children. Despite being granted a dispensation of his vows with the Christian Brothers, following an

For a discussion of the relationship between the State and primary schools see Seán Cottrell (Irish Primary Principals' Network, Director),'Employment of Primary Teachers – Accountability Gaps' on page 358.

admission of sexually abusing boys in the schools in which he taught, Dunne went on teaching in a variety of national and secondary schools for over 20 years. A complaint of physical abuse was made directly to the Department of Education in the mid 1960s, which was ultimately dismissed by an inspector, while the in the 1980s a former pupil of Dunne's, who had been abused by him, informed the Department that Dunne had been sacked from a national school for sexually abusing boys. The latter episode was entirely mishandled. At the time of the complaint Dunne was teaching in a secondary school. Given that it was a girl's secondary school and that his history of sexual abuse was of young boys, combined with the fact that he had three years until retirement and that the abuse had happened over ten years previously, it was decided no action should be taken. The man who had written to the Department did not even receive a response to his letter. Dunne's conviction in the 1990s led to the Minister for Education's admission in the Dáil that "I am firmly of the view that the Department's response to this complaint was seriously lacking and that there can be absolutely no excuse by reference to standards of the time".[60]

Despite acting as an employer of teachers in many respects, the Department of Education is not considered the employer in law and therefore is not responsible if a child is abused in a primary school. In this case the Patron, the majority of which are members of the Catholic hierarchy, and the Board of Management, which is comprised of voluntary members, holds responsibility for child protection. Given that the Department of Education pays for teachers' salaries and determines so many aspects of their employment, and the school curriculum, it is essential that it has direct responsibility and is accountable in law for what happens in these schools.

The State has also been painfully slow to respond to its obligation to ensure multi/non-denominational education. The Education Act 1988, appears to make provision to have regard to the rights of parents to send their children to a school of their denominational choice. However, while Article 44 of the Constitution prohibits discrimination in State funding for schools on religious grounds,[61] the 1998 Act permits schools themselves to discriminate against

pupils on the basis of religious ethos, and confers an exemption on schools from the Equal Status Act to this end.

Attitudes to children

It is likely that attitudes to certain groups of children outlined in chapter two remain. While today victims of child abuse are viewed with sympathy and concern, anxiety about the threat to the social order which troubled and troublesome young people represent continues to permeate the responses of agents of the State and wider society to children in care. In their examination of child sexual abuse in residential institutions in the United Kingdom, Colton, Vanstone and Walby argue that this "ambivalence is further fuelled by the social class background of these young people and … by factors such as racism and negative attitudes towards disability".[62] The results of the public poll undertaken for this research in July 2011, show that children who commit crime, children in the Traveller community and children who are here to seek asylum are considered by people to be afforded lower priority than other groups of children.[63]

The State does seem apathetic about the rights of certain groups of children. For instance, asylum seeking children who live with their families in direct provision hostels where they receive food and other basic necessities, receive a weekly allowance of €19.10 per adult and €9.60 per child, the only social welfare payment not to have increased since its introduction ten years ago. Many centres suffer from overcrowding and a lack of privacy, making them inappropriate for children, who can experience physical and mental health problems as a result.[64] The HSE Intercultural Health Strategy recommends an end to this system. Yet the Department of Justice steadfastly refuses, on the basis that it serves as a deterent to others who might seek asylum here.

In addition, since 2000, 503 separated children have gone missing from State care, 441 of whom remain missing. In a cable from the US Embassy

in Dublin to the US Government released through Wikileaks in early 2011, it was reported that the HSE could not say where the missing children had gone but suspected that many ended up being trafficked for the purposes of labour or sexual exploitation. Despite this being highlighted by NGOs for six years it was only when the Ombudsman for Children published a report in 2009 highlighting the inferior care received by these children when compared with Irish children in care that the HSE finally acted to improve how these children were cared for and to close all unregistered hostels for separated children.

Concern has also been expressed about the "the lack of validation of Traveller culture within the post-primary education system, which can often leave young Travellers feeling isolated or can lead them to hide their identity to avoid bullying and discrimination".[65] Conversely, in his June 2006 report, the UN Co-ordinator on Follow-up of the Committee on the Elimination of Racial Discrimination noted that training centres for Traveller children may lead to a focus on "traditional" education due to their ethnic identity and less on the educational needs of the individual child. It is a serious cause for concern that children in the criminal justice system do not have access to an independent complaints mechanism. The Ombudsman for Children Act excludes from the OCO's remit children in the court process and those detained in centres other than Detention Schools. In 2006 the Committee on the Rights of the Child expressed concern at this exclusion, and recommended that the OCO remit be extended to all children in the criminal justice system, but this has not been implemented.

As mentioned in chapter two,

the results of a public poll commissioned as part of this research in July 2011, reveals that 86 per cent of respondents agree that it is important that children have their opinions taken into account in significant decisions that affect them, while 67 per cent agree that children are trustworthy when

voicing their opinions on decisions that will affect them.[66]

These high percentages suggest that individuals recognise the importance of children having a voice; it is essential that this be reflected in our laws, policies and Constitution.

Lack of human rights education

Despite the requirement in Article 28 of the Convention on the Rights of the Child that the child's education must be directed at the development of human rights, human rights education in schools is discretionary. Human rights education is a process which seeks to ensure that children have an understanding of their own human rights and associated responsibilities, foster attitudes of respect and appreciation of the uniqueness of each individual, and promote skills among children that will enable them to act in ways that defend and promote human rights. In the long-term it contributes to increased respect for human rights, which is the first step towards the effective enjoyment of human rights by all. In the short term, there is increasing evidence that the inclusion of human rights education in the formal education system has a positive impact on children's levels of attainment, and on the overall school climate through decreased instances of bullying and conflict and increased respect for the rights and identities of all peoples.[67] The OCO has recommended that human rights education should be a compulsory component of the relevant curriculum programmes. The poll showed that 81 per cent of respondents agreed with the following statement: "Noting that the 1948 Universal Declaration of Human Rights says that all people 'should act towards one another in a spirit of brotherhood', ordinary people in Ireland should accept some responsibility for respecting and defending the human rights of other people in Ireland". Given the acceptance of this fundamental human rights principle, it is logical that people be further educated on what

this and other human rights principles mean.

More generally, there is little provision for incorporating the views of children and young people into schools' policies on education. The Education Act 1998 makes provision for schools' councils at second level but, again, this is discretionary. A study commissioned by the National Children's Office found that, while many schools have established schools councils, they do not always function effectively and do not enjoy the support or confidence of students and staff.[68] In 1998 the Committee on the Rights of the Child expressed concern that "the views of the child are not generally taken into account … at schools" in Ireland, and recommended the implementation of Article 12 in the educational setting.[69]

Institutional Settings

It took the Leas Cross Nursing scandal to provoke action in the area of poor standards and abuse in nursing homes. HIQA inspections commenced for nursing homes, but not for residential facilities for children and adults with disabilities. In the 1950s the entire service for people with intellectual disabilities was ceded to a few religious orders who were already active in this field. The Department of Health looked to these orders to expand their services, which the State funded but failed, from 1957, to inspect.[70] Today, Ireland still has no mandatory or independent inspections for assessing support provided by residential services to disabled people.

Annual reports issued by the Inspector of Mental Health Services repeatedly point to mental health facilities that are unacceptable for care and treatment, in particular in some 'long-stay' units. A 2010 report from the Mental Health Commission found worryingly high levels of seclusion and restraint within in-patient services.[71] The government set out a comprehensive reform agenda in its 2006 mental health policy, *A Vision for Change*, promising to transform the institutionalised, in-patient mental health service model into a comprehensive, community-based model, and to overcome the over-use of pharmacological interventions through the provision of a full range of psycho-social supports in line with the right to the least restrictive or intrusive treatment. However, progress in implementing this reform has been slow.[72] Cuts in resources in 2009 and 2010 have almost halted the reform process, and, according to the Inspector of Mental Health Services, "it is the

progressive community services which are culled, thus causing reversion to a more custodial form of mental health service".[73]

Successive governments have utterly failed to address longstanding inadequate and degrading conditions and regimes in many prisons. In the report of its 2010 visit to Ireland, the European Committee for the Prevention of Torture (CPT) criticised the overcrowding,[74] inadequate healthcare, and "slopping out"[75] due to the lack of basic in-cell sanitation in many prisons. It found vulnerable prisoners in need of protection consigned to 23-hour lock up regimes akin to solitary confinement. It found individuals with severe mental health problems inappropriately kept in prison, stating: "Irish prisons continued to detain persons with psychiatric disorders too severe to be properly cared for in a prison setting; many of these prisoners are accommodated in special observation cells for considerable periods of time". Safety observation cells with their spartan environment, limitation on clothing and restricted regime are designed to accommodate prisoners who required frequent observation for medical reasons or because they are a danger to themselves. However, the CPT found numerous instances where these observation cells were used as punishment or to accommodate troublesome or at-risk prisoners. It found one prisoner with mental health problems placed in such a cell for a considerable time on several occasions during which time his mental health deteriorated. Mountjoy Prison, in particular, experiences high levels of overcrowding and inter-prisoner violence, making it unsafe for prisoners and prison staff.[76] A report by the Mountjoy Visiting Committee described this prison as "chronically overcrowded", "vermin infested", with "filthy facilities and no structured approach to a prisoner's day", and "20% of prisoners … sleeping on the floors".[77] The UN Committee Against Torture, issuing the concluding observations of its first examination of Ireland, also expressed "deep concern" at the level of overcrowding in the prison system and called for urgent action to end slopping out. It was also "gravely concerned" at the ongoing detention of 16 and 17 year olds in St Patrick's Institution, and has called on the State to confer on the Ombudsman

for Children the power to receive individual complaints from children held at St Patrick's. Successive governments have also refused to comply with the CPT's recommendations that prisoners should have access to an independent complaints mechanism, given the flaws and prisoners' lack of confidence in the internal complaints process. This recommendation has been repeated by the UN Committee Against Torture. It is somewhat encouraging that the 2011 Programme for Government recognises "the need to provide in-cell sanitation to all prisons and, in so far as resources permit, to upgrade prison facilities".

The Catholic Church and Child Protection

The Cloyne Report differed from the Ferns and Murphy (Dublin) Reports in that it dealt only with allegations, concerns and suspicions of child sexual abuse made to Church authorities in the period 1996 to 2009. This meant that the Church's own procedures were supposed to be in place, and the so-called 'learning curve' which Church authorities had previously used to explain very poor handling of complaints in other dioceses had no relevance in these cases.[78] The Report describes the failure to report all complaints to the Gardaí as the greatest failing on behalf of the Diocesan authorities. It is clear that those who held responsibility for overseeing child protection guidelines in the diocese did not believe it was always appropriate to report to the civil authorities. This indicates that it is essential that child protection guidelines are embedded in the organisation and not subject to change by personalities. Furthermore, the HSE must conduct effective audits of dioceses to ensure that the guidelines are being followed.

The National Board for Safeguarding Children in the Catholic Church (NBSCCC), an independent supervisory body established by Irish bishops, is currently undertaking an audit of all the dioceses at the request of the hierarchy. However, the 2010 annual report[79] revealed the difficulties faced in undertaking such a review, which led to only three dioceses being examined. The three sponsoring bodies of the NBSCCC, the Bishop's Conference, the Conference of Religious of Ireland and the Irish Missionary Union, refused to cooperate with the review they had requested, citing legal advice with regards

to breaches of data protection legislation, in the case of sharing information on allegations of child sexual abuse.

This led to extensive negotiations between the legal representatives of the three sponsoring bodies and the NBSCCC, which has only recently produced an agreement that will allow the review to continue. However, as part of the agreement the NBSCCC has accepted that it will only share its recommendations with the bishop or congregational leader in question, and will not comment publicly on its review without the consent of the head of that authority.

An even more serious issue highlighted in the annual report was the "reporting deficits", given that less than a quarter of the safeguarding cases that arose in the previous year had been communicated when the diocese or religious congregation involved became aware of the complaint.[80] The NBSCCC revealed the ongoing problems in implementing a proper system of child protection amongst the three sponsoring bodies. The board describes its role as operating within the context of the Papal letter of March 2010, which called for "decisive action [in Ireland] carried out with complete honesty and transparency" which "will restore the respect and good will of the Irish people towards the Church". However, the NBSCCC stated that,

> **It is insufficiently appreciated that the inculturation required to overcome the difficulties which have been made manifest in the Church through the inadequate safeguarding of children will regrettably, take a considerable time.**[81]

After the publication of the Cloyne Report, the Minister for Children and Youth Affairs called on the Catholic Church to provide a commitment that the reports of these audits be published.

The Cloyne Report highlighted the Vatican's response to the Framework Document on child sexual abuse agreed by the Irish Bishops Conference in

1996, noting that it was considered "not an official document of the Episcopal Conference but merely a study document". The Cloyne Report considered that this effectively gave individual Irish bishops “the freedom to ignore” the guidelines. It states that the Vatican’s response “can only be described as unsupportive especially in relation to the civil authorities”, and its effect was “to strengthen the position of those who dissented from the official stated Irish Church policy”.[82] In its 2011 annual review of States, Amnesty International found that the Holy See has not sufficiently complied with its international obligations in relation to the protection of children. The Holy See has also failed to submit its second periodic report on the UN Convention on the Rights of the Child to which it is a party. This report was due in 1997.[83]

Other Allegations of Past Abuses

As explained in Chapter 1, the State has a duty under international human rights law to ensure that victims of human rights violations have their right to truth and justice vindicated. Victims should have access to a remedy, redress, reparation and guarantees of non-repetition. This can be achieved through the criminal/civil legal system or an administrative system, or a combination of both. It is for the State to decide what is the most appropriate. However, the State must ensure that all allegations of human rights violations are investigated effectively, promptly, thoroughly and impartially and, where appropriate, action is taken against those responsible in accordance with domestic and international law.

In the case of victims of institutional abuse, the Irish State put in place an alternative mechanism to the civil law process by establishing the Residential Institutions Redress Board. The scheme was set up on a 'no fault' basis but was immediately flawed in that it failed to address the significant effects of the victim's experience in terms of the lack of education they were provided and the loss of opportunity. In placing a cap on this aspect of any individual claim, the State refused to acknowledge the extraordinary harm and vocational injury caused to those children, some of whom faced a lifetime of illiteracy, unemployment and impoverishment as a result of the State's failings.

The average claim was approximately €62,000, with a third of claimants receiving less than €50,000, a significantly lower level of award than might have been made in any High Court action taken in such circumstances.[84]

For a discussion on the lack of prosecutions that have resulted from the Reports see Pearse Mehigan (Solicitor), 'Accountability and the Law', page 366.

Furthermore, the experience of dealing with the Redress Board was often a difficult one for many victims who could be considered vulnerable. The board followed an adversarial and legalistic model and in some cases applicants were subject to cross-examination and questioning. Although the standard of proof was lower, the process was not dissimilar to that of a personal injury action, and the formal setting was undoubtedly intimidating to many. Additionally, the award is conditional on a secrecy agreement and a waiver on taking further legal action – victims would be guilty of a criminal offence if they disclosed the amount they received or discussed the facts of their case in public. The board consisted of a judge and medical doctor, and the applicant went into them alone. One consultant psychiatrist, who gave evidence to the board on behalf of his patients, described the distress of one patient in particular who was on the verge on a panic attack with no friend, advocate or partner present for comfort.[85]

Successive Irish governments have resisted calls for investigations into other areas where serious human rights violations have been alleged, in many cases where the State has been accused of colluding in those violations but has refused to accept such responsibility. The abuse of women and girls over many decades in the Magdalene laundries is probably the issue that has captured most recent public and media attention. The recent RTÉ television documentary series, *Behind the Walls*, has prompted fresh calls for an investigation into historic, but relatively recent, conditions and practices in Ireland's psychiatric hospital system.

There have also been calls for the State to investigate serious allegations surrounding the use of the medical procedure symphisiotomy on women up to the 1980s, the missing death certificates for 58 of the 133 bodies exhumed from a graveyard owned by the Sisters of Our Lady of Charity at High Park, Drumcondra, and the vaccine trials carried out in variety of mother and baby homes, residential institutions run by religious orders, and State run children's homes during the 1960s and 1970s. Similar to the Magdalene Laundries, Bethany Home, also subject to allegations of abuse, was excluded from

the workings of the Redress Board on the basis that it was not a residential institution that the State was responsible for, but a private and charitable institution.[86] See Annex 3 for a further discussion of some of these past abuses.

For a discussion of the on going issues around Magdalene Laundries see James M. Smith (Associate Professor of English and member of the JFM Advisory Committee), 'The Justice for Magdalenes Campaign' on page 372.

Role of the public

In relation to the role of the general public or wider society, the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports identify the impact of deference to the Church on how people responded to abuse and suspicions of abuse. Fear, an unwillingness and an inability to question agents of the Church and disbelief of the testimony of victims until recent times indicate that wider societal attitudes had a significant role to play in allowing abuse to continue. This is particularly evident in the many examples of non-action of health care professionals, teachers, Gardaí, and those involved in the court system who would have had clear knowledge of abuse both in residential institutions and in the community. Furthermore, rather than general members of the public, these professionals also acted as agents of State.

Government action has occurred in response to public outrage. Often this has been prompted by the fact that abuses and dangerous practices were highlighted in the media. Interestingly the poll undertaken for this report showed that 65 per cent of respondents agreed that "Government acts when society demands that it act"; although there was significant variation between males and females with 70 per cent of males agreeing but only 60 per cent of females.[87]

However, it is often the negative views of the public that reinforce rather than ease some of these problems. The poll also showed that a significant percentage of respondents, 47 per cent, agreed with the statement, "wider society is prejudiced against people who were in industrial schools". 50 per

cent agreed that "wider society is prejudiced against children in the care of the State today". Furthermore, children who commit crime, Traveller children and children in Ireland seeking asylum were considered a relatively low priority in society.[88] There are many marginalised groups and individuals in Ireland who suffer from discrimination: people with disability; asylum seekers; women; homeless people; Travellers and people with mental health problems. It is often the fears such prejudice generates that will prevent people from seeking mental health services – and this includes children – or prevent women and children from reporting the sexual abuse they have experienced. It is probable that public attitudes to prisoners and young offenders are deeply hostile – "lock them up and throw away the key" – and resistant to evidence that most young people who end up in the penal system have been failed by their families and the State since they were born.

Contributors' Responses

Martina Deasy, Manager, Arklow Springboard Family Support Service

Dealing with Child Neglect

The Ryan Report clearly establishes the gross failure of the Irish State to properly respond to the needs of families, and most especially children, living in poverty. One might well have expected that such a damning indictment would result in a searching debate about how we support the needs of those living on the margins of Irish society, in particular those families and children living in consistent poverty.

Through our direct work in Family Support services, we meet families and young people who remain trapped in poverty. Family support is an umbrella term covering a wide range of interventions from parental support to youth work. We know that children living in poverty live life on the margins, excluded from opportunities that would enable them break the cycle of intergenerational poverty. We know that poverty can affect every aspect of a child's life, having short and long-term consequences on their health, education outcomes and life chances.

This research makes clear that political and societal attitudes to those living in poverty contributed significantly to the situation whereby children at risk and living in poverty were victims of human rights abuses. Families at risk of or living in poverty were somehow blamed for their socio-economic status. They were viewed as morally suspect, degenerate and unworthy. Having been placed in institutions where the abuse and neglect they experienced left them traumatized, they were further stigmatized for having been in care in the first instance. Upon leaving care, many had little choice but to leave the State and seek a new life elsewhere. As we know from this report, that choice was encouraged by some in positions of authority at the highest level. Too often those on the margins in Ireland have been viewed as morally suspect, with highly subjective assessments being made as to which families should be given proper support.

The State does not appear to have appreciated that poverty is neither a genetic nor a cultural phenomenon, but the result of failures in State policy. Furthermore, the State did not see poverty as a public policy issue, but as a matter to be addressed by charities and other private actors. We must therefore question our current attitude to poverty and those children and families most at risk in today's Ireland.

We must acknowledge that children continued to experience poverty and deprivation even during the years of the Celtic Tiger. These children cannot be looked at in isolation; they are members of a family who are living in poverty. Their number has also undoubtedly increased as Ireland goes through this period of economic decline. Children continue to suffer in modern-day Ireland and while increasing attention has been paid to the issue of child sexual abuse, there has not been a similar focus on child neglect, perhaps the most pervasive form of child abuse in Ireland today.

Children First, the National Guidelines for the Protection and Welfare of Children defines four categories of child abuse, which includes neglect. Neglect occurs when "a child suffers significant harm or impairment of development by being deprived of food, clothing, warmth, hygiene, intellectual stimulation, supervision and safety, attachment to and affection from adults, or medical care". In working with families, it is apparent that welfare and neglect issues are a low priority, especially when compared to child protection. Child neglect is the deprivation of such basic needs as food, clothing, education and nurturing. Unlike physical and sexual abuse, which is often identified by specific, discrete acts, neglect is usually typified by an ongoing pattern of inadequate care. It is an area that requires early intervention.

The *Report of the Task Force for Children and Families Social Services, Principles and Practice* (2010) asserts that the focus for the HSE Service in the coming years will be on community-based, preventative and early intervention services. It maintains that the development of comprehensive support services for children and families at community level will, over time, bring a reduction in the numbers of children who need to leave their families to be cared for in

alternative forms of care, either foster care or residential.

However, there now appears to be a focus on child protection, while preventative and early intervention support work appears to be secondary. The findings of a recent *National Social Work and Family Support Survey* (2008) found that 'social work departments are applying varying definitional frameworks for categorizing referrals in terms of welfare, neglect and abuse'.[i] Also, while social work departments are receiving more welfare and support type referrals there is a focus on protection rather than prevention.

The survey found that neglect was the most common reason for a child coming into care, accounting for 27 per cent of children taken into care in the period studied. It found that parent(s) being unable to cope and/or family difficulty regarding housing/finance accounted for 25 per cent of cases. Despite these findings, which indicate that social workers receive significantly more neglect and welfare referrals, there is still a focus on child protection.

If we are to address neglect, multigenerational disadvantage and poverty we must work with children and families to support them in escaping poverty. We must equip care leavers with the life skills necessary to make choices that will ensure that they escape the trap of poverty and disadvantage.

So what are the support structures currently in place for children who have been in care and who are now parents themselves? Many care leavers have told me their main priority is that their children will not end up in care. But in examining the services available to care leavers today it is difficult to identify the continuum of support structures that will prevent this next generation of children going into care.

The HSE has a statutory duty under the Child Care Act, 1991 and the Children Act 2001 for the care and protection of children and their families: 'It shall be the function of every health board to promote the welfare of children in its area who are not receiving adequate care and protection'.[ii] The Child Care Act makes it the State's responsibility to intervene to support children clear, but service provision and resources remain inadequate. The social work profession has begun to be courageously self-critical. There is an increasing acceptance

that levels of neglect are not deemed to be child protection concerns and are therefore not a priority. This assessment may be the result of an over-stretched and under-resourced service. Given our current economic woes it is difficult to see how we can address the significant resource issues, but we must nevertheless acknowledge the nature of the problem and begin to identify possible solutions as an essential first step.

Child neglect has been highlighted in reports such as the Roscommon Report. Too often there appears to be a lack of urgency in addressing such cases. It seems that State intervention in cases of neglect occurs only when the situation has escalated or an emergency has occurred. Again, this appears to be largely due to a lack of resources and capacity to engage with families at an early stage.

There is an emphasis in present policy to work in partnership with families and communities in addressing children's needs; however in reality the practice can be very different. Often the interventions and supports offered are reactive and aimed at resolving immediate safety concerns rather than addressing the underlying issues. As a result little effective work is done to prevent the continuing cycle of neglect that can become a multi-generational problem.

The failings exposed by the Ryan, Ferns, Murphy (Dublin) and Cloyne Reports speak clearly of the terrible consequences for children of societal denial of difficult and complex child protection, welfare and neglect concerns. We cannot allow ourselves to deny today's problems.

There have been welcome developments in service provision over the past number of years. We have seen the development of Family Support Services through the Springboard initiative, first launched by the Department of Health (and Children) in 1998. Under this initiative new family support projects were developed. The interventions of Family Support services are needs-led. There is a clear focus on the wishes, feelings, safety and well being of children. These services are mindful of the strengths of participants and of the resilience of many children and families. These services are also community based,

where the focus is on prevention and aims at avoiding the need for further, more serious, interventions later on.

In addressing the needs of children and families in this way, a way that is highly cost-effective, we can avoid greater problems in the future. The savings, both in terms of financial costs to the State, and human costs to children, families and communities are likely to be high.

There remains, however, a need to consider how historic attitudes to those living in poverty might still be evident within today's services and systems. It is still sadly the case that on occasion supports are provided on the basis of a rather subjective assessment of need. In the absence of clear system wide objective criteria this is perhaps unavoidable. Furthermore, in the absence of a broader public debate about how we view those living in poverty, those working within the system, both in statutory and voluntary services, are as likely as anyone else to carry the baggage of discriminatory judgments about the families they work to support.

During the Celtic Tiger years there was little political priority given to those living in poverty. Those who were not in work were often judged as being either unable or unwilling to do so. Given that a rate of 4% unemployment was the norm over the period, there was little focus on the human impact of poverty in this marginalised section of society.

As the economic crisis has deepened there have been significant cuts made to community services such as addiction services and Family Support services. While the economic crisis undoubtedly presents enormous challenges for those who must decide how to allocate resources we must not pay lip service to the commitments made following the publication of recent reports.

Cuts in community services, the absence of multidisciplinary approaches, and cut backs in special needs assistants, all have a negative impact on children trying to cope or overcome incidences of abuse and neglect. It means that despite all the findings in the reports on the past, such as the Murphy (Dublin) report, Ferns, Ryan and Roscommon Reports, some children

continue to live life on the margins. They remain excluded from opportunities and it remains difficult to break the cycle of intergenerational poverty.

Our history is clear - a lack of understanding of the clear responsibility of the State to properly provide for those on the margins and to be fully accountable for their care and support resulted in terrible neglect and abuse. Today the State must accept its responsibility and learn from the past. The care of the most marginalized must not be seen as a private issue to be outsourced to any agency, church or voluntary sector. Voluntary agencies can and should be effective resources for the State but not a means to avoid its responsibilities. That must now surely be consigned to history.

i *Report of the Task Force for Children and Families Social Services*, Principles and Practice, 2010.

ii Child Care Act (1991), s. 3:

Norah Gibbons, Director of Advocacy, Barnardos

The Child Welfare and Protection System in Ireland Today

It has been two years since the publication of the Ryan Report. Since its publication, numerous other reports, including the Murphy (Dublin) Report, the Roscommon Report and the A and B Report, have reiterated the ongoing problems within Ireland's child welfare and protection system. Each report highlighted a system that continues to fail vulnerable children; failing to listen to their voices and to protect their best interests over those of agencies and institutions. No system can fully protect all children from abuse; much abuse occurs within families and can be hard to detect. However, Ireland's child welfare and protection system has consistently failed too many children, too much of the time. The gaps in protection for children in Ireland have often left already vulnerable children at risk of abuse and harm. From my experience of chairing the Confidential Committee of the Commission to Inquire to Child Abuse and hearing the testimonies of over 800 adults raised in the Irish Care system from 1913 to 1997, I am aware of the extent to which children were silenced within the system and the consequences of this silence. This experience reaffirmed for me the dangers to any society that is posed when the rights of the individual is sacrificed to what is perceived as the greater good.

There have been positive steps towards reforming Ireland's child welfare and protection system since the publication of the Ryan Report. The Ryan Implementation Plan (2009) set out 99 recommendations to improve child welfare and protection and marked a significant move towards learning from the past and the development of good practice service provision for children at risk of abuse and neglect. Since its publication we have seen clear and tangible indicators of change. The appointment of a HSE National Director for Children and Family Services is very welcome. It sets out a firm commitment from the HSE to prioritise its work with children. The establishment of the Department of Children and Youth Affairs and the appointment of Frances Fitzgerald as Minister for Children and Youth Affairs in 2011 built on this

progress, marking an historic step in Ireland whereby children are fully represented at the Cabinet table. The creation of the new Child and Family Support Agency also represents a new found commitment to reform. The Agency will provide an opportunity to develop streamlined policy and practice in the child welfare and protection system that prioritises efficiency, professionalisation, improvement in supervision, investment in partnerships, and a community approach. The significant progress made in the past two years adds up to real possibility for a reformed system based on accountability, transparency and better outcomes for children and families.

There is increased recognition of the importance of monitoring, evaluation and outcomes for children in care. It is widely acknowledged that all professionals caring for children must be sufficiently trained, mentored, assessed, vetted and supported and that families providing foster care must be appropriately trained, vetted and supported. Although the system for vetting those caring for children needs to be improved and provided for in legislation, an ethos of monitoring has become the norm. The establishment of the Health Information and Quality Authority (HIQA) and its inspections have had a positive impact on raising awareness of standards of care and following up on recommendations that are not adhered to. This transparent process is valuable as a monitoring tool and succeeds in placing pressure on service providers to improve standards and services. HIQA's consultation interviews with children in care in 2010 was crucial to enabling service users improve services for themselves and in providing a forum for children to have their voices heard.

While significant progress is being made in the child welfare and protection system, much more remains to be done. While the State has taken increased responsibility for protecting children by providing social and care services, many aspects of these services are underdeveloped and subsequently offer inadequate protection to children from those who seek to harm them, either from within their family or outside. Core issues remain. Chief among these is the continued absence of explicit children's rights in the Irish Constitution. The Constitution represents the bedrock of the social

and legal mores of our society. It is the document that should represent the core principles that we as a nation stand for. The conspicuous absence of distinct children's rights in the Irish Constitution represents the ongoing failure of our society to adequately prioritise children. In the 2010 Saving Childhood Poll, 62% of adults indicated that they would vote in favour of the insertion of children's rights into the Constitution. A Constitutional amendment on children's rights isn't just another piece of paper, it is a statement of intent and a solid promise which can be used by children and their advocates to challenge any system that fails to uphold their rights. It gives a voice to the children of Ireland who have been voiceless for too long.

In the care system, other crucial issues remain. Despite the appointment of 200 social workers to child protection teams in 2010, 5.4 per cent of the 6,122 children in care in April 2011 did not have an allocated social worker and 11 per cent did not have a written care plan. The continued absence of a comprehensive out-of-hours social work service also continues to put children in crisis situations at risk of harm. The limited availability of aftercare services for those leaving care also puts very vulnerable young people at risk of serious harm, leaving them exposed to homelessness, substance misuse, prostitution and involvement in crime.

Interagency work remains poor in some areas and is largely driven by personalities rather than structured processes and systems. The Ombudsman for Children's review of the implementation of the *Children First* guidelines confirmed what was already known: the guidelines were never fully implemented and that the approach was a-la-carte. While the revised Guidance has now been published and legislation is on the way, the system has a long way to go before both policy and practice reflect a child and family centred model. The reform of the child welfare and protection system must continue to focus on consistent practice to ensure that children's needs are adequately assessed, that clear outcomes are set for them and that the services they need are available to them wherever they live. The current situation whereby the service provided depends on what is available in a local

area must end. The system must be able to respond to all children equally.

Services for children in high support/ special care units remain particularly under resourced. While the recent announcement that the HSE has established an Assessment, Consultation and Therapy Service (ACTS) to provide on-site specialist therapeutic care for children in special care is welcome, resourcing these services is the key to their success. The failure of the system to provide holistic systems of support for children and young people requiring special care often means that young people leaving such units do not have the support to maintain progress made while in such care. The provision of special care for children and young people who need it must be examined to ensure that such care is based on their needs and their best interests.

The majority of children who were placed in industrial schools were from disadvantaged backgrounds. Their family's low socio-economic status dictated their future. While poverty and child protection are not one and the same, there is an historic link between them that continues to linger in Irish society. In 2011 a child's life chances continue to be disproportionately affected by their family's social and economic status. Where they are born and their family's position on Ireland's social ladder limits their potential before they even begin in life. It can affect their educational outcomes and hamper their ability to find a way out of poverty. Children living in poverty experience hardship. Many live in inadequately heated homes, wear poor quality or insufficient clothes, do not get enough nutritious food to eat, and are struggling in school. Many of those on low incomes cannot afford to bring their child to the doctor, dentist or optician and they must rely on accessing public services. However, the waiting lists for assessment in crucial areas such as psychological and psychiatric services can be as long as two years. This means that medical conditions are not detected early and can have a detrimental impact on a child's development. The inadequacy of public services has a disproportionate affect on children living in poverty and greatly impedes their ability to reach their potential.

The provision of comprehensive State services to support children and families are still not underpinned by a rights perspective – i.e. that everyone is entitled to social (including health and education) services as a matter of right. Access to many services remain largely based on professional and personal discretion leading to a system that is hard to navigate and which is not conducive to supporting the families it is designed to help. This system of discretion and collusion continues to feed the cultural bias towards the 'deserving' and 'non deserving' poor with the latter not seen as having the same entitlements to services or protection. Linked to this is the ongoing prevalence of an organisational culture that focuses on the protection of the institution or agency over the protection of children, thus inhibiting transparency and accountability.

Conclusion

Ireland has come a long way in the past ten years. Significant progress has been made in terms of how children are viewed, how their needs are considered and how services for them are provided. However, there is much more to do. Children's voices continue to be absent from many of the decision-making processes that can have profound effects on their lives. They continue to be viewed as passive recipients of services rather than active participants in their own right. We must move Irish culture forward and increase the debate around rights and responsibilities with regards to children.

We have seen increased political engagement with the need for service reform for children and families and a better understanding of the nature of that reform. Political commitment to tackling ongoing challenges in services was reinvigorated by the 2011 election. However, maintaining commitment and resourcing reform will be a significant challenge during the recession. The need to move Ireland from a short-term, crisis service provision model to a good practice, prevention and early intervention models is urgent. Children must be seen as a priority by successive governments, within State agencies and by Irish society as a whole, particularly those children living in

disadvantage. It is only through the practical development of policy, structures and services that Ireland will fully move out from the shadow of the past and towards a future based on dignity and respect for all citizens.

Lisa Collins, Advocacy and Policy Officer, ISPCC

Learning from the Past

The ISPCC welcomes the opportunity to contribute to this comprehensive report, commissioned by Amnesty International Ireland.. Accountability has long been an issue for both Irish Governments and Irish society. Facing up to the shameful history of the abuse of Irish children, the powers that failed to protect them and the passing of the buck when it came to their welfare, should have meant a complete turnaround and over-haul of the State's approach to the protection and value of children and their childhoods. However, it is evident that this has not occurred. As report after report is published and recommendations are made, the promises of implementation and radical reform continue to be broken. What remains ever clear is that the abuse and neglect of children and their rights is by no means a thing of the past and the State in many ways still shuns its responsibility when it comes to the welfare and protection of our children. This is demonstrated by a continued failure to listen to the very children who should be at the heart of this issue, a failure to act on the areas that we already know to be weak in our system of child protection, and a failure to learn from the huge mistakes of the past.

I. Failing to Listen

The UN Convention on the Rights of the Child (UNCRC) refers, in Article 12, to the right of the child to be heard and to have the opportunity to express his or her views. While Ireland has ratified the UNCRC it has yet to be embraced into everyday experiences, and the rights of children as individual citizens remain unrecognised within the Irish Constitution. The ISPCC, and others, have repeatedly called for the now promised referendum on Children's Rights, in order to enshrine children's rights within the Constitution. The voices of the children who suffered abuse and neglect in the past were silenced. Their rights were completely disregarded. Ireland, its society and its Government, cannot

say that today we truly value children, their rights and their childhoods, until we listen to their voices and acknowledge their rights.

The publication of the Roscommon Child Care case in 2010 documented the horrific and unimaginable abuse of six children at the hands of their parents. This abuse took place in present day Ireland. This abuse was allowed to proliferate and continue due to a lack of adequate legislation to protect these children, a failure to sufficiently intervene in a family in desperate need of support and a complete failure to consider the voices of these children. The case report stated that the voice of the child was virtually silent, while the then Minister for Children and Youth Affairs, Barry Andrews, expressed concern that "the views of the children were not listened to". That this abuse is occurring in Ireland today should be a source of real shame for the Irish Government and its people.

The ISPCC works everyday to realise its vision of an Ireland where all children are heard and valued. Through our work we provide a range of services to vulnerable children and those in need of support. One of these services is Childline, the 24 hour free listening service for young people all over Ireland. Childline listens to children. In 2010 the service received over 800,000 calls from young people seeking a listening ear. On average, the service receives 2,300 calls, messages and texts a day. Many young people are suffering and in need of support for a range of issues, including mental health, abuse and welfare. The annual publication of Childline statistics, indicating the needs of young people in Ireland, should be a marker and incentive for State bodies to respond accordingly to ensure that all children are protected and supported. As the demand for the Childline service continues to grow, the service struggles to answer all calls, with 35 per cent of calls in 2010 going unanswered. Yet this service continues to operate without any State support or Government funding. The responsibility of offering 24 hour support, with no other out of hours support available, has fallen solely to a non-Governmental agency, that expresses very clearly every year that the abuse and mistreatment of children is happening every day. The State is still failing to step up and take

meaningful responsibility for supporting those in need. As stated in the Murphy (Dublin) Report, primary responsibility for child protection must rest with the State, and the ISPCC has cause to question the State's commitment and responsibility for listening to and protecting children.

II. Failing to Act

It is an ongoing concern that the lines of responsibility continue to be blurred when it comes to child welfare and protection. An environment of silence and inaction allows abuse and neglect to continue and successive Irish governments have been party to inaction for too long. The Ryan Report referred to the extraordinary lack of guidelines and legislation in relation to child care and protection for several decades and yet in Ireland today, the Children First, National Guidelines for the Protection and Welfare of Children, first published in 1999, have yet to be put on a statutory footing. These guidelines, of which an updated version is due to be published, represent a clear plan as to how children may be protected and how all citizens can be meaningfully involved in ensuring that this happens. By not putting these guidelines on a statutory footing and implementing the principle of mandatory reporting, the State is once again falling short in its responsibility. It is apparent that without an express obligation to ensure the safety and welfare of children, many vulnerable individuals will be neglected and forgotten. It is imperative that these guidelines are put on a statutory footing.

In more recent times, it has been revealed that vast numbers of children have gone missing whilst in the care of the State. Responsibility for the care of young people can only be undertaken by those with relevant expertise and by a system which is resourced and sufficiently supported. The high numbers of children in State care who have been and continue to be without a social worker highlight the deficits of State-run services and the slow response rate in taking action and remedying this situation. With the launch of the Ryan Implementation Plan in 2009, Barry Andrews took personal responsibility for

the full implementation of the actions outlined in the plan, which includes the recruitment of more social workers and placing the *Children First* guidelines on a statutory footing. The progress of this plan to date has slowed significantly and falls far short of timely completion. The slow progress of this plan calls into question once again the commitment of Government to take responsibility for the care and protection of children.

Children going missing has been a cause of concern in both Ireland and across Europe. As the borders of surrounding countries cease to act as significant barriers to movement, the issue of missing children has become a Europe-wide issue and one that requires a universal approach. To date, Ireland has failed to implement the 116 000 Missing Children Hotline, which is now operational in fifteen European countries, to offer assistance and support to children who go missing and their families. The ISPCC has on several occasions expressed a willingness to operate this service but would require funding support from the Government. By failing to support the implementation of this service, the Government is failing to act responsibly.

III. Learning from the Past

As highlighted in reports such as the Ferns Inquiry, the Ryan Report and the Murphy (Dublin) Report, the abuse and neglect of children was widespread. In addition to this, the lines of accountability and responsibility were so blurred so as to facilitate this ongoing atrocity. While the Ireland discussed in the Ryan Report may have been a different time, this is no excuse or absolution for the mistreatment of children that took place. To attempt to understand these blurred lines, one must consider the structures in place to oversee the care of children at that time, as outlined in the Ryan Report. The Murphy Report states unequivocally that the "primary responsibility for child protection must rest with the State". The State in this regard very clearly passed the buck. The responsibility of child welfare was often passed to the Catholic Church, which existed as a single authority, without review or involvement from statutory

bodies. Allegations of abuse and neglect as identified in several reports were silenced and ignored. Furthermore, while the Gardaí and statutory bodies should have been the authority in these matters, the State allowed the Church to self-govern and mishandle allegations of child abuse.

In the absence of statutory, State-run supports, the NSPCC, and subsequently the ISPCC (a non-governmental organisation), was the only child protection agency operating in Ireland until 1970, when the Health Boards were established. The ISPCC did not have a statutory responsibility for the protection of children, however it was carrying out the work which to all intents and purposes should have been the responsibility of the State. The ISPCC regrettably features in this dark history, with inspectors making cases for children to be committed to industrial schools in the courts. Given the failures of the statutory authorities to fulfil their responsibilities in monitoring and safeguarding children in these schools, the ISPCC, along with others, should have looked harder at the consequences of its actions. However, we believe the ISPCC has learned a great deal from the past and has moved to work and achieve the vision of an Ireland where all children are heard and valued. The ISPCC today offers support to Ireland's most vulnerable children through a range of services, as well as advocating on their behalf and ensuring their voices are heard. The mistakes of the past will not be forgotten and will serve to drive us forward in ensuring that those mistakes are never repeated.

Serious concerns arise with the absence of a single accountable entity. Victims suffer without knowing who to turn to, who to seek support from and who to encourage to influence change. There were structural and institutional issues that were unregulated and left to be overseen by churches and by NGOs. There was no overall State responsibility. The sheer number of contacts received by ISPCC services today signifies the importance of the support our services offer, services which cannot be found elsewhere. The absence of any statutory out of hours social work service leaves families and children without help and support during the most vulnerable times. It is no longer acceptable to allow other agencies to take on the burden of what should be the State's

responsibility. This was not sufficient in the past and should not be permitted to continue into the future.

The ISPCC is encouraged by the current Government's plans for a new State agency to oversee the care, protection and support of children and families. It is a positive step to recognise that the protection of children is the responsibility of the State and that steps be taken to see that this responsibility is met with a robust and accountable system to ensure regulation and efficiency. A child-centred and multi-dimensional, multi-disciplinary approach is needed to provide the best support and protection services to children. Having a dedicated statutory body which offers child and family supports would be an enormous step in the right direction to ensuring past abuses are not allowed to continue. It is imperative that this body seeks partnership with and offers support to the many voluntary agencies currently endeavouring to provide support to children and families. By doing this, a holistic, "joined up" approach to child welfare and protection can be achieved.

As members of our society, we are all accountable for the atrocities suffered by children at the hands of unquestioned authorities. Societal attitudes towards the Catholic Church, the State and children all contributed to the failure to protect vulnerable children. There is no question that the human rights of thousands of children were violated and disregarded. Today, the rights of children continue to go unrecognised and we know that abuse and neglect persists. The State must now once and for all assume its responsibility and put into action the guidelines, legislation, plans and initiatives to ensure that Ireland's present and future can in no way mirror its past.

Jackie Murphy, Assistant Director Tros Gynnal Plant

Improving Children's Services – The Welsh Example

Since devolution and the establishment of the National Assembly for Wales in 1998, Wales has adopted a children's rights approach to the development of policy and structures to protect and improve the outcomes for children.[i] This essay considers the impact of successive child abuse scandals in Wales and documents the key policy developments that have embedded the United Nations Convention on the Rights of the Child (UNCRC) into the legislative framework, culminating in the Rights of the Children and Young Persons (Wales) Measure 2011.

The relationship between scandals, Committees of Inquiry and policy making was identified by Drake and Butler (2007), who posed the question "do inquiries have a more positive-life in which their findings and recommendations make a difference to social policy and social welfare practice?" It can be argued that the Waterhouse Inquiry into the abuse of children in North Wales Children's Homes was particularly timely and influential in this respect, as it provided justification and momentum for the new policy direction the National Assembly Government was about to take. The report, entitled *Lost in Care*, was published in 2000 and the findings presented a unique opportunity to change attitudes to the welfare of children, particularly those in residential and foster care.

Allegations about poor treatment of children in North Wales first emerged in 1986. North Wales Police investigated complaints made by a social worker but no convictions were made. There was a further investigation by North Wales Police in 1991, when four men were convicted. Clwyd Council commissioned a report about the abuse of children in care, which reported in 1996 but, on legal advice, it was not published. In the same year, the Secretary of State for Wales ordered a Tribunal of Inquiry chaired by Sir Ronald Waterhouse, which heard evidence from 264 witnesses. It found that 650 children had been abused, 12 of which are said to have committed

suicide since their time in care. Twenty-five childcare workers received prison sentences for their roles in abusing children.

Themes inherent in the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports were also present in the Waterhouse Inquiry. These include the particular class and low status of the children and their families; the low status and lack of training of residential staff; the lack of systems to investigate abuse; the failure of internal management structures; the ignoring or diminishing of complaints and a culture of blaming the victims and assigning them responsibility for the abuse.

A victim would be made to feel that he was an accomplice in the act and sworn to secrecy. The boys were very much alone at Bryn Estyn and rarely had anyone they trusted within easy access.

Extract taken from Chapter 8.08, Lost in Care (2000)

The Waterhouse Tribunal sat between January 1997 and April 1998. It concluded that in Clwyd there was widespread sexual abuse of boys and, to a lesser extent, girls, in local authority and private children's residential establishments and in an NHS psychiatric unit, between 1974 and 1990. The tribunal found that in Gwynedd there "was no evidence of persistent sexual abuse in children's residential establishments" but sexual and physical abuse occurred in a small number of foster homes and there were isolated incidents of sexual abuse in private residential homes. Many children in residential care were also subject to physical abuse. Failures in the system were widespread at all levels, including local authorities, private providers, the Welsh Office and Central Government.

The report made a total of 72 recommendations including the appointment of an independent Children's Commissioner for Wales and the appointment of a Children's Complaints Officer in every Children's Social Services department. It stated that decisions about the future of a child

should be made in the child's best interests and that local authorities should implement clear whistle blowing procedures. Another key recommendation was the appointment of independent visitors (Children's Advocates) to visit residential homes on a regular basis so that children would have access to an adult they could trust to protect them and help uphold their rights.

The sheer scale and appalling nature of the offences makes the Waterhouse Report one of the landmarks in the history of British welfare. It came at time when the political landscape in Wales was changing. A new devolved government was taking shape in the form of the National Assembly for Wales in Cardiff. Human Rights had an important profile right from the Assembly's inception. Equality campaigners successfully lobbied for a unique equality clause to be included in the 1998 Government of Wales Act, while children's NGO's had been campaigning for the UNCRC to be adopted and for a Children's Commissioner for Wales.

One of the first tasks for the first, newly elected Welsh Assembly was to respond to the recommendations of Waterhouse. The UK's first Statutory Independent Children's Commissioner was established via the first Wales-only Bill introduced in the Houses of Parliament.[ii] This was seen as a signal of the importance the new Assembly was to give to Wales' children (Thomas and Crowley, 2007).

The Assembly also instigated a review into allegations of abuse at a former NHS inpatient clinic for children and young people with mental health problems identified by the Waterhouse inquiry. Chaired by Lord Carlisle QC, the review examined the current safeguards for children and young people treated and cared for by the NHS in Wales. The report "Too Serious a Thing" (2002) made 150 recommendations, including allowing children the right to an independent advocate when making a complaint.

In the same year the Commissioner for Wales Peter Clark initiated an investigation into the handling of allegations of sexual abuse by the drama teacher John Owen at a South Wales Comprehensive School. The Clywch[iii] Report 2004 concluded that certain adults in authority failed to protect

children from abuse; failed to deal appropriately with their allegations; failed to get justice for the children; and failed to take steps to prevent the possibility of further abuse. Again the themes of a charismatic personality in a position of authority, an institution eager to protect its reputation and failures of systems to listen to and protect children are all too familiar. The Clwych Inquiry was instigated after John Owen committed suicide in 2001 and was an attempt to expose the failure of internal management structures which allowed the abuse to go on for so long. The changes introduced by the Welsh Assembly Government in response to the inquiry afforded pupils the right to complain and to have access to the support of an independent advocate throughout the complaints process.

In 2002 the Children's Commissioner also instigated an investigation into advocacy services, whistle blowing and complaints procedures in Local Authorities and in the Health Services. The resulting report "Telling Concerns" (2003) recommended the setting up an Advocacy Unit within the Assembly with the aim of improving children's access to advocacy and ensuring quality and equity of service across Wales.

With advocacy featuring prominently in the recommendations of various enquiries, the Welsh Government announced a review of advocacy arrangements for children and young people in 2002. This review was informed by research carried out by Cardiff University (Pithouse et al, 2004) which reported that: children were generally unaware of their rights to make representation; few children actually made a complaint; some had poor experiences of making a complaint; and many were left confused by the process and the outcome. On the other hand those who had access to an advocate valued the emotional and practical support. However, access and quality of services across Wales varied widely and difficulties were compounded by short-term contract arrangements and poor monitoring (Pithouse et al, 2004).

The outcome of both reviews was the setting of National Advocacy Standards in 2003 and Participation Standards in 2007. Along with the establishment

of a National Independent Advocacy Board in 2009 and a National Advocacy and Advice Service known as "Meic"[iv] launched in May 2010. Guidance on the commissioning of advocacy services is out to consultation and is due to be published later in 2011.

Despite the Welsh Assembly government's long-standing commitment to providing universal effective advocacy for children progress has been slow and it remains a concern of Tros Gynnal Plant, a Welsh Children's Rights Charity, that the majority of private residential schools and children's homes are not appointing independent visiting advocates as recommended by Waterhouse. Having said that, it is now a statutory right in Wales for children who are in Local Authority care or who wish to make a complainant against the Local Authority or Health Board to have the support of an advocate.

There have been occasions where the policy ambition in Wales has been constrained by the Westminster government with some of its objectives being beyond the scope of devolved powers. One example is the Welsh Government's attempt to ban the smacking of children. The Westminster Government did not want a ban to operate in England and in 2009 refused to grant the Welsh Assembly Government the powers to make smacking a criminal act in Wales.

So far this essay has considered initiatives that are essentially aimed at safeguarding children. The next section highlights the measures that successive Welsh Governments have taken to promote children's rights in line with the UNCRC. Adopted by the UN in 1989, the CRC promotes the four P's: the participation of children in decisions affecting their own destiny; the protection of children against discrimination and all forms of neglect and exploitation; the prevention of harm to children; and the provision of assistance for their basic needs.

Since devolution there have been a whole raft of polices for children and young people that are underpinned by the UNCRC. It would be impossible to detail them all in an essay of this size. Therefore, what follows is a chronology of the most relevant documents and events.

In 2000 The "Children and Young People: A Framework for Partnership"

proposed a new method of planning services for children through partnerships with Local Authorities, the Health Service and other local bodies. The document clearly stated a commitment to listening to children:

> The Assembly is committed to transforming the way in which the needs of children and young people are met by service providers in Wales. The Assembly wants to hear the voices of children and young people, to listen to their views, and to ensure that services respond to their needs and their aspirations. (Children and Young People a Framework for Partnership, 2000)

"Better Wales" (2000) the first Strategic Plan for Wales echoed these sentiments:

> Every young person in Wales has the right to be consulted, to participate in decision making, to be heard on all matters that concern them or have an impact on their lives.

In "Rights to Action" (2004) the Assembly further stated its commitment to children having distinct rights

> Children and young people should be seen as young citizens, with rights and opinions to be taken to account now. They are not a species apart, to be alternately demonised and sentimentalised, not trainee adults who do not yet have a full place in society.

Rights to Action sets out seven core aims, which are directly taken from the UNCRC's articles. Children are entitled to a flying start in life; a comprehensive range of education and learning opportunities; the best possible health and freedom from abuse, victimisation and exploitation; access to play and cultural activities; to be listened to and to be treated with respect and have their race and cultural identity recognised; to have a safe home and community; and not to be disadvantaged by poverty.

Local government has also been required to adopt a rights-based approach to the services it provides for children. The Children Act 2004 guidance for Wales states that all local authorities and their partners must have regard for the UNCRC. Participation and consultation with children has been a

key component of service provision and strategies to date. The commitment to listening to children is illustrated by the Estyn School Inspectors requirement to evaluate the effectiveness of schools councils and the "Pupil Voice" (http://www.pupilvoicewales.org.uk/) within the governance of schools.

Significant national initiatives include the first child Poverty Strategy for Wales, "A Fair Future 2005", which sets out the Welsh Government's vision for reducing child poverty. A "Children and Well Being Monitor" has also been developed to measure the implementation of the strategies in line with the seven core aims.

In the early days of its inception the Welsh Government appointed a Minister for Children. It also established Funky Dragon, a national assembly of children and young people aged 0-25 in 2002, to ensure that children and young people "have a voice" in decisions made at a national level and in 2007 an influential Children and Young People Cross Party Committee was established to scrutinise policy and consider issues affecting children.

"Getting it Right" 2009 is an action plan on Children's Rights aims to support all children and young people across Wales to know about, exercise and access their rights. By 2014, when the Welsh Government next reports to the UN Committee, it hopes to be able to demonstrate considerable progress in the implementation of the UNCRC.

The "Government of Wales Act" 2006 provided a mechanism to delegate power from Parliament to the Assembly and gave the Assembly powers to make "measures" (Welsh Laws) including those for protecting children and the better implementation of children's rights in Wales.

As a result the Children's and Families (Wales) Measure 2010 was approved by the Assembly with unanimous cross party support. The measure included provision for contributing to the eradication of child poverty, the promotion of play opportunities for children, participation, establishing integrated family support services and improving the standards in social work for children and those who look after them. Another landmark piece of legislation, the Rights of Children and Young Person (Wales) measure, was

approved by Her Majesty in Council in March 2011 and places Wales ahead of the UK in making the UNCRC part of its domestic law. The legislation will require all Welsh Ministers functions to have due regard for the UNCRC when making, reviewing or changing policy. The measure also places a duty to promote knowledge and understanding of the UNCRC on Welsh Ministers, who are now charged with publishing a new Child Poverty Strategy for Wales.

Conclusion

Wales, like other parts of the UK and Ireland, has had its fair share of scandals relating to the abuse of children in its schools, children's homes and in the Health Service. Following on from these child abuse scandals the Welsh Government has been determined to instigate policies and initiatives that are underpinned by Human and Children's Rights principles with the aim of safeguarding and improving outcomes for Welsh children.

Only time will tell, if this approach has been successful in protecting children and if it has created an attitudinal change toward children within Welsh society. In the current economic climate it will take vigilance on behalf of the Children's Commissioner for Wales, the children's NGO's and Funky Dragon to ensure that the Welsh Government delivers on its early promises. Nevertheless, Wales has to be commended on its achievements to date, as the author believes that it is the empowerment of children, through an increased understanding and claiming of their rights, which will protect them and prevent further child abuse scandals of the kind that we have seen in the past.

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i Throughout this essay the term 'children' is used to reflect the legal definition of people under the age of eighteen.

ii The post was established by the Care Standards Act 2000 and extended by the Children's Commissioner for Wales Act 2001.

iii Clywch means "to hear" in English.

iv Meic, meaning "microphone" in English, is a 24-hour help line.

Emily Logan, Ombudsman for Children

Children's Rights and the Constitution

In January 2005, in my first year as Ombudsman for Children, I called for the strengthening of the position of children's rights in the Irish Constitution. I was not the first; Justice Catherine Mc Guinness posed the question in 1993 in the context of the Kilkenny Incest Inquiry, the Constitution Review Group in 1996 and the UN Committee on the Rights of the Child in 1998. Therefore in 2005 it had been seven years since the notion was given any credence. It was thought to be such a significant step at the time that it made front-page news on the broadsheets.

After the fall of the Fianna Fáil/Labour government over its handling of the Fr. Brendan Smyth case in 1994, Austin Currie, the first Minister of State with responsibility for children, found himself under considerable pressure to introduce mandatory reporting of child abuse.[i] In addition, the Irish government was soon to report for the first time to the UN Committee on the Rights of the Child on its progress on children's rights since ratifying the UN Convention on the Rights of the Child (UNCRC) in 1992. In response to these pressures, Austin Currie proposed the establishment of the Ombudsman for Children's Office in 1996.

Since that first public statement in 2005 I have witnessed extraordinary political change in this area, culminating in the publication by an Oireachtas Committee in 2010 of a proposal to amend the Constitution, a document that finally represented a political consensus on this issue.

It is impossible to isolate a single catalyst for this change. It resulted from an amalgam of occurrences dating back years in Ireland's shameful history of mistreating children, as well as the more recent collapse of the legislative framework relating to statutory rape in 2006, as a result of the decision of the Supreme Court in the CC case.[ii] However, central to the shift in the public psyche about children, in my view, is the chronicling of egregious breaches of the fundamental human rights of thousands of voiceless children in Ireland in

a number of reports published over the last few years.

I wish to reference in particular the report of the Commission to Inquire into Child Abuse, which documents gross, systemic, and widespread violations of the rights of children placed in institutions in Ireland during the period 1936 to 2000. For me, as Ombudsman for Children, I see it as illustrative of the breadth of power that exists to this day over children's lives by adults and how the arbitrary use and abuse of that power has and can destroy the lives of many children.

Measured against human rights standards today, there are several core human rights principles that were ignored for these children: the right to have decisions made in their best interests; the right not to be subject to discrimination; the right to family life and survival; and the right to express ones views freely.

Other violations included torture; inhuman and degrading treatment; rape; sexual assault; slavery; physical assault; neglect; and emotional abuse. The scale of the abuses suffered by the children is breathtaking in terms of its severity and apparent commonality. The report also records the extraordinary attempts made by some children to tell others about what was happening and the crushing response or deafening silence from those who should have done something to help them. Indeed, complete indifference to the voice of the child was one of the hallmarks of the exploitative, abusive and toxic environment which characterised the institutions examined by the Commission.

I was struck by the contrast between the treatment of children in these institutions and the treatment of children in an orphanage run by Janusz Korczak in the early 20th century. Korczak was a paediatric doctor and a pioneer in the area of children's rights who established an orphanage for Jewish children in Warsaw in 1912. The orphanage was unusual because the young people had a significant role in running it. It had a court and a parliament. It even had its own newspaper. This experiment in self-government drew the attention of many educators within Poland and subsequently across Europe.

During the Second World War, in spite of living in some of the most brutal and dehumanising conditions imaginable, Korczak was adamant that the children's rights should not be diminished. His commitment to the children even led him to refuse the opportunity to leave the ghetto and when the orphans were rounded up to be sent to the extermination camp at Treblinka, he chose to go with them and share their fate.

In reference to Korczak's philosophy and approach, the contrast with what was happening at the same time to children in Irish institutions, ostensibly set up to care for them, was stark.

The degradation of children chronicled in the Ryan Report was total. This was accomplished not just by the appalling material conditions, but also by the assault on the self-worth of the children. They were made to feel worthless. Whatever meagre comforts or maimed charity they received were to be regarded as gifts. For many of them, this was compounded by systematic physical and sexual abuse, which represented the final extirpation of dignity and annihilation of their most basic human rights.

It was no coincidence that the vast majority of children who suffered in this way came from marginalised backgrounds. It is self evident that it is easier to violate the human rights of people who are not socially powerful. Indeed, one of the core characteristics of human rights is that they act as a bulwark against the arbitrary exercise of power by those who have it over those who don't. A society that is fully committed to promoting and protecting human rights is one that establishes systems of accountability and redress, preventing anyone from exercising power in this way.

The Ryan Report did not close the chapter on the State's failings in caring for vulnerable children – it explained where we have come from and how the legacy of those institutions has yet to be fully addressed. We can never protect every child from harm, nor can we guarantee that their rights will always be respected. It is our duty, however, to make sure that the systems of accountability and the legislation that protects them recognises the inherent value and humanity of any child, irrespective of their environment.

This cannot be achieved without moving to an understanding that public policy and service provision in this area must be underpinned by a respect for children's rights, in particular respect for the voice of the child. In my view it is a fallacy to argue that a child's welfare can be guaranteed in the absence of such an understanding. It is too easy for the gap between the intention to secure the welfare of children and the reality of children's experience to widen.

Since the Kilkenny Incest Investigation Committee recommended that the Constitution include a clearer and stronger articulation of the rights of the child in 1993, the call for constitutional change has been repeated by national and international bodies.

The wording produced by the Oireachtas Committee in 2010 stimulated lively debate and will no doubt continue to do so. I think it is important that a number of points should be borne in mind regarding the context in which such debates are taking place.

The first is that change has been a long time coming. Efforts to amend the Constitution never bear fruit quickly and the circumstances which prepare the way for a referendum are always subject to an uncertain political alchemy. Opportunities to effect positive change in this way therefore do not present themselves very often and they should be seized when they do appear. You can never tell when the currents of change are going to gather pace and when significant events – such as the publication of the Murphy (Dublin), Ryan and Cloyne Reports – will accelerate them. Now, with the appointment of a Minister for Children with executive powers and a coalition government that has committed to amending the constitution to strengthen children's rights, it is imperative that its supporters maintain that momentum.

The wording published by the Oireachtas Committee in 2010 is very different from the original wording published by the Government in February 2007. The difference relates not only to the substance of the proposed amendment but also to its provenance. The 2007 wording did not enjoy political consensus and was only the starting point for the Oireachtas Committee's deliberations. It took the Committee over two years and sixty

four meetings to produce its own wording and settle on agreed language that enjoys the unanimous support of the members of the Committee. The current Government has again referred the matter to the Attorney General and has committed to a referendum in Spring 2012.

While I hope in my tenure as Ireland's first Ombudsman for Children to see a strengthening of children's rights in the Constitution I know that it is not a panacea. Constitutional change is not in and of itself sufficient to bring about the fundamental change of culture that is required. That takes time and effort. It is not only about changing the framework in which laws affecting children are drafted or children's services are delivered – it is about changing mental habits. While constitutional change cannot achieve that goal, it can certainly alter the legal and policy landscape and lay the foundations for the cultural change we need. Giving life to the principles enunciated in the proposed amendment will require a concerted effort on the part of the Oireachtas, government departments, statutory bodies, the judiciary, service providers and others in order to make sure that the State fulfils the promises it makes to all children living in Ireland.

This would allow Ireland to further align its law and practice with the international human rights instruments to which it is party and could give guidance to the Oireachtas, the Courts and those who provide services to children, encouraging a consistency of approach that is often lacking.

In the experience of my Office, the absence of clearer protection for children's rights in the Constitution has had an adverse effect on children across a wide range of areas. The organs of the State with which my Office deals most regularly are the Oireachtas, Government departments, civil and public administration, local authorities, the HSE and schools. While it might be argued that discrete legal lacunae can be dealt with by means other than a constitutional amendment, the breadth of instances in which the same problems recur demands a greater response that constitutional change can provide.

We need to move from the concept of families 'failing' to one of family support,

where the state acknowledges its responsibility to those who are unable to care for their children. I have never been a proponent of disproportionate State intervention. I would like to see an approach that obliges the state to support families in a proportionate manner, limiting more extensive interventions into cases where such action is clearly required. We have seen the human cost of state inaction. Only intervening when a family is in crisis is, in the crudest possible terms, a false economy.

It is important that we get the message right in the primary legal document of the State. Unlike in other countries where a written Constitution can be an abstract document, our Constitution has a real impact on every day decision-making in the State. It reflects who we are as a society, what we value and how we operate. The rules and principles it contains define our cultural values about children, our legal framework and they also provide direction to decision makers of every level in public life.

It is now time to demonstrate that Ireland as a society is fully committed to recognising children's human and inherent dignity. We need to promote and protect their human rights by enhancing systems of accountability and redress which prevent anyone - state actor or otherwise - from exercising power in ways we have seen in the past.

While there is much that the State and we as community must do to improve children's lives, we must never forget their strength, resilience and capacity to be part of shaping their own future. In Korcak's words 'it is fortunate for mankind that we are unable to force children to yield to assaults upon their common sense and humanity'.

i The Fianna Fail/Labour Coalition Government collapsed as a result of controversy over the failure to extradite Fr Brendan Smyth to Northern Ireland on charges of child sexual abuse.

ii In the 2006 "CC" case, the Supreme Court ruled the 1935 Criminal Law (Amendment) Act unconstitutional as it failed to afford a person the opportunity to defend a statutory rape charge by pleading that he had made a reasonable mistake as to age.

Seán Cottrell, Director of the Irish Primary Principals' Network

Employment of Primary Teachers – Accountability Gaps

The structure used to employ primary teachers in Ireland is unorthodox and serves as an impediment to professional accountability, especially in relation to complaints about a teacher's competence or conduct. Primary teachers are employed by the Patron of each school - in most cases a Catholic Bishop. The contract of employment is with the Chairperson of the school's Board of Management, who is a nominee of the Patron. A Board of Management comprises:

- 8 voluntary members: 2 appointed by the Patron, one of which is automatically Chairperson
- 2 members elected by the Parent Body
- 2 members elected by the teachers in the school, one of which is the Principal
- 2 people from the local community co-opted by the 6 other Board of Management members.

The Board of Management does not pay teachers' salaries and yet it is the official legal employer, acting in proxy for the Patron. The Department of Education & Skills carries out all the normal functions of an employer, including payment, but is not the legal employer. It is also important to note that many schools in disadvantaged and isolated rural areas, and also many special schools, find it very difficult to attract volunteers onto their Board of Management.

Background

This triangular relationship has its origins in the Irish Constitution (1937), which states (in Section 42.2) that: "The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to

private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation".

Central to this article is the key term 'provide for'. This effectively means that the State recognises that national schools in the main are the property of the various Patrons, which up until recently included agents of the Catholic Church and the Church of Ireland primarily. These are private institutions, which, among other activities, are engaged in the delivery of primary education. In order to fulfil this function, the State assists the Patrons by various means, the most significant being the payment of salaries and pensions for teachers and annual operational funding for schools based on the number of pupils enrolled. Ultimately, this means that where underfunding of education occurs, the State does not oblige itself to provide free primary education but instead hides behind the Patron, who is the official provider.

In general, this arrangement has worked well for both Church and State. The general public, and perhaps even many teachers, are unaware that the teachers are employed by the Board of Management rather than the State. Most people (reasonably) assume they are employed by whoever pays their salary. Considering that primary education is a public service activity, such a perception is understandable. However, when a problem arises, the inadequacies of the arrangement come into focus. This issue entered the public domain when Louise O'Keeffe, a former pupil of Dunderrow National School, near Kinsale in Cork, took a case in the High Court against the then Minister for Education & Science Mary Hanafin TD, for damages in relation to sexual abuse by Leo Hickey, who had been the Principal of the school. Ms O'Keeffe lost her case on the basis that the Minister was not responsible as the Minister was not the legal employer. She was subsequently unsuccessful in her appeal to the Supreme Court, where a majority ruling found in favour of the Minister. This led to the rather shocking statement by Minister Hanafin when she publicly advised Louise O'Keeffe that she should sue the Board of

Management, not the Minister.

Who is the employer?

An examination of any employer/employee relationship reveals a number of key features that are common in virtually all workplaces. In the case of primary teachers, the view that the Department of Education and Skills is the de facto employer is supported by the fact that it carries out virtually all of the employer functions. For example, the Department determines the following elements:

1. Legislation which underpins all primary education provision; for example, Education Act (1998), Education & Welfare Act (2000), EPSEN Act etc
2. Compliance with the Rules for National Schools (1965)
3. Compliance with Ministerial Circulars
4. Minimum entry standards for pre-service teacher training
5. Minimum graduation requirements for teachers
6. Probationary period and performance appraisal for graduate teachers
7. Pay scale for teachers and promoted allowances
8. Payment of salaries
7. Validity of teacher appointments
10. Coordination of the redeployment of teachers from schools with falling enrolments
11. Arrangement to deduct PAYE, PRSI and other levies
12. Deduction of pension contributions and the payment of pensions Eligibility for retirement
13. Holiday entitlements
14. Arrangements for leave of absence, job-sharing, career breaks
15. and other such HR terms and conditions
16. Role and responsibilities of the school Principal, Deputy Principal

and holders of Posts of Responsibility

17. Curriculum which teachers must deliver

18. Time spent on curriculum areas

19. Class sizes

20. Policy in relation to children's needs; for example those with learning difficulties, Special Educational Needs, economic disadvantage, immigrants with English language needs etc

21. In-service training

22. Inspection of teachers' work through incidental visits and planned Whole School Evaluation.

Since 2000 the Department has issued 402 ¬'circulars' which instruct Principals, teachers and Boards of Management in detail on a wide range of organisational and education policy matters.

This begs the question, how can the Department continue to say it is not the employer when it micro-manages teachers and Principals to this extent? When a serious complaint is made about a teacher or Principal, Section 24 of the Education Act (1998), which was only commenced in 2009, sets out procedures the Board of Management can undertake. Section 24 does not take into account the fact that significant numbers of voluntary Boards of Management are not fit for purpose and are incapable of performing an employer-type function. Evidence to date shows that, even where Boards are fully functioning, the challenge of disciplining and ultimately dismissing underperforming teachers and Principals proves too great. In other workplaces, including those in the private sector, performance management is regarded as a higher order management skill which is accompanied by labour law expertise and training. None of these are available to Boards of Management. Similarly, the role of the Department Inspectorate is insufficiently prescribed in the Section 24 procedures, as outlined in Circular 60/2009. The Inspectorate role is largely confined to whole-school evaluations and incidental visits. There has been a noticeable change in their role over the last decade whereby they

are no longer willing to address or even advise on performance-related issues, stating that it is a matter for the Board of Management. It is broadly accepted that the capacity of a voluntary Board of Management to deal with the growing number of Human Resource and legal issues in schools is inadequate and leaves a serious governance gap.

Patron as Employer

While the Department acts as the de facto employer of teacher and principals in most areas, there is of course one major exception. The Board of Management has the power to appoint and dismiss teachers and Principals, a power the Patrons seem quite content to retain.

In November 2011, members of the Boards of Management of 3,300 primary schools will be replaced as part of the ongoing 4-yearly process. It is arguable that if the volunteers who sit on these Boards fully understood the concept of vicarious liability that rests with an employer, many would decline to become a member of the Board of their school. There are serious shortcomings relating to the triangular relationship between teacher, Board of Management and Department. Having some direct and indirect experience of the nature and scale of problems arising, I believe that it is at best a weak and ineffective arrangement. At worst, it is a system which is deeply flawed and deliberately designed to enable the Department of Education & Skills to centrally control the operational and staffing costs to the State of primary schools while devolving employer responsibility to each school in isolation. Research shows that between 25 per cent and 33 per cent of the operational costs of schools has to be fundraised from parental after-tax income. Effectively each Board of Management is like a mini HSE, providing a buffer between the State and its school communities.

Sustainability

A number of events currently coincide which collectively may have a serious impact on the sustainability of this current model of teacher employment:

1. The publication of the Murphy (Dublin), Ryan, Ferns and Cloyne Reports, which outline clerical sexual abuse of children and the failure of Catholic Bishops to follow correct child protection procedures, raises serious questions about the appropriateness of some bishops being the employer of Principals and teachers in schools.

2. The Forum on Patronage and Pluralism established by Minister Ruairi Quinn TD involves, for the first time ever, consultation with all stakeholders to determine a means by which pluralism and diversity can be accommodated in the Irish education system.

3. Until now, the issue of patronage and ownership of schools did not present a major obstacle as various groups seeking inclusion in the education system were accommodated through provision of their own schools e.g. Gaelscoileanna, Educate Together, Islamic Foundation. However, this model of addressing diversity only created choice between schools for parents by failing to tackle the core issue of inclusion within schools. Furthermore, it is no longer economically sustainable to continue to build schools for an ever increasing number of diverse groups.

4. Louise O'Keeffe is currently taking her case to the European Court of Justice. If they find in her favour, the ruling will have radical implications for the employer/employee regime in Irish schools.

5. The Irish Human Rights Commission is raising the stakes in its pursuit of the UN Convention of Children's Rights, which

> stipulates the rights of a child to primary education without distinction based on colour, sex, language, religion …

More suitable and successful models exist elsewhere. In countries such as New Zealand and Finland, which are frequently acknowledged for their excellence in primary education, the system operates without any form of patronage i.e. the role of the state is to legislate for education, pay teachers' salaries, provide operational funding and determine national policy and curriculum. Each school has a Board of Management, which is empowered and trained in its various functions. There is no intermediate tier of administration between the school and the state.

Patronage as a barrier to inclusion

The Equal Status Act determines nine grounds under which Irish citizens are protected from discrimination. However, schools are allowed to discriminate in favour of a particular religion to protect the school's ethos, when employing teachers and enrolling children. Throughout the last three decades, the State's policy on inclusion was in fact no more than a continued fragmentation along faith and cultural lines. Regrettably, our approach to diversity up to now is leading to diversity between schools rather than within schools. Given Ireland's long history of sectarianism and prejudice between religious groups, Ireland must become a beacon of good practice to the rest of the world - illustrating the enormous dividend to society in terms of peace and prosperity, when difference is meaningfully embraced. Primary Schools have been exemplary in the manner in which they have included children with physical and intellectual disabilities, children from the Traveller community and children from all corners of the world with extensive language learning needs. In any society wishing to educate its children, it would be reasonable to expect that enrolment would be organised on the basis of what we all have in common rather than what makes us different. Schools are the ideal places that embrace

all humanity, majorities and minorities, with equal status and respect.

Pearse Mehigan, Solicitor

Accountability and the Law

Perhaps one of the most striking aspects of the entire clerical and institutional child abuse saga in the Irish context is the failure of the State to hold both those responsible for crimes committed against children and for facilitating and covering up those crimes to account before the law. There have been few prosecutions of individual perpetrators of offences against children, despite the fact that the various State sponsored investigations have identified hundreds of individuals against whom serious allegations of criminality have been made. Thus far, there has not been a single criminal charge laid against any person in a position of power and authority who knowingly concealed grave crimes against children and continued to give identified and often admitted child sex abusers unimpeded access to children.

Many thousands of children have been savagely raped, beaten, abused and neglected. They have been subjected to acts of torture and neglect on a truly shocking scale. Despite this, there has been little real accountability. In the absence of criminal prosecutions, many victims have turned to civil law for recourse, often because they felt that the State had failed to prosecute either their abuser or those who allowed the abuse to occur.

For many, the decision to initiate proceedings was not based on a desire to secure an award of damages or compensation, but borne out of a desire to secure a day in court; to witness a holding to account of both those who had harmed them and those who failed in their responsibility to act to prevent such harm. I have often been struck by how empty that process can be for many victims: the notion that justice for them would be limited to an out-of-court settlement and the payment of damages is an upsetting, and at times shattering, realisation.

But their decision to seek to prosecute those responsible for the harm they experienced was not based on some basic misunderstanding of the law. The simple reality is that the State appears to have had little appetite to

prosecute those responsible for the crimes many children were subjected to. It is notable that when challenged about the perception that his government had failed to hold the institutional Church to account following the publication of the Ferns Report in 2005, then Taoiseach Bertie Ahern replied:

> The notion that the institutional church has not been held to account is misconceived. Our legal system provides a remedy in damages for negligence by the institutional church. Many victims have successfully sued church bodies for damages. That is their right and entitlement. Our independent judiciary thus will assess the correct level of compensation for that abuse. And our criminal courts will impose sanctions for offences.[i]

This assertion by Ahern fails to acknowledge two significant facts. Firstly, the criminal courts can only impose sanctions when the State undertakes a criminal prosecution, which it has failed do except in a very small number of cases. Secondly, and perhaps most crucially, it is the State that has the obligation to vindicate the rights of those who have been subjected to such grave crimes and not the victim of crime him or herself. It is simply not acceptable for the State to assert that it has discharged its responsibility by leaving it to individuals, who are often traumatised, to secure the psychological or financial resources to take on powerful institutions such as the Roman Catholic Church, and indeed the State itself.

One must also question the manner in which the State has managed to abdicate its responsibilities for the management and supervision of day schools throughout the country. These schools were generally run by religious orders or under the patronage of Catholic bishops for and on behalf of the State. Thousands of children suffered horrendous physical and emotional abuse, and in some cases grievous sexual abuse, at the hands of various priests, brothers and nuns involved in the running of these schools. This abuse was rampant throughout the country, but was allowed go unchecked as aside from cursory inspections, the Department of Education did little or nothing to ensure the safety and well-being of the children attending these schools.

The judgement in the Louise O'Keefe case exonerated the State of all liability for this widespread abuse when it held the State was not the de facto manager for primary schools as it was not involved in their day-to-day management. This has left countless claimants across the country without any remedy other than to pursue the religious or diocese in question. They are then met with robust and trenchant defences relying both on the statute of limitations, delay and vicarious liability.

The situation is further exacerbated by the installation of boards of management in most schools, by which a further firewall is provided, as findings and legislation provide that boards of management cannot be held liable for any wrongs that may have occurred prior to their inception. Indeed, members of boards of management enjoy a further defence by virtue of Section 14(7) of the Education Act 1998, which states "except as provided by this act, no action shall lie against a member of a board in respect of anything done by that member in good faith and in pursuance of this act or any regulations made by the Minister under this act".

Again, by its failure to organise the provision of education in a manner that recognises its overarching responsibility for the rights of children within the State, the State has failed to guarantee recourse in law that ensures that victims of child abuse in such settings can secure justice.

A common thread throughout is the failure of the State to ensure that it is itself accountable to those children whose rights it violates or fails to vindicate. Of course, it is also the case that the State effectively became a judge in its own case. Given the symbiotic relationship that existed between the Catholic Church and the State, an independent assessment of the State's role and culpability is next to impossible. The fact that the Commission to Inquire into Child Abuse was sponsored by the Department of Education and Science, the very department its investigations were focused on, is evidence enough of the failure to understand the need for meaningful, independent investigation.

Despite the shortcomings in the manner in which it was conceived and resourced, the Ryan Commission has reported comprehensively on the

State's involvement in the management, supervision and control of residential institutions to which children were dispatched at random through various organs of the State, the court system in particular. These institutions were in turn run by religious orders, with much of the cost being sub-vented by the State. The system was then supposedly held up to scrutiny by inspectors from the Department of Education.

The religious orders ran these institutions with impunity, and in many cases there was no regard for the welfare of the child. Given the absence of meaningful interventions on behalf of the State, accountability was simply non-existent. Such failings, once identified, must never again be repeated. There are some tentative signs that lessons have been learned. There are promises of new approaches, greater accountability and greater protections for children and vulnerable adults and these, if delivered, will be a real step forward. However, there remains a need to examine why it has not been possible to apply sanctions in criminal law to those responsible for grave crimes and the concealment and facilitation of such crimes.

The role of the State in the administration of justice must also be examined in the context of the Murphy (Dublin) Report. No member of the Catholic Church or its hierarchy has so far been prosecuted for the concealment and suppression of information and evidence regarding the paedophile activities of members of the clergy. In the face of incontrovertible evidence, we must ask why this is so?

The Murphy (Dublin) Report found countless incidents of failure to report and mishandling of complaints by various individuals throughout the Archdiocese of Dublin. The report briefly mentions the offence of 'misprision of felony', by which it is an offence to know a felony has been committed and to conceal that felony from the authorities. The Criminal Law Act (1997) introduced a significant change as it abolished the distinction between a felony and a misdemeanour and created a new offence which provides that "where a person has committed an arrestable offence, any other person who knowing or believing him or her to be guilty of the offence or of some other arrestable

offence does without reasonable excuse any act with intent to impede his or her apprehension or prosecution shall be guilty of an offence". If the sexual abuse of a child is taken as an arrestable offence, anyone who impedes the prosecution of someone who has committed that offence is themselves committing an offence.

Failure to report to the statutory authorities, and the use of mental reservation to conceal crimes and information, should surely result in prosecutions. However, in the days after the publication of the Cloyne Report, Justine McCarthy reported in the Sunday Times that although Gardaí had previously pushed for the prosecution of Bishop John Magee for failing to report an arrestable offence, the Director of Public Prosecution (DPP) said that this was irrelevant and no charges should be brought.

If law is to have the force necessary to both be a deterrent in preventing crime and a key means of holding to account those who commit serious breaches of the law, then it must surely be enforced. If the failure of the criminal justice system to prosecute criminality on the grand scale revealed in the various reports into clerical child abuse goes unaddressed, then an environment of impunity will continue to exist. Law and accountability will have little meaning.

The Office of the DDP should itself be reviewed to establish the number of complaints, if any, it received over the years concerning members of the clergy and the religious and every single such file should be re-opened and examined as to the reasons why individuals were not prosecuted. The DPP's right not to have to give a reason for decisions not to prosecute ought to be overlooked in the interests of human rights accountability and with a view to ascertaining whether or not there were political machinations in force behind the decision making process.

In the absence of such transparency, it is often the case that investigating Gardai are left to explain to a victim why, after an often demanding investigation that has reopened old trauma, there will not be any prosecution. The reasons given are often baffling. At the very least, victims of clerical

childhood sexual abuse, who have been through the painful experience of reporting the abuse and being interviewed in regard to same, ought to be entitled to an explanation from the DPP for its decision not to prosecute in certain cases.

i *The Irish Times*, 18 November 2005.

James M. Smith, Associate Professor of English at Boston College, member of the JFM Advisory Committee and author of *Ireland's Magdalene Laundries and the Nation's Architecture of Containment* (2008)

The Justice for Magdalenes Campaign

Justice for Magdalenes (JFM), the survivor advocacy group, began a campaign in July 2009 to bring restorative justice -- an apology, reparations and access to records -- to survivors of Ireland's Magdalene Laundries. On 3 June 2011 the UN Committee Against Torture (UNCAT), which examined Ireland for the first time on May 23 and 24 last, published an unequivocal recommendation:

> The Committee recommends that the state party should institute prompt, independent and thorough investigations into all allegations of torture, and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries, and, in appropriate cases, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed, and ensure that all victims obtain redress and have an enforceable right to compensation including the means for as full rehabilitation as possible.

On 14 June 2011 the Minister for Justice announced the formation of an Inter-departmental Committee "to clarify any State interaction with the Magdalene Laundries and to produce a narrative detailing such interaction." Minister Shatter later appointed Senator Martin McAleese as the Committee's independent chairperson. An "initial report" is expected within three months.

This campaign began as a response to the political debates after the Ryan Report's publication (May 2009) -- a Dáil motion to cherish all children equally passed unanimously; this was followed by assurances of legislative reform. There was also a guarantee of criminal convictions. But, from JFM's perspective, the Report's avoidance of the Magdalene Laundries exposed a compartmentalised response to institutional abuse.

The word "Magdalene" does not occur in the 2,600-page Ryan Report. Ireland's Magdalene women were ignored, edited out in the present just as they were abandoned and disappeared in the past.

One chapter, entitled 'Residential Laundries, Novitiates, Hostels and other Out-of-Home Settings', includes testimony from women whose childhoods were spent in residential institutions, but who were transferred to the laundries. These women were the only Magdalene survivors eligible to apply to the Residential Institutions Redress Board (RIRB), where their abuse was dealt with as if it occurred while the girls were in residential institutions. The RIRB never acknowledged that children worked in Magdalene Laundries.

These young girls were children, some only 12 years old, and yet they toiled in commercial, for-profit laundries, in dangerous working conditions, and they were never paid. They describe prison-like conditions including locked doors and barred windows. Their identities were taken from them. If these conditions, documented by the State's own commission of inquiry, constitute abuse for this one population of children, surely they constitute abuse for the other girls, indeed for all the women, in the laundries?

JFM's campaign was set in motion when we circulated a draft "Apology and Distinct Redress Scheme" to all TDs and senators on July 3, 2009. More recently, and after a process of consultation with individual and groups of survivors in Ireland, the UK and the US, we submitted to the Minister for Justice a revised proposal on March 28, 2011, entitled "Restorative Justice and Reparations Scheme".

In the meantime, JFM met with three government departments and corresponded with many others. We twice presented before an Oireachtas Ad Hoc Committee, arranged for over 30 parliamentary questions to be tabled in Dáil Éireann, made formal submissions to the Irish Human Rights Commission, the UN Universal Periodic Review, the UN Committee Against Torture and lobbied for support from organisations including the National Women's Council of Ireland, Amnesty International-Ireland and Labour Women, among others. We wrote to seek meetings with the religious congregations and the Irish

hierarchy. We did meet with Cardinal Sean Brady, on 26 June 2010, who characterized JFM's presentation as "fair and balanced," and who encouraged us to approach the Congregation of Religious of Ireland (CORI) in the hope of entering into dialogue with the four orders of nuns -- the Sisters of Mercy, Sisters of Charity, Good Shepherd Sisters and Sisters of Our Lady of Charity -- who operated the laundries. CORI refused our request for a meeting on 1 October 2010.

No one in Ireland has apologized to these women. There is no official acknowledgment of their abuse. As such, many survivors, now elderly and ageing, live with the stigma and shame long associated with the Magdalene Laundries. Even today, these institutions are inaccurately referred to as homes for "fallen women", a label that causes hurt and pain to many women.

The young girls transferred from industrial and reformatory schools were raised in the nuns' care. They were not "fallen". Many girls were deemed "too pretty" or "in danger"; the nuns referred to them as the "preventative" cases. They were not "fallen". The victims of male sexual violence, punished again by family members and hidden away in the laundries, were not "fallen". The women referred to the laundries by the courts may have been guilty of a crime. Does that make them "fallen"?

The fact that no one has apologized for the Magdalene Laundries abuse enables this hurtful stereotype to continue unchecked. Until Church and State stand up and apologise, stand up and tell these women that "we were wrong" and that "you were wronged", most survivors will choose to maintain what they perceive as the shameful secret of their past.

JFM's campaign also focused on documenting state complicity in the operation of the Magdalene Laundries. Invariably, our efforts met with state denials of responsibility. Then Minister for Education Mr Batt O'Keeffe claimed that "the state did not refer individuals to Magdalen Laundries, nor was it complicit in referring individuals to them". Former Taoiseach Brian Cowen asserted that the laundries "were not analogous" to state residential institutions. Former Minister for Justice Dermot Ahern insisted they were

"privately run institutions" in which the State had no function.

JFM's campaign disproves these assertions. We can demonstrate numerous incidences of State complicity in referring women to the laundries: the courts referred women long before there was a statutory basis for doing so. The Department of Justice knew, as early as 1934, that there was no statutory basis and yet stood by as the courts continued this "informal practice" into the 1960s.

The Department of Education knew in 1970 that there were at least 75 girls in the laundries between 13 and 19 years of age. Department officials never intervened. Neither can the Department demonstrate what became of these children.

It was Department of Health policy after 1932 to refer unmarried mothers of more than one child to the laundries. Later, after 1960, the same department paid capitation grants to religious convents, including Magdalene Laundries, to confine "problem girls". What became of these women? And what happened to their children?

After 1941, the Department of Defence contracted Army laundry to the Magdalene institutions, and it did so in the knowledge that there was no "fair wage clause" in such contracts, as there was in contracts with commercial laundries. The Department met the religious congregations to discuss the insertion of a fair-wage clause as late as 1982.

Survivor testimony recounts that members of the Garda Síochána delivered women to the laundries and returned women there who escaped. There was no statutory basis for doing so.

Confronted with government denials of complicity, JFM submitted an inquiry application to the Irish Human Rights Commission (IHRC) in June 2010. The submission, augmented with over 100 pages of archival documentation, focused on the State's obligation to protect the women's constitutional and human rights despite the fact that the abuse took place in "private institutions".

The IHRC assessment, published in November last year, affirmed JFM's

arguments, concluding that the State failed to protect women and young girls in the laundries from "arbitrary detention", "forced and compulsory labour" and "servitude". It recommends "that a statutory mechanism be established to investigate the matters advanced by JFM and in appropriate cases to grant redress where warranted".

Then Taoiseach Brian Cowen referred the assessment for review to the Office of the Attorney General last November.

Faced with additional delays, JFM made formal submissions to the UN Universal Periodic Review and the UN Committee Against Torture (UNCAT) in the hope that external pressure might leverage the State into action. Four women participated in these submissions by providing JFM and the UN with their testimonies. Maeve O'Rourke, who wrote both submissions, represented JFM at the UNCAT examination of Ireland in Geneva.

UNCAT Committee members questioned the Irish delegation regarding its stated position on the Magdalene Laundries. They reiterated serious reservations following the delegation's response. The committee insists that the state has an obligation to conduct an independent investigation into abuses in the laundries as stipulated by Articles 12 and 13 of the Convention, and to help survivors obtain redress in accordance with Article 14.

Moreover, Felice Gaer, UNCAT's acting chairperson, rejected the State's assertion that the laundries' abuse is from a different era. She rebutted the State's logic that the "vast majority" of women entered the laundries "voluntarily". And she underscored the fact that the State's own definition of torture includes the crime of omission with respect to ensuring due diligence to prevent torture, and other cruel, inhuman or degrading treatment or punishment.

JFM welcomes UNCAT's "concluding observations" following the examination. In particular, we appreciate the recommendation that the state establish an independent investigation into the Magdalene Laundries abuse and provide redress for the women who suffered.

JFM wants to support the government's investigation on the Magdalene

laundries. Indeed, we have already met with the minister for justice, Alan Shatter and Minister of State Kathleen Lynch, at which time we submitted "A Narrative of State Interaction with the Magdalene Laundries," a fifty-page document detailing eight government department's involvement with the laundries and supported by over 400 pages of archival appendices.

We did so because we want to assist the Inter-departmental Committee with its work, and thereby bring about restorative justice and reparations to all Magdalene survivors. And yet, it remains important from JFM's perspective that the Committee's terms of reference be made available publicly as soon as possible. Likewise, it is important that Dr. McAleese's powers, as independent chair of the Committee, also be made available publicly. Moreover, the Committee's narrative of State interaction with the Magdalene Laundries must extend beyond forms of direct involvement (e.g., referring women or girls to the Laundries or supporting the commercial enterprise by awarding contracts to the Laundries) to include acts of omission, or the ways in which the State failed to exercise due diligence in the prevention of abuse in the Laundries (e.g., the failure to inspect, regulate and monitor the Laundries). Acts of omission are central to the UN Committee against Torture's response and recommendation regarding the State's obligation towards survivors of the Magdalene Laundries.

In conclusion, JFM calls on the Irish State to issue an official apology to all survivors of the Laundries without further delay. The apology should come first, because only by first apologising can Ireland as a society ever hope to seek the women's forgiveness. And only with their forgiveness can we ever hope to approach understanding and reconciliation with and for the past.

1 Central Statistics Office, EU Survey on Income and Living Conditions (EU-SILC) 2009, 2010, p.32.

2 Ibid.

3 The OECD Programme for International Student Assessment (PISA), *PISA 2009 Results: What Students Know and Can do*, OECD, Paris, 2010.

4 Joint Oireachtas Committee on Education and Skills, First Report, *Staying in Education: A new way forward*, 2010, p. 12. Just 56 per cent of Travellers completed the Junior Certificate compared with an estimated 96 per cent nationally.

5 S. McCoy and E. Smyth, *Investing in Education: Combating Educational Disadvantage*, Economic and Social Research Institute, Dublin, 2009, p. 55.

6 A 2006 study for the Office of the Minister for Children found that child homelessness is caused by a combination of economic poverty, lack of families' access to housing, with a personal life crisis which might include abuse/neglect, ill-health, addiction or domestic violence. Mayock and Vekic, *Understanding Youth Homelessness in Dublin City Key Findings from the first phase of a longitundinal cohort study*, 2006. It found that the lack of medium and long-term housing for homeless children leaves these children extremely vulnerable and at risk of abuse and exploitation, poverty and poor health.

7 Paula Mayock and Eoin O'Sullivan, *Lives in Crisis: Homeless Young People in Dublin*, Liffey Press, Dublin, 2007. The study also found that many young people interviewed were known to various agencies of the State, such as youth homeless services and the criminal justice system, from a young age and over a long period of time, pointing to failures within the State intervention systems at various junctures in children's and young people's lives.

8 'Child protection is in crisis, say social workers', *The Irish Times*, 17 January 2011.

9 '23,000 on waiting list for speech therapy', *Irish Examiner*, 3 May 2010.

10 HSE, Second Annual Child and Adolescent Mental Health Service Report, 2010.

11 In the first nine months of 2010, 120 children under the age of 18 were admitted to adult units, including 13 children under the age of 16. See HSE, *Second Annual Child and Adolescent Mental Health Service Report*, 2010.

12 *Mental Health Commission Annual Report 2008, 2009*. Available at www.mhcirl.ie/News_Events/MHC_Annual_Report_2008.pdf.

13 *The Irish Times*, 18 November 2005.

14 Office of the Minister for Children and Youth Affairs, *Report of the Commission to Inquire into Child Abuse, 2009: Implementation Plan*.

15 The Murphy (Dublin) Report found that some Gardaí considered the investigation of clergy outside their remit and in some cases complaints received by Gardaí were reported to the archdiocese rather than being investigated. In 1998, the UN Committee on the Rights of the Child, in its first report to the State in relation to its record on children's rights, expressed its concern about the reporting of child abuse. Once again, in September 2006, the UN Committee voiced its concern, making an explicit recommendation to the State that it consider the establishment of the Children First on a statutory basis.

16 A report based on an investigation into the implementation of *Children First: National Guidelines for the Protection and Welfare of Children*, April, 2010.

17 Department of Health and Children, *Expert Group on Resource Allocation and Financing in the Health Sector*, 2010.

18 Programme for Government, 2011.

19 Elaine Byrne, *The Irish Times*, 16 March 2010.

20 The Cloyne Report, 6.19.

21 Ibid.

22 Ibid., pp. 367-8.

23 Ibid., 6.22.

24 Ibid., 6.24.

25 Ibid.

26 Ibid., 6.18.

27 Ibid., 6.25.

28 Ibid., 6.23.

29 This comment is taken from a letter from one HSE Assistant National Director to another. See ibid., 6.26.

30 Ibid., 6.27.

31 Ibid.,6.38; 6.39

32 Speech by Minister Frances Fitzgerald at the launch of the Cloyne Report, 13 July 2011.

33 *The Irish Times*, 28 July 2011.

34 *The Irish Times*, 21 July 2011.

35 The Cloyne Report, 6.112.

36 *Report of the Joint Oireachtas Committee on Child Protection*, 2006.

37 See also Geoffrey Shannon, *Second Report of the Special Rapporteur on Child Protection*, October 2008. For further discussion see Irish Council for Civil Liberties, *Protecting Children*

and Respecting the Rule of Law, May 2009.

38 DPP Submission to the Joint Oireachtas Committee on Child Protection, September 2006, pp. 6-7.

39 Defilement of a child under 15, or defilement of a child under 17, under the Criminal Law (Sexual Offences) Act 2006, formerly the offence of unlawful carnal knowledge.

40 See Irish Council for Civil Liberties, *Protecting Children and Respecting the Rule of Law*, 2009.

41 Ibid.

42 Law Reform Commission, *Report on Child Sex Abuse*, 1990 (LRC 32-1990), p.8. While the offence of "causing or encouraging sexual offence upon a child" was introduced by section 249 (1) of the Children Act 2001, this offence is inadequate and does not cover all situations where a child has been sexually abused.

43 *Report of the Joint Oireachtas Committee on Child Protection*, November 2006, para. 4.6.10-4.6.12

44 *Report of the Joint Oireachtas Committee on Child Protection*, November 2006, para. 5.6.2.

45 See Submission of the DPP to the Joint Oireachtas Committee on Child Protection, September 2006, p.17 and Submission of the DPP to the Joint Oireachtas Committee on Child Protection (revised version), February 2009, p.7.

46 See, Susan Marks and Andrew Clapham, *International Human Rights Lexicon*, Oxford, 2005, pp. 21-32.

47 The right to education is given limited scope in Art.42 of the Constitution, and the Education Act 1998 does not expressly recognize children's rights to education as enshrined in CRC, in respect of both access to education and content of education. Consequently, a number of important areas of the curriculum are discretionary, such as human rights education and sex education.

48 While, unmarried cohabiting couples do not enjoy these constitutional rights, under the Status of Children Act 1987 a child born outside marriage is treated the same as a child born inside marriage.

49 The Supreme Court decided that a child born to and placed for adopted by her unmarried parents in 2004, who then later married and withdrew their consent to the adoption, should be retuned to her natural parents despite expert testimony that it would not be in her best interests to be separated from her foster family.

50 *The Irish Times*,14 November, 2006.

51 See the 2010 report of the Oireachtas (Parliament) Joint Committee on the Constitutional Amendment on Children, which explains that the State can only intervene where there is a failure of duty and exceptional circumstances, or an extreme threat to the child. It also outlines that the rights of children are secondary to parental rights.

52 For a detailed discussion of these issues, see J*oint Committee on the Constitutional Amendment on Children – proposal for a Constitutional Amendment to Strengthen Children's Rights*. Final Report, February 2010, pp 72-81

53 See Concluding Observations of the UN Committee on the Rights of the Child: Ireland, 29 September 2006, CRC/C/IRL/CO/2, paras 8, 9 & 25.

54 *Programme for Government*, 1997.

55 U.Kilkelly, *Barriers to the Realisation of Children's Rights*, 2007.

56 *Irish Examiner*, 25 July 2011.

57 The pseudonym John Brander was used in the Report.

58 The Ryan Report Vol. I, chapter 14.

59 The school in question was Naomh Mhuire National School, Walsh Island, Geisill, Co Offally.

60 The Ryan Report, Vol. I, chapter 14.

61 Art.44.2.4 of the Constitution provides: Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

62 Matthew Colton, Maurice Vanstone and Christine Walby, 'Victimization, Care and Justice: Reflections on the Experiences of Victims/Survivors Involved in Large-Scale Historical Investigations of Child Sexual Abuse in Residential Institutions, in *British Journal of Social Work*, 32, 2002, pp 541-551, p. 549.

63 For more on this poll see annex 2.

64 Free Legal Advice Centres, *One Size Doesn't Fit All: A legal analysis of the direct provision and dispersal system in Ireland, 10 years on*, 2010.

65 Irish Traveller Movement at www.itmtrav.ie/keyissues/myview/47 (accessed 1 September 2011).

66 The poll was undertaken by Red C on the 25-27 July 2011. See annex 2 for further details.

67 LIFT OFF is a cross-border human rights education initiative for primary schools in Ireland and Northern Ireland developed by teachers in partnership with Amnesty International, the Ulster Teachers' Union and the Irish National Teachers' Organisation. This partnership is advised by a committee, which includes the Human Rights Commissions, Departments of Education and curriculum bodies in of Ireland and Northern Ireland. It also enjoys the financial and practical support of the Department of Education and Science in Ireland, the Department of Education for Northern Ireland, and Irish Aid. (See www.liftoffschools.com)

68 Keogh and Whyte, *Second Level Student Councils in Ireland: A*

Study of Enablers, Barriers and Supports, National Children's Office, 2005.

69 Concluding Observations of the Committee on the Rights of the Child: Ireland, 04/02/98, UNCRC/C/15/Add.85, at para. 15.

70 John Sweeney, 'Attitudes of Catholic religious orders towards children and adults with an intellectual disability in postcolonial Ireland', in *Nursing Inquiry*, 17, 2, 2000, pp. 95-110, pp. 96, 101.

71 The Use of Seclusion, Mechanical Means of Bodily Restraint and Physical Restraint in Approved Centres: Activities Report 2009 (2010). During its 2010 visit, the European Committee for the Prevention of Torture (CPT), met with patients who had been administered medication for behaviour control rather than for decreasing symptoms of their mental health problem.

72 *Council of Europe Commissioner for Human Rights, Report by the Commissioner on his Visit to Ireland 26-30 November 2007*, CommDH (2008)9; Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010. See successive annual progress reports published by the Independent Monitoring Group established to monitor implementation of *A Vision for Change*, at www.dohc.ie/publications. See also successive annual reports of the Mental Health Commission, at www.mhcirl.ie.

73 Report of the Inspector of Mental Health Services, *Mental Health Commission Annual Report 2009* (June 2010).

74 Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010 (CPT/Inf (2011) 3). See also Inspector of Prisons and Places of Detention, *The Irish Prison Population - an examination of duties and obligations owed to prisoners*, presented to the Minister on 29 July 2010, published on 23 October 2010.

75 "Slopping out" refers to the practice by which prisoners have to urinate and defecate into a small pot in their cell (which they often share with others), have no access to running water to wash their hands, sleep with the contents overnight and then publicly take the contents to a sluice area the next day.

76 In a 2010 report, *The Irish Prison Population - an examination of duties and obligations owed to prisoners*, the Inspector of Prisons and Places of Detention described inter-prisoner violence in Mountjoy as "endemic".

77 *The Mountjoy Prison Visiting Committee Annual Report 2009*, Department of Justice, Equality & Law Reform (2010). In a more recent inspection report of Mountjoy Prison, the Inspector of Prisons and Places of Detention described a "sea change for the better in many aspects of the prison". However, this report expressly does not address prison discipline, use of observation cells (see below), healthcare or education services. In this report, the Inspector observed that a number of cells had been equipped with commodes to replace 'slop out' buckets on a pilot basis. While he stated that he was not in a position to give a view on the effectiveness of this measure, he noted that, "from what prisoners have told [him] this arrangement does not address the problem", and advised that this practice should not be used as an excuse for delaying the installation of in-cell sanitation in all cells.

78 The Cloyne Report, 1.2; 1.5.

79 *The National Board for Safeguarding Children in the Catholic Church*, Annual Report 2010 (May, 2011).

80 The Annual Report revealed that the NBSCCC was unable to report that the practice of reporting allegations to both the board and the civil authorities was being carried out across the Church. While the NBSCCC had been notified of fifty three new allegations of abuse as having been brought to the attention of Church authorities, a final 'pro forma check' in advance of the compilation of the annual report revealed that 272 new allegations were made to dioceses and religious orders. Twelve of those allegations were made against twelve people still in ministry. See ibid., pp 7-9.

81 Ibid., p. 5.

82 The Cloyne Report, 1.18.

83 *Amnesty International Report, 2011, The State of the World's Human Rights.*

84 *The Sunday Tribune*, 24 January 2009.

85 *The Irish Times*, 5 April 2010; 19 May 2005.

86 See annex 3 for a further discussion of High Park, Bethany Home and the Vaccine Trials.

87 See annex 2 for more details on this poll.

88 See annex 2 for more details on this poll.

Chapter 4

Key Findings

Key Findings

1. No clear lines of responsibility make true accountability impossible.

This report demonstrates how the absence of clear lines of public and private responsibility in the provision of services, along with the absence of effective accountability mechanisms, allowed the abuse of children to continue unchecked. It wasn't that the system didn't work but rather that there was no system. The absence of clear systems allows for the discretionary use of power, often resulting in unjust and unequal relationships between those who hold power and those that do not.

A range of State departments and agencies, churches and religious orders were involved in a number of disconnected sub-structures that assumed responsibility for children. However, a coherent and joined up system overseen by the State, with the primary aim of safeguarding the welfare of children, did not exist. The deference of agents of the State towards the Catholic Church also hindered the development of accountability mechanisms, as there was an unwillingness to hold the latter to account.

In the Republic of Ireland there can often be confusion as to who holds responsibility for particular services. This confusion makes it difficult to hold anyone to account. In many areas where non-State agencies are providing services in Ireland today - e.g. rape counselling services, homelessness services - they are fulfilling the core responsibilities of the State itself in

meeting its human rights obligations. If these bodies did not provide these services, the State would be required to. Where the State effectively delegates the performance of its human rights functions to non-State bodies, it cannot in so doing divest itself of responsibility for how those services are delivered. In particular it must make sure that those bodies are adequately resourced, staffed, trained, monitored and inspected.

It is essential that the public understands what both the State and private actors are responsible for. Furthermore, people should understand that Ireland has obligations under its own Constitution and international treaties that require the State to take positive action to protect people within its jurisdiction from human rights violations that may be perpetrated by private actors.

The absence of clear systems of accountability in the provision of children's services allowed for the large-scale abuse of children to go unchecked. While both the perpetrators of crimes against children, and the institutional Church within which they operated, hold responsibility for the abuse, State authorities also failed in their duty to monitor residential institutions effectively, to act appropriately when abuses by agents of the Catholic Church in communities came to light, and to take action to prevent the continuation of abuse.

The minister for education had legal responsibility for the certification, inspection and funding of the residential institutions examined in the Ryan Report, while members of religious orders, including the Resident Manager, managed these institutions on behalf of the State. The minister had the power to remove Resident Managers from their positions and to close schools, while officials in the Department of Education were obliged to inspect each school annually. The Department failed to inspect some institutions at all, particularly those that housed children with disabilities, and often failed to act upon the evidence of neglect in inspection reports, or in reaction to complaints. Department officials did not insist that members of religious orders abide by the Department's own rules on punishment and had knowledge that they were contravened, thereby condoning the physical abuse of children.

The Department did not have a system for examining and investigating complaints. Instead it managed complaints in a way that minimised bad publicity and scandal, demonstrating a disregard for those whose rights had been violated, and revealing that maintaining the status quo was their priority. Parents, lay people who worked in the institutions, and individual members of the public complained and highlighted concerns to both the Department of Education and the Department of Justice. Those who tried to draw attention to problems in these institutions were often ignored or labelled as troublemakers. When members of religious orders brought a clear case of abuse to the attention of the Department of Education, there were no clear procedures in place for civil servants to deal with the complaint and it was mishandled.

The Catholic Church was the dominant service provider for the majority of people in the State, and remains a significant service provider in the fields of health, education and disability services. The State failed to ensure that proper systems of regulation and accountability were put in place. In the absence of such systems, abuse was endemic and occurred with near impunity. The State rarely acts as a direct provider of social services, and this has allowed for the ad hoc development of services in a number of areas. Given this approach by the State, it is essential that there are proper lines of responsibility and clear accountability mechanisms. Otherwise problems persist and are blamed on a system failure, when the real issue is that there is no clear system. This is why there is rarely evidence of accountability for gross failures– it is extremely difficult to hold anyone accountable when no one has been designated clear and overall responsibility.

The Ryan Report reveals that the State also failed when it acted as the direct service provider. While the religious orders managed residential institutions on behalf of the State, the Department of Education had managerial responsibility for Marlborough House, a remand home, and the Department of Justice had an obligation to satisfy itself as to the suitability of this accommodation. Abuse and neglect were features of Marlborough House and no regular inspections occurred. Regardless of whether State or private

actors provide services, there must be effective regulation and accountability mechanisms.

In the Louise O'Keeffe case in 2006, a High Court Ruling, later upheld by the Supreme Court (*O'Keeffe v Hickey* [2009] IESC 39 (2009)), ruled that responsibility for the actions of a teacher in a primary school rested with the board of management and patron of the school, who are considered the employer, and not with the Department of Education. Thus the Supreme Court has ruled that if the State chooses not to directly provide services, it is not held responsible for harm experienced within these services. Therefore the minister for education does not have legal responsibility in cases where children are abused in primary schools managed by private actors. This is despite the fact that the State pays the salaries of teachers and regulates almost all aspects of their work, and that boards of management are comprised of voluntary members that are often unaware of or unable to carry out child protection responsibilities.

Traditionally all State funded primary schools have been managed by private actors, primarily churches. Identical to the situation exposed in the Ryan Report, the State has overall legal responsibility for the provision of a schools system but is not responsible for the management of such schools or the welfare of children who are, quite properly, required by law to attend. Legal responsibility for management resides with the board of management and the patron, the majority of which are Catholic bishops. Given that the Department of Education pays for teachers' salaries and determines so many aspects of their employment, and the school curriculum, it is essential that it has direct responsibility and is accountable in law for what happens in these schools.

The Murphy (Dublin) Report makes it clear that the primary responsibility for child protection must rest with the State, and that in enforcing child protection rules and practices, organisations such as the Catholic Church cannot be equal partners with State agents such as the Gardaí and health authorities. While private organisations must develop their own guidelines and procedures the State must have a clear system of child protection itself and

when necessary be able to audit practices in private organisations.

The Ferns, Murphy (Dublin) and Cloyne Reports describe how clarity in the area of child protection is still lacking as the Child Care Act (1991) fails to clarify the powers and duties of the health authorities. A 'principal social worker' informed the Commission of Investigation that there were no statutory powers of intervention available to the HSE in non-familial abuse cases. The Cloyne Report expresses concern that a number of bodies may rely on the HSE to deal with alleged perpetrators of child sexual abuse when the HSE, in reality, does not have the power to do so effectively. The Murphy (Dublin) Report expressed concerns that an impression has been created that the HSE has more powers than it actually has. If there is clear evidence that a child is at risk of abuse by a non-family member, HSE workers do not have designated powers, provided for by legislation, to intervene and instruct employers to ensure that an alleged perpetrator is not working in either a professional or voluntary capacity with children until an investigation is completed and it has been found that there is no evidence of a risk of harm to children. While government has agreed in principle to put the *Children First* guidelines on a statutory footing, new legislation must be clear and unambiguous. There must also be clear direction as to how 'soft' information should be shared between agencies.

The Ferns, Murphy (Dublin) and Cloyne Reports show that in relation to cases of clerical abuse, Catholic authorities were preoccupied with the maintenance of secrecy, the avoidance of scandal, the protection of the reputation of the Church, and the preservation of its assets. After the publication of Cloyne, Taoiseach Enda Kenny deplored the actions of the Vatican for its role in managing and downplaying "the rape and torture of children" in order to uphold the power and reputation of the institution.[1] It is important that the same critical eye is turned on agents of the State so that we understand their role in these abuse scandals, and the problems that linger. A review of the role played by Department of Education officials in the failings in residential institutions, highlighted in the Ryan Report, is warranted.

Where State systems, policy or practice appear to have permitted abuse to go unchecked, we must assess and address these shortcomings in order to prevent such abuses and failures reoccurring in the future. We must also recognise that accountability mechanisms are not simply a way to designate blame and scapegoat individuals. Rather they can inform, support and protect both those who oversee and those who discharge services. Furthermore, they can provide a means of documenting and acknowledging positive achievement. It is clear that a belief that the State should not provide, or was incapable of providing and/or regulating, key social services was a significant factor in allowing grave human rights violations to occur. The State must ensure that such attitudes are addressed and consigned to history and that all agents of the State recognise and uphold their legal obligations to protect and provide for the rights of all people living within the State.

2. The law must protect and apply to all members of society equally.

The Reports on child abuse highlight how the law did not serve or apply to all members of Irish society equally. The most obvious example of this is how children who were placed in residential institutions were branded as criminals as a result of the court committal process, while the majority of perpetrators of abuse have not been held to account by that same criminal justice system. Despite the severity of the crimes revealed in the Ferns, Ryan, Murphy (Dublin) and Cloyne reports, which range from physical assault to rape, very few perpetrators have been convicted. Furthermore, no criminal charge has been laid against those in positions of authority in the Catholic Church who concealed crimes against children and allowed known sex abusers to continue to have access to children and to continue to abuse with near impunity.

In its review of the Republic of Ireland in June 2011 the UN Committee Against Torture expressed its concern that despite the extensive evidence

in the Ryan Report, the Gardaí had only forwarded 11 cases to the Director of Public Prosecutions (DPP) and eight of these were rejected. The Cloyne Report reveals that despite the number of allegations it detailed, just one priest from that diocese has been convicted of child sexual abuse. The DPP has consistently rejected pleas that reasons for decisions not to prosecute be published.

Given the lack of prosecutions of those who abused children in residential institutions, it is a tragic irony that many of these children were in effect criminalised, as they were committed to institutions via the courts. The child was almost always unrepresented in court and the evidence was seldom contested, so the issue of whether it had to be proved beyond reasonable doubt scarcely arose. Many children were criminalised in this way simply for being victims of poverty or for the perceived moral transgressions of their parents. The Ryan Report asserts that there is considerable evidence to indicate that these children were seen as criminals by staff, and that a lot of the mistreatment experienced by these children emanated from this perception.

The Reports raise serious questions about the rule of law, given the evidence of deferential treatment shown to priests and bishops by members of the Gardaí. The Murphy (Dublin) Report refers to the inappropriate relationship between some senior Gardaí and some priests and bishops, while the Ferns Report asserts that prior to 1990 there was reluctance on the part of individual Gardaí to investigate some cases of clerical child sex abuse. It is clear that in many cases the rigour of the law was not applied to either investigating or prosecuting very grave crimes committed against children. Some agents of the State saw priests and those in religious life as above the rule of law. This view was shared by many members of society, including political representatives, members of the legislature and government ministers.

The Ferns, Ryan, Murphy (Dublin) and Cloyne Reports reveal how some agents of the Catholic Church did not consider themselves, or alleged child abusers within their organisation, to be subject to the criminal law in

the same way as other members of society. The Ryan Report describes how when lay people working in residential institutions were discovered to have sexually abused children they were often reported to the Gardaí. However, when a member of a religious order was found to be abusing, it was dealt with internally, which in many cases meant the abuser was transferred to another institution or to a day school. Similarly, Ferns, Murphy (Dublin) and Cloyne demonstrate how abuser priests were not reported to the Gardaí. Often they were transferred to other parishes where they would abuse more children. Even canon law procedures relating to the investigation and suspension of child sex abusers were ineffectively implemented. In 1996 the Irish hierarchy produced child protection guidelines that directed that all allegations of abuse would be reported to the civil authorities. The Murphy (Dublin) Report shows that in the archdiocese of Dublin not all known cases were reported to the Gardaí after 1996, while the Cloyne Report, which addresses allegations, concerns and complaints of child sexual abuse from 1996 to 2009, identifies that not all cases were reported to the Gardaí. As Irish bishops report directly to the Vatican, the role of the Vatican is highlighted in the Ferns, Murphy (Dublin) and Cloyne Reports. The Vatican did not appear to support reporting to the civil authorities and had warned the Irish hierarchy in 1997 that their child protection guidelines might contravene canon law. This situation suggests that the Vatican was subverting efforts being made to address child abuse, while the absence of legislation governing the reporting of abuse, reveals that it is necessary for the State to clarify legal obligations in this area. In its 2011 annual review of States, Amnesty International found that the Holy See has not sufficiently complied with its international obligations in relation to the protection of children. The Holy See has failed to submit its second periodic report on the UN Convention on the Rights of the Child to which it is a party. This report was due in 1997.

While it is essential that everyone be equal under the law, the criminal justice system continues to prove itself inadequate in addressing the needs of victims of sexual abuse. While one in four Irish men and women disclose that

they have been sexually abused, the SAVI report (2000) suggests that in the case of childhood sexual abuse only 5.6 per cent of men and 9.7 per cent of women reported to the Gardaí. This low rate of reporting may well reflect the low rate of prosecutions and attitudes to victims of sexual crime. While the lack of independent evidence and the delay in reporting, that is often a feature of sexual abuse, act as formal barriers to convictions, the fact that the DPP does not publish the reasons why a case is not brought to trial is very frustrating for victims. Recent research from the advocacy organisation One in Four indicates that some judges, barristers and solicitors have no training in how to handle sexual offence cases and fail to treat victims with a sensitivity that would prioritise their dignity. The trauma of going through the criminal justice system can outweigh any positive benefits of reporting the crime.[2]

Under international human rights law individuals have the right to an effective remedy when their fundamental human rights have been violated. It is debatable whether or not the Residential Institutions Redress Board, established to give compensation to those who experienced abuse in residential institutions, can be considered an effective remedy considering the adversarial and legalistic model it followed and the non disclosure clause victims were forced to accept. While the standard of proof was lower than it would be in a criminal court, the average reward was significantly lower than the level of award similar cases would garner in the High Court. The comprehensiveness of the Ryan Report can also be called into question, as not all the institutions that were the subject of witnesses' testimony in the Confidential Committee were subject to investigation by the Investigation Committee. This included those who experienced abuse in Magdalene laundries, who were also excluded from the workings of the Redress Scheme. Similarly institutions such as Bethany Home were excluded from the workings of the Commission to Inquire into Child Abuse and the Redress Board, because the State considers them to have been private and charitable institutions. The recently approved Residential Institutions Amendment Bill (2011) removes the power of the Residential Institutions Redress Board to

consider applications made on or after 17 September 2011. However, there is no published evidence that such a decision was based upon any assessment of whether or not the scheme has led to the State properly fulfilling its obligations to those who experienced past violations.

3. Recognition of children's human rights must be strengthened.

Children have indivisible and interdependent human rights. This is outlined in the Convention on the Rights of the Child (CRC), an internationally binding treaty to which the Republic of Ireland is a party. Children's rights include survival rights, such as the right to life and to basic necessities like nutrition, shelter and access to medical services; development rights, including the right to education, play and leisure; protection rights, which ensure that children are protected from abuse, neglect and exploitation; and participation rights, which includes children's right to have a say in matters affecting them.

This report includes a human rights analysis of the abuses detailed in the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports. The sexual abuse in the diocesan reports, and the sexual and physical abuse, the living conditions, the neglect, and emotional abuse described in the Ryan Report, can be categorised as torture, and cruel, inhuman and degrading treatment under human rights law. The Reports also demonstrate clear evidence that children's rights to private and family life, to a fair trial and to be free from slavery and forced labour were contravened, as was their right to education and to physical and mental health. Article 3 of the CRC requires that the best interests of the child are a primary consideration in all actions taken concerning children. The Ryan Report shows that the placing of children in residential institutions often served the interests of religious orders rather than those of the children.

In the Irish Constitution the family, that is a family based on marriage, is protected and given the right to remain free from government interference except in extreme circumstances. The Ryan Report shows that the

constitutional rights of families living in poverty were often contravened as children were placed in institutions against the will of their parents. However, in some cases children were removed from an abusive family situation and these cases continue to be a feature of society. The Constitution should be amended to place a positive obligation on the State to intervene in a proportionate and appropriate manner so that families are supported at an earlier stage. In cases of familial abuse and neglect, agents of the State have difficulty in protecting children from dangerous situations due to the Constitutional emphasis on the marital family. There is a need to rebalance the rights within the Constitution to ensure that children at risk are protected and that the emphasis on the rights of the family does not undermine the rights and best interests of the child.

Other protections accorded under the Constitution have also subverted efforts to ensure that the State puts in place meaningful and effective child protection legislation and policy. In 2007 for instance, it was asserted that the constitutional provision of a right to one's good name could constitute a bar to the sharing of 'soft' information relating to child protection concerns. In 2002 it was even argued that the State could not investigate clerical child sexual abuse in the diocese of Ferns because of the constitutional bar on the State interfering in the internal management of religious organisations. Constitutional impediments have often been used to justify government inaction or to prevent disclosure of information. If the Attorney General advises the government on a constitutional impediment it would be helpful if this advice was shared with civil society. At the very least the government should elaborate on what sort of impediment has been identified so that civil society can interrogate that position. In addition, there is a need to review child sexual offences and to introduce protective measures for the child victim giving evidence in a criminal trial, to ensure that the law properly protects children who have been sexually abused.

It is essential that the rights of the child are made explicit in the Irish Constitution and that the paramount importance of the rights of the child be

explicitly enshrined in law. Of course, this applies to people's human rights more generally, i.e. to the general principle that all human rights should find expression in States' laws. The Office of the Ombudsman for Children has asserted that the invisibility of children from governance structures, law and policy and public debate is directly related to the fact that children do not have express constitutional rights and are therefore not explicitly protected in law and policy.

In order to make children visible we require not just changes in the Constitution, but we must also listen to children. The Ryan, Ferns, Murphy (Dublin) and Cloyne Reports reveal the consistent absence of the voice of the abused child. It is clear that inspectors from the Department of Education rarely spoke to the children in residential institutions, while children's complaints were usually not believed. The Murphy (Dublin) Report describes how children who suffered sexual abuse usually did not complain because they did not think they would be believed or because the abuser had told them not to tell anyone. The results of a public poll commissioned as part of this research in July 2011, reveals that 86 per cent of respondents agree that it is important that children have their opinions taken into account in significant decisions that affect them, while 67 per cent agree that children are trustworthy when voicing their opinions on decisions that affect them.[3] These high percentages suggest that the public recognise the importance of children having a voice; it is essential that this be reflected in our laws, policies and Constitution.

Children do not represent a homogenous social category and children from different subsections of society have very different experiences. The majority of children in industrial schools were placed there as a direct result of the poverty of their families. Long established attitudes towards poverty and members of the working class deprived these children of the advantages often afforded their middle class counterparts. The significance of class is evident in how the male children in these schools were trained to work as farm labourers and in particular trades which would ensure that they remained in the socio-

economic class they had come from, while girls were similarly trained to be domestic servants.

Negative attitudes towards children born out of wedlock and those who were sexually abused by adults saw the incarceration and further punishment of already vulnerable children. Similarly the vulnerability of those with an intellectual or physical disability did not lead to their protection. In fact the Department of Education and Science informed the Commission to Inquire into Child Abuse that there was no record of the number of children with disabilities who passed through residential institutions. Furthermore, no government department took responsibility for the inspection of these residential facilities, highlighting the low priority afforded these children in Irish society. The Ryan Report also demonstrates the existence of negative attitudes to Traveller and non-white children in government departments, while the failure of government to complete and publish a report that investigated the grave abuse of Traveller children in Trudder House, indicates how Travellers continue to be a low priority.

Children in the care system have traditionally been viewed as 'other' and have low status in society. The Task Force on Child Care Services, an interdepartmental committee that was established in 1974 and issued its final report in 1981 argued that "the most striking feature of the child care scene in Ireland was the alarming complacency and indifference of both the general public and various government departments and statutory bodies responsible for the welfare of children".[4] It is essential that we do not treat any groups of children as 'other'.

4. Public attitudes matter. Individual attitudes matter.

The Reports identify the impact of deference to the Catholic Church on how people responded to abuse and suspicions of abuse. The provision of so many social and charitable services by agents of the Church meant that many members of society were dependent on Church structures, while clericalism

elevated the position of priests in the community. Fear, an unwillingness and an inability to question agents of the Church, and disbelief of the testimony of victims until recent times indicate that wider societal attitudes had a significant role to play in allowing abuse to continue. This is particularly evident in the many examples of non-action by health care professionals, teachers, Gardaí, and those involved in the court system who would have had clear knowledge of abuse both in residential institutions and in the community. Furthermore, many of these professionals also acted as agents of the State.

Clericalism often shaped the community response to the sexual abuse of children, which was often to protect the abuser priest. The Murphy (Dublin) Report describes how one mother of an abused child was unwilling to make complaints to the Gardaí as she feared being ostracised by her neighbours.[5]

That parents commonly reprimanded their children with threats of being sent to residential institutions indicates that there was broad knowledge of the poor conditions there. But rather than garnering sympathy for these children, wider societal attitudes to these children upon their release was often negative and hostile. The prejudice and discrimination they experienced led many to emigrate, leading to the further disintegration already divided families. The abuse children suffered, their separation from their families, and in many cases their emigration, has inter-generational implications for thousands of families today.

While it is impossible to quantify the extent of the knowledge of child abuse that existed amongst the wider public, it is apparent that deference and denial were central to this dynamic, while its terrible effects for the victims of abuse are clear. Perhaps acknowledging abuse by agents of the Catholic Church would have had unthinkable ramifications for some, undermining the way people lived their lives and the way society operated. Interestingly in the poll undertaken as part of this research, very high percentages of respondents agreed that the Ryan Report made them feel angry at those who abused children (89 per cent) and angry at the State (83 per cent), while a similarly high percentage agreed that it made them angry that wider society did not do

more (84 per cent). However, there was greater variation in responses when people were asked if they agreed that members of society were powerless to protect the children identified in the Ferns, Ryan, Murphy (Dublin) and Cloyne Reports. 46 per cent strongly disagreed, 19 per cent neither agreed nor disagreed, and 35 per cent agreed with this statement. These variations strongly reflected socio-economic status, with the total net agree figure being significantly higher for those of the more advantaged socio-economic ABC1 group, and lower for those of the C2DE group, indicating a relationship between power and socio-economic status.

Irrespective of where anger and blame for past abuse is placed, the implications for today's society are clear. The end of deference to powerful institutions, and the taking of personal responsibility by all members of society, will initiate some of the changes that are necessary to prevent the occurrence of human rights abuses. This was surmised by one letter writer to a national newspaper in the wake of the Ryan Report in the following way: "It is time to speak out and criticise where criticism is due … More importantly, it's time the citizens of Ireland became responsible for, and to, themselves, for this is the only way change can come about".[6] Other letters indicated the implications for today's children, highlighting the failure of people to connect the abuses revealed in the Reports with the failings in the child care system today, as thousands of children remain vulnerable to abuse.

As individuals we must be willing to acknowledge and inform the appropriate authorities, when we suspect that a child is being abused or is at risk of abuse. While Irish society has become one that is used to an absence of accountability, we must demand that there are consequences for both failures to fulfil responsibilities and for individual criminal acts.

But we must also create a cultural appreciation for the principle of accountability, not simply as a means of ensuring that there are consequences for inappropriate actions, but as a tool that properly informs decision-making and the development of law, policy and practice. Those who are charged by society for making decisions that impact upon the lives of many must

be properly accountable to, and consider the views of, those so affected by their decisions and actions. It must be appreciated that accountability can inform and support those in positions of significant responsibility and is not an onerous demand or an act of subversion.

The public poll indicated that children who commit crime and children in the Traveller community are considered relatively less important to society than other groups of children. Children seeking asylum were given the least priority. The poll also indicated high levels of public prejudice towards children in the care of the state today. Everyone must be aware of the impact of prejudice and negative attitudes towards marginalised groups in our society. Negative attitudes towards the marginalised make life more difficult for members of our society who may already be vulnerable. Such attitudes can lead to prejudicial or discriminatory behaviour – whether through acts (e.g. avoiding people, insults) or omissions (e.g. failing to defend someone) - often unintentionally.

5. The State must operate on behalf of the people, not on behalf of interest groups.

The Reports demonstrate how the State had a deferential relationship with the Catholic Church. The complaints of parents, children and lay workers about problems and abuses in residential institutions were often dismissed by Department of Education officials, while the reputations of religious orders were defended by ministers and TDs in the Dáil. Agents of the State colluded with those of the Catholic Church in maintaining the status quo, while the former were often careful to maintain enough distance to protect the reputation of the government and to ensure that the State did not become responsible for the direct provision of those services. In some ways the relationship between the religious orders and the State became representative of what is known as 'agency capture', whereby a regulatory body is effectively controlled by the body it is supposed to regulate. The historical legacy whereby the Catholic

Church had provided extensive social services resulted in a State that felt it was inappropriate to provide such services for its citizens and therefore became incapable of providing such services. As a service provider, with control not just over residential schools but mainstream schools and many hospitals, the Catholic Church became too big to fail.

Despite the formal constitutional separation of church and State, the Catholic hierarchy had a unique position among pressure groups in Irish society in that it could have an indirect influence upon Catholic members of government and on the majority Catholic population. This posed few problems for many members of the political establishment as agents of the Catholic Church and the State were often educated at the same schools and often came from a similar social class and background. The Murphy (Dublin) Report suggests that the prominent and influential role of agents of the Catholic Church in society was the very reason why abuses by members were allowed to go unchecked. While there was a failure to demand accountability from this powerful and pervasive institution, article 44.5 of the Irish Constitution suggested to some that any involvement in the internal affairs of the various Irish churches was inappropriate, even unconstitutional.

In 1998 this position was outlined in a letter from the office of the Taoiseach Bertie Ahern to Andrew Madden, the first victim of clerical child sex abuse to go public on this issue. Madden had requested a public inquiry into the Catholic Church's handling of allegations of sexual abuse of children by priests and other religious in Ireland. The letter he received stated that such an investigation was not possible due to the "impracticality" of such an inquiry and "the fact that the Catholic Church is not a public body". The letter noted that tribunals of inquiry can only be established for the purpose of inquiring into definite matters of urgent public importance, suggesting that this issue did not fall into this category. It also argued that due to the constitutionally agreed autonomy of the churches in Ireland, the State could not seek to supervise the day-to-day operations of schools and institutions managed by churches, concluding that, "it is not accepted that [this] approach can be held to have

contributed to abuse".[7]

In the wake of the publication of the Ferns Report, Bertie Ahern sought to minimise damage to the institutional church by stressing that "it was an important part of civil society" and that Irish citizens owed the church "a great debt of gratitude".[8] The actions of Michael Woods, former Minister for Education, who oversaw the €128 million indemnity deal between 18 religious orders and the State, have similarly been viewed as minimising the culpability of the Catholic Church. While Taoiseach Enda Kenny's recent criticism of the Vatican suggests a less deferential attitude to the Catholic Church, transparency in the operations of all arms of the State is necessary to prevent interest groups from exerting undue influence. The Reports on child abuse illustrate the consequences of State officials acting on behalf of or protecting a non-State institution. Political systems must operate on behalf of the people of the State, not on behalf of interest groups. Political actions in all spheres must have at their core the best interests of the wider population and not sectional interests.

The Ferns, Ryan, Murphy (Dublin) and Cloyne Reports hold up a mirror to Irish society. While the above key findings reflect an analysis of these reports, what is revealed cannot be consigned to history or just to the area of child welfare and protection. The findings can have a broader application as a lack of accountability, the failure of the law to treat people equally, and the power of public attitudes are all issues in Irish society today. The lessons to be learned from Ferns, Ryan, Murphy (Dublin) and Cloyne are, therefore, relevant and essential to making this society a safer and more equitable place.

1 Statement by An Taoiseach on the Dáil motion on the report of the Commission of Investigation into the Catholic Diocese of Cloyne, in Dáil Éireann, 20 July 2011.

2 *Sunday Business Post*, 17 July 2011.

3 The poll was undertaken by Red C, 25-27 July 2011. See annex 2 for further details.

4 The Ryan Report Vol. IV, 4.90.

5 The Murphy (Dublin) Report, 28.35.

6 *The Irish Times*, 3 June 2009.

7 Letter from the office of An Taoiseach, 9 June 1998, in Andrew Madden, *Altar Boy, A Story of Life After Abuse*, Penguin Books, London, 2004.

8 *Irish Independent*, 11 November 2005.

Annex 1

Evolving Status of Children's Rights

Pre 1950

The first important international document devoted entirely to protecting the rights of children was adopted in 1924. The Declaration of Rights of the Child, also known as the Declaration of Geneva, recognised that mankind "owes to the child the best it has to give" and, in so doing, it declared and accepted a collective duty to protect children. In addition, by this date the ILO (International Labour Organisation) Conventions[1] had codified specific international obligations for States in respect of work by young people, affirming the special status and vulnerability of children.[2]

While the Universal Declaration of Human Rights (UDHR) of 1948[3] contains only two articles which expressly refer to children - Article 25 on special care and assistance, and Article 26 on education - it proclaims a catalogue of human rights which apply to all human beings and therefore, by definition, to children. These include the right to life, liberty and security of person[4] ; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment[5] , the right to an effective remedy[6] ; the right to a fair and public hearing[7] , the right to protection against arbitrary interference with his privacy, family, home or correspondence, and from attacks upon his honour and reputation.[8]

While these Declarations are aspirational[9] and do not create binding legal obligations upon States, they reflect a developing international awareness of and consensus on child rights, and thus discredit any contention that international children's rights are a new development in international human rights law.[10] Furthermore, it is noteworthy that the International Court of Justice has held that the UDHR constitutes at least partly customary law.[11]

1950- 1960

The European Convention for the Protection of Human Rights and Freedoms (ECHR) was drafted and opened for signature on 4 November 1950. Ireland

signed it on that date, ratifying it on 2 February 1953.[12] Based on the 1948 Universal Declaration Human Rights, the ECHR contains eleven substantive provisions which include, most notably, the right to life[13] , the prohibition of torture, inhuman and degrading treatment or punishment[14] , the right to liberty[15] , the right to a fair trial[16] , the right to respect for private and family life[17] , as well as the right to education[18] . Article 14 establishes that all rights must be enjoyed without discrimination and Article 13 requires that everyone whose rights are violated must have an effective remedy before a national authority.

The ECHR has become immensely influential, largely because it was the first international instrument of its kind to establish supervisory and enforcement machinery and obliges States Parties to "secure everyone within their jurisdiction" the rights and freedoms it sets forth.[19] While there is an absence of express provision for children's rights in the ECHR[20] , the Convention uses throughout the term "everyone" (or, where appropriate, "no one"); as a result, children have successfully brought suit either on their own behalf or as co-applicants with their parents. There has been no shortage of cases before the European Court of Human Rights (ECtHR) concerning children and the case law has established a number of important principles of particular relevance to children.[21] Due to Ireland's position as a dualist State[22] , the ECHR did not form part of the domestic law until the European Convention on Human Rights Act 2003 came into force, therefore it could be said to be binding on Ireland, but not in it.[23] While the government was bound to accept the ruling of the European Court in judgements against it, the Convention otherwise placed no direct obligations on public authorities, and legislative, executive or judicial measures which appeared out of line with Convention provisions could not be the subject of Convention specific challenge.[24] However, even prior to the ECHR Act 2003, the State did have international obligations under the Convention and had to answer before the European Court of Human Rights in Strasbourg for any alleged break of ECHR rights.

In addition, during this period the Declaration of the Rights of the Child was adopted in 1959 by the General Assembly of the United Nations. This

was a longer document than the 1924 Declaration, containing ten substantive rights including the child's right to treatment without discrimination, right to special protection, to material and spiritual development, to socio-economic rights, such as housing, medical care and food and to rights to education and protection from exploitation, neglect and cruelty.[25] It also includes a reference to the child's right to a name and nationality. One of the key principles of the Declaration of Rights of the Child is that a child is to enjoy 'special protection' as well as "opportunities and facilities by law and other means, for healthy and normal physical mental, moral, spiritual and social development in conditions of freedom and dignity".[26]

While the instrument clearly does not have the same enforcement thrust as the European Convention on Human Rights, this does not necessarily mean that the rights listed do not impose a certain level of obligation. Firstly, the fact that the Declaration was adopted unanimously certainly accords it a greater weight than other General Assembly resolutions. Van Bueren submits that many of its provisions may have been incorporated into international customary law.[27] In addition, it is submitted that the 1959 Declaration was the "real impetus" to the development of children's rights as a distinct category of human rights law[28] , proving to be instrumental in developing concrete international standards as well as representing great progress in conceptual thinking of children's rights.[29] Finally, it contains innovations not seen much outside the UDHR as regards the responsibilities of individuals and private institutions in its enforcement.[30]

1960-1980

Chronologically, the European Social Charter is the first international treaty whose specific aim is to protect a general catalogue of economic and social rights.[31] The European Social Charter was adopted by the Council of Europe in 1961 and entered into force in 1965.[32] The Charter contains a number of specific references to children. Amongst others, the Charter enshrines the

basic principles that children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed, and Articles 8 and 17 are concerned with the economic and social measures, both direct and indirect, which are necessary to protect children.

The International Covenant on Civil and Political Rights (ICCPR) (1966)[33] is an internationally binding treaty which obliges States Parties "to respect and to ensure to all individuals within its territory and subject to its jurisdiction" the rights recognized in the ICCPR, "without distinction of any kind;" to adopt laws to give effect to those rights; and to provide effective remedies where there are violations.[34] Article 24 of the ICCPR is specifically devoted to children. It stipulates that "every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." In addition, the ICCPR includes several rights relevant to the Ryan Report including the right to an effective remedy, the right to dignified conditions of detention, the right to a fair trial and fair hearing and the right to freedom from torture and ill-treatment.

The Preamble to the International Covenant on Economic, Social and Cultural Rights (ICESCR)[35] , recognizes that the indivisibility of human rights applies to "all men and women" and therefore by implication to children.[36] The type of legal obligation assumed by States Parties has been described as "programmatic"[37] in nature, in the sense that a State Party "undertakes to take steps … to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized thereunder.[38] Specific references to children are found in articles 10 and 12. Article 10 stipulates that "special measures of protection and assistance" should be taken on behalf of the young without any discrimination; that they should be protected from economic and social exploitation and that employing them in morally or medically harmful or dangerous work or in work likely to hamper their normal development should be punishable by law. Article 12 addresses the right of all to "enjoyment of the highest attainable standard of physical and mental

health," and incorporates a specific provision under which State parties are obliged to take steps for the provision of healthy development of children.[39] Other Covenant provisions apply to children by necessary intendment, even though they do not refer specifically to children. Article 13, recognizing "the right of everyone to education", must surely include children within its ambit. Other examples include "the fundamental right of everyone to be free from hunger"[40] and "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".[41] Both Covenants were signed in 1966 but did not come into force for it another ten years, in 1976. Ireland signed the ICCPR and ICESCR but it did not ratify them until December 1989.

The State obligations as regards the right to freedom from torture and ill-treatment were further spelled out in the UN General Assembly Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which was adopted in 1975.[42] Article 2 of the 1975 Declaration provides: "Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights". This declaration later formed the basis for the UN Convention against Torture adopted in 1984.

1 Minimum Age Convention 1920 (No. 7) ILO; Night Work of Young Persons (Industry) Convention 1919 (No. 6) (ILO).

2 Kubota Yo, 'The Protection of Children's Rights and the United Nations', *Nordic Journal of International Law*, Vol 58. 1989. pp 7–23 states that two Conventions adopted by the ILO illustrate this: Convention for the Suppression of the Traffic in Women and Children (1921) and Slavery Convention (1926) .

3 The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations in Resolution 217 A(III) of 10 December 1948.

4 Article 2

5 Article 5

6 Article 8

7 Article 10

8 Article 12

9 The 1924 Declaration Preamble merely invites member States to be "guided by its principles in the work of child welfare".

10 Van Beuren, G., 2nd ed, International Law on the Rights of the Child (Amsterdam, Kluwer, 1998)

11 In the Tehran Hostages case the Court held that "wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights". United States Diplomatic and Consular Staff in Tehran (United States of America v Iran) ICJ Reports (1980) 2, 43.

12 While the Convention is not binding until ratification, it is well established that even the mere signing of a treaty requires of a nation "to refrain from acts which would defeat the object and purpose of the treaty ... until it shall have made its intention clear not to become a party to the treaty". Vienna Convention on the Law of Treaties [Treaty on Treaties], 1969, art. 18, paras. 1 and 1(a)

13 Article 2

14 Article 3

15 Article 5

16 Article 6

17 Article 8

18 Article 2 Protocol No.1.

19 Article 1

20 Specific references to the young are found in two articles of the ECHR and concern legal proceedings. Article 5(1)(d), on the lawful procedures for depriving a minor of his or her liberty, permits the lawful detention of a minor for the purpose of educational supervision or for bringing him before the competent legal authority. Article 6(1) stipulates that everyone is entitled to a fair and public hearing and that judgment will be pronounced publicly, but the hearing may be held in private when required by the interests of juveniles or the protection of the parties' private life. Protocol No. 7 to the ECHR provides that while spouses enjoy equality of rights and responsibilities in their relations with their children, this does not prevent States "from taking such measures as are necessary in the interests of the children" (Article 5).

21 Physical punishment has been declared a violation of Article 3, (A v United Kingdom [1998] 2FLR 959) as has parental neglect and State failure to prevent, to intervene, and to protect the well being of children. (Z v United Kingdom [2001] 2FLR 193). Most significantly the Court has stressed that in certain areas, member States are positively obliged to take measures to protect the rights of children, (Osman v United Kingdom [1999] 1 FLR 19), particularly where children are neglected or abused. (Z v UK, op. cit). The right of a child to a parental relationship has also been recognised, (*Marckx v Belgium* (1979) E EHRR and *X, Y, Z v United Kingdom* (1997) 2 CLF 982) as well as other de facto members of the family (*Marckx v Belgium* (grandparent) and Boyle v United Kingdom (uncle)). The right to respect for the sexual life of children has also been acknowledged.(*Sutherland v United Kingdom*).

22 Article 29.6 of the Constitution states that no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas.

23 Consequently, irrespective of whether a victim of a pre 2003 violation was or would have been able in fact to rely upon the ECHR, and/or seek a "convention compliant" remedy in a national court, international obligations relevant to the abuse of children in care continued to exist during this period. Regardless of whether there has been any transformation of these treaties into Irish law through statute, actions or omissions that can be attributed to the State may have violated those obligations, and under international law remedies are due to the affected individuals. Those remedies may remain due today if they have not yet been made available. See U.Kilkelly, *Children's Rights in Ireland: Law, Policy and Practice*, (Tottel Publishing, October 2008).

24 See in UK context, *R (on the application of Hurst) v Commissioner of Police of the Metropolis* [2007] UKHL 13 in which the the House of Lords held that the requirement under Article 2 of the ECHR (right to life) to hold an effective public investigation into the circumstances surrounding a death was not held to be applicable to an incident which took place in May 2000, before the entry into force of the Human Rights Act on 2 October 2000. However, in an earlier UK case the ECtHR seemed to suggest that it viewed convention rights on remedies under articles 2, 3 and 13 to be applicable to events that happened prior to the entry into force of the Human Rights Act. In the case of *E and others v UK*, Application No. 33218/96, Judgement of 26 November 2002, para 115, in relation to action against abuses which occurred in the 1960s and 1970s the Court stated, "If taking action at the present time, the applicants might, at least on arguable grounds, have a claim to a duty of care under domestic law, reinforced by the ability under the Human Rights Act to rely directly on the provisions

of the Convention." Note that the ECtHR is currently considering this issue *Christine Hurst v UK*, European Court of Human Rights, Application no. 42577/07, statement of facts and questions to the parties, 19 November 2009.

25 Principle 9: "The child shall be protected against all forms of neglect, cruelty and exploitation…"

26 Article 27

27 Van Bueren, G op. cit. 'The International Law on the Rights of the Child' (Martinus Nijhoff Publishers, 1998) p. 12.

28 Rehman, J., *International human rights law: A Practical Approach* (London, Longman 2002) p. 378

29 Fortin highlights the Declarations importance in that it was the first serious attempt to set out in a reasonably detailed manner what constitutes children's 'overriding claims and entitlements.' In comparison with its 1924 predecessor, it adopts a language of entitlement and demonstrates an emergence of children as subjects of international law and able to enjoy the benefits of specific rights and freedoms as opposed to mere passive recipients." Fortin, *J., Children's Rights and the Developing Law* (Cambridge University Press, 2003) at page 36

30 The Declaration states "The General Assembly … calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively".

31 Wiebringhaus, H., "La Charte sociale européenne: vingt ans après la conclusion du traité". *Annuaire Français de Droit International*, XXVIII, 1981, p. 934.

32 Ireland ratified the European Social Charter on 07/10/1964.

33 The International Covenant on Civil and Political Rights, with a Preamble and 53 articles, was adopted by the U.N. General Assembly on December 16, 1966, and entered into force on March 23, 1976. G.A. Res. 2200A (XXI), 21 U.N. GAOR, 21st Sess. Supp. (No. 16) at 52, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171. Ratified by Ireland in 1989.

34 Article 2.

35 The International Covenant on Economic, Social and Cultural Rights, with a Preamble and 31 articles, was adopted by the U.N. General Assembly on December 16, 1996, and entered into force on January 3, 1976. G.A. Res. 2200A (XXI), 21 U.N.GAOR, 21st Sess., Supp. (No. 16) at 49, U.N. Doc. A/6316 (Dec. 16, 1966), 993 U.N.T.S. 3. The Covenant was signed by Ireland on 01 October 1973 but not ratified until 1989.

36 The Preamble states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and that "these rights derive from the inherent dignity of the human person".

37 Hodgson, D., "The Rise and Demise of Children's International Human Rights" (University of Western Australia, The Forum on Public Policy, 2009) available at http://www.forumonpublicpolicy.com/spring09papers/archivespr09/hodgson.pdf and accessed on 18th May 2011

38 Article 2(1).

39 Article 13(2a).

40 Article 11 (2).

41 Article 12 (1).

42 Adopted by UN General Assembly resolution 3452 of 9 December 1975. Article 2 of the 1975 UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides: Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Annex 2

Red C Opinion Poll

RED Express Questionnaire, July 2011.

Q. 1 How important to Irish society do you think it is that the following groups of children are a government priority? Please answer on a scale where 1 is not at all important to society and 10 is highly important to society?

(Base: All adults – 1011)	1 %	2 %	3 %	4 %	5 %	6 %	7 %	8 %	9 %	10 %	Any 7-10 Score %
Children who have been abused by members of the clergy	2	1	2	1	4	2	4	6	8	71	**88**
Children who have been abused by their families	2	1	1	2	4	3	3	8	7	68	**87**
Children who experience mental health problems	2	1	2	2	6	4	4	10	6	64	**84**
Children in the mainstream education system	1	1	1	2	7	6	10	20	7	45	**81**
Children whose families are poor	2	2	2	3	7	4	9	15	6	50	**80**
Children who commit crime	3	3	3	4	10	6	9	13	6	43	**71**
Children in the Traveller community	4	2	2	5	11	9	10	16	5	35	**67**
Children who are here to seek asylum	5	5	2	5	17	8	11	14	5	28	**58**

Q. 2 As you may or may not know, in 2009 the Commission of Inquiry into Child Abuse published a report, commonly referred to as the Ryan report. From what you know, can you tell me how much you agree or disagree with each of these statements on a scale of 1 to 5 where 1 is strongly disagree and 5 is strongly agree?

(Base: All adults – 1011)	Strongly Disagree %	Slightly Disagree %	Neither %	Slightly Agree %	Strongly Agree %	Don't Know %	**Net Agree %**
It made me angry at those who abused these children	2	1	6	8	81	1	**89**
It made me angry that wider society didn't do more	3	2	9	17	68	1	**84**
It made me angry at the state	3	3	9	17	66	3	**83**
I talked with my friends or family about it	14	6	16	15	48	1	**63**
It made me feel helpless	13	8	19	12	45	2	**58**
I find the subject overwhelming and don't know what to think	16	11	19	16	36	2	**52**
I don't know what the report says	30	12	19	12	24	2	**36**
I find the subject too upsetting to engage with	26	15	22	11	24	2	**35**

Q. 3 In addition to the Ryan report there have been three reports of inquiries into child abuse in Catholic dioceses, called the Ferns, Murphy and Cloyne report published. From what you know, can you tell me how much you agree or disagree with each of these statements on a scale of 1 to 5 where 1 is strongly disagree and 5 is strongly agree?

(Base: All adults – 1011)	Strongly Disagree %	Slightly Disagree %	Neither %	Slightly Agree %	Strongly Agree %	Don't Know %	**Net Agree %**
Individual members of society should have demanded that the state act to prevent child abuse	2	2	6	14	74	2	**88**
Individual members of Irish society should have done more to protect these children	3	2	9	14	71	1	**85**
Government acts when society demands that it act	8	9	16	16	49	3	**65**
Wider society is prejudiced against children in the care of the state today	12	10	23	19	30	4	**50**
Wider society would prefer to turn a blind eye to child abuse	22	10	16	15	35	3	**50**
Wider society is prejudiced against people who were in industrial schools	14	9	25	17	30	5	**47**
Members of society were powerless to protect these children	29	17	19	8	26	1	**34**

Q. 4 Thinking about the rights of children and the recent published reports in Ireland, can you tell me how much you agree or disagree with each of these statements on a scale of 1 to 5 where 1 is strongly disagree and 5 is strongly agree? Firstly, can you tell me if

(Base: All adults – 1011)	Strongly Disagree %	Slightly Disagree %	Neither %	Slightly Agree %	Strongly Agree %	Don't Know %	**Net Agree %**
It is important the children have their opinions taken into account in significant decisions that affect them.	1	2	10	22	64	1	**86**
Noting that the 1948 Universal Declaration of Human Rights says that all people "should act towards one another in a spirit of brotherhood", ordinary people in Ireland should accept some responsibility for respecting and defending the human rights of other people in Ireland	2	3	12	23	58	2	**81**
Wider Irish society bears some responsibility for what has been revealed in the Ryan, Ferns, Murphy and Cloyne reports	3	3	19	23	48	4	**71**
Children are trustworthy when voicing their opinions on decisions that affect them	2	4	27	27	40	1	**67**

Annex 3

Past Abuses

High Park

In 1993 the Sisters of Our Lady of Charity sold land at High Park, Drumcondra to a property developer. This necessitated the exhumation of 133 bodies from a graveyard, which were then cremated at Glasnevin Cemetery. However, an additional twenty-two bodies were discovered during the initial exhumation and investigative journalist Mary Raftery subsequently revealed that death certificates existed for only 75 of the initial 133 bodies. It has been a criminal offence to fail to register a death that occurs on one's premises since 1880. The current penalty for this offence is a fine of €2,000, six months in prison, or both.

The Department of the Environment granted an initial exhumation license in respect of the 133 named women, one of whom had died as recently as 1987.[1] Mary Raftery reported that the nuns had made no secret of their failure to register many of the women's deaths when applying for the exhumation license and that "Department of the Environment was unconcerned with this flagrant breach of the law". Of the 155 remains in the unmarked plot, she discovered that 80 of the deaths had never been notified to the authorities. Furthermore, the nuns had no names for 45 of the women, with several of them identified merely as Magdalen of the Good Shepherd, Magdalen of Lourdes, and so forth.[2]

Raftery asked both the Department of the Environment and the Gardaí if inquiries were being made into these breaches of the law in 1993 but neither believed one was required.[3] In 2003, the National Women's Council of Ireland called for an investigation, with its chairwomen stating that it was "shameful that women so dishonored in their lives by our society have not been accounted for by name or by certification of their mortal remains, in death".[4] In 2010, the Irish Human Rights Commission reported that, "the burial, exhumation and cremation of known and unknown women from a Magdalene laundry in 1993 at High Park raises serious questions for the State in the absence of detailed legislation governing the area".[5]

Bethany Home

Bethany Home operated in Blackhall Place, Dublin from 1921-34 and in Orwell Road, Rathgar until it closed in 1972. It was a combined mother and baby home, a children's home and a place of detention for women convicted of birth concealment, infanticide, prostitution and petty crime.[6] In the absence of a State borstal for young female offenders, Bethany Home, similar to the role Magdalene Laundries played for Catholic offenders, was used as a place of remand, probation and imprisonment for protestant women and young girls. While run by an independent board of trustees drawn from the Protestant community at large,[7] Derek Leinster, campaigner and former resident, describes how Bethany Home was an outgrowth of the Proselytizing Irish Church Missions to Roman Catholics, which reported annually to the Church of Ireland Synod, while Protestant clergy were involved in its operations.[8]

In 2010, academic Niall Meehan found evidence of a significantly high number of child deaths at Bethany Home which he then traced to unmarked common graves at Mount Jerome cemetery, Harolds Cross, Dublin.[9] Meehan's research suggests that the State did "little or nothing" about reported increases in illness and mortality at Bethany Home in the 1930s and 40s, "despite it being brought to the attention of the then Department of Local Government and Public Health by its own inspectors".[10] The research also suggests that in 1939 one inspector was more concerned with preventing "Bethany's proselytising activities" than in reducing infant mortality.[11] Similar to the bodies found in High Park, questions remain about the children buried at Mount Jerome cemetery: how did these children die, do death certificates exist for each child and were family members informed of their deaths?[12]

In 2010 Kathleen Lynch TD asserted that "the Bethany Home should be included within the Irish Government's redress scheme, as well as the Magdalene Laundry women, so that people who suffered the horrors of abuse in the institution, on the wink and nod of the State, can be afforded the reparations that they deserve".[13] However, despite the efforts of Lynch

and fellow Labour party TD Joe Costello, Ruairí Quinn, Minister for Education, rejected a call by former residents of Bethany Home to include them in the State redress scheme in 2011. Quinn stated that Bethany Home could not come within the scope of the scheme as it operated as a mother and baby home and was not a residential institution for which public bodies had responsibility.[14]

Given the establishment of an interdepartmental committee to examine Magdalene Laundries, Derek Leinster has called on the TD's to include Bethany Home in this inquiry, given the similarities in the case put by successive government's in their refusal to include both in the Redress Scheme.[15]

Vaccine Trials

In the 1990s concerns were raised by a number of people who had been formerly resident in children's homes as to their suspected involvement in clinical trials of vaccines.[16] In 1997 the Minister for Health announced that appropriate inquiries would be made, and the Chief Medical Officer (CMO) of the Department of Health, Dr. James Kiely, was appointed to investigate the matter. In 2000, his report "Report on 3 Clinical Trials involving Babies and Children in institutional settings 1960/61, 1970 and 1973" was laid before the Oireachtas. The three trials took place in a variety of mother and baby homes, residential institutions run by religious orders, and State run children's homes. The trials involved a range of different vaccines administered in different ways.[17] They were conducted on behalf of Wellcome Laboratories, a company that was later subsumed in GlaxoSmithKline, and conducted by Professor Patrick Meenan and Professor Irene Hillary who were attached to the Department of Medical Microbiology at University College, Dublin, with Dr Dunleavy being involved in one trial. In his report the CMO noted that there was no documentation or information available to clarify what arrangements were arrived at with the managers of the children's homes or the parents of

the children who were involved in Trial 1, or whether consent was obtained for the participating of children in the children's home involved in trial 2. He noted conflicting statements on the issue of consent in relation to Trial 3.[18]

The Minister for Health identified four questions that the CMO's report could not answer due to informational gaps: why children in care received the experimental vaccines; why were some of the recipients outside the normal age for the administration of the vaccines; was the end result for commercial gain or public good; why were the records of the trials so inadequate? The Minister said that the work of the CMO "must be regarded as the beginning, not the end of the matter".[19] He referred the report to the Commission to Inquire into Child Abuse.

The Government made the Order to confer the Commission to Inquire into Child Abuse with functions and powers to inquire into the vaccine trials, and a Vaccine Trials Division of the Commission was established.[20] While the Division undertook significant work, it was halted in 2003 due to legal proceedings undertaken by Professor Irene Hillary. Her legal representatives sought Judicial Review Proceedings, in which she sought a declaration that the Government Order directing the Commission to conduct the vaccine inquiry was ultra vires the Act establishing the Commission.[21] The High Court upheld that the Order was invalid under the terms of the Act. Justice Ó Caoimh was satisfied that the CMO report disclosed nothing which suggested the conduct of the trials amounted to 'abuse' as defined in the 2000 Act.[22] However, he stated that his decision was not to be construed as suggesting that there might not be issues relating to the trials which might be the subject of an appropriate form of inquiry.[23]

In 2010 the Irish Independent revealed that GlaxoSmithKline gave the Commission records relating to vaccine trials, other than those identified in the CMO's report. The newspaper report revealed that these files were referred to in a brief paragraph in the Commission's Third Interim Report (2003):

> The documentation discovered by GlaxoSmithKline also disclosed a considerable amount of information in relation to other vaccine

> trials conducted in the State. No determination has been made as to whether those trials are within the ambit of the functions conferred on the Commission by the Order.[24]

The details of these trials have not been made public. Prior to the High Court ruling, the Vaccine Trial Divison's inquiries had included issuing a questionnaire, to provide the public with an opportunity to indicate that they either were, or suspected that they might have been, involved in a vaccine trial and to provide details to the Division in relation to the conduct of such trial, including any information as to selection for the trial and consent. A total of eight hundred and seventy-seven (877) members of the public submitted completed questionnaires. One hundred and fifty-eight (158) correspondents positively alleged that they had been involved in a vaccine trial; two hundred and nineteen (219) correspondents suspected that they may have been involved in a trial; One hundred and forty-three (143) correspondents both alleged and suspected that they were participants in a vaccine trial.[25]

When the Division came into possession of further documentation which indicated the names and dates of birth of those involved in the three known trials and the identity of the institutions in which the trials were conducted, it was possible to correlate this information with the information submitted in the questionnaires. As a result, the Division was in a position to positively confirm to the correspondents whether or not they had an involvement in any of the known trials. Four correspondents were involved in two of the three known trials. The correspondents, who were eliminated from involvement in the trials known to the Division, were informed that they would be contacted should the Division come into possession of any further documentation tending to show their involvement, while resident in an institution, in a clinical trial of a vaccine which is within the Commission's remit.[26]

The high number of respondents who considered that they were or may have been part of a vaccine trial suggests that the additional documentation provided by GlaxoSmithKline indicating other trials, needs to be investigated.

Symphysiotomoy

In June 2011 the Department of Health appointed Dr Oonagh Walsh, a senior research fellow in medical history, to carry out an inquiry into the practice of symphysiotomoy in Irish maternity hospitals.[27] Survivors of Symphysiotomy (SOS) had been trying to secure an independent inquiry into the surgery for almost a decade.[28] Marie O'Connor's recent study Bodily Harm, Symphysiotomoy and Pubiotomy in Ireland, 1944-92 (2011) describes how at least 1500 of these operations were carried out in Ireland from 1944-92. Symphysiotomoy involved severing one of the main pelvic joints, while pubiotomy involved a cutting of the public bone.[29] Both were used to facilitate childbirth. Walking disabilities, chronic pain and incontinence are common side effects of these procedures.[30] In their 2010 statement, the Institute of Obstetricians and Gynaecologists of the Royal College of Physicians in Ireland describe how symphysiotomoy

> was introduced in the 18th century for selected cases of obstructed labour and proved effective in allowing vaginal births while reducing maternal and infant death and morbidity rates that related to prolonged labour. Because symphysiotomy permanently enlarged the pelvis the procedure also offered the prospect of safer vaginal delivery in future pregnancies at a time when large family size was usual. At that time, symphysiotomy was a simpler and safer practice than caesarean section (C/S), a technique that gradually replaced it during the 20th century when difficulties with the C/S procedure itself were overcome.[31]

The Institute also states that "the historic use of symphysiotomy should be assessed in the context of what was considered valid practice at the time".[32] O'Connor argues that by 1944 the caesarean section was well established in Ireland as the norm for difficult births but that symphysiotomy and pubiotomy were revived in the National Maternity Hospital and carried out there until the 1960s, and in Lourdes Hospital, Dundalk until the 1980s.[33] This made Ireland

the sole country in the Western world to use these practices in the mid to late 20th century.[34] While some obstetricians have stated that symphysiotomy was carried out to avoid the medical risks associated with repeat Caesareans,[35] O'Connor argues that the preference for these procedures reflected the promotion of a catholic ethos. As good practice was generally seen to limit the number of Caesareans that could safely be performed,[36] the caesarean was viewed as limiting family size. She also argues that the practice of symphysiotomoy was also driven by the need to train medical students going on Medical Missions to Africa - the operation is a relatively simple operation that doesn't require electricity and therefore has been seen as a substitute for caesarean sections in first world countries.[37]

Done in Ireland at a time when Caesarean section offered a safer alternative, O'Connor argues that these procedures constituted medical negligence. Performed without patients consent they breached constitutional and human rights. She maintains that State Regulators, such as the Department of Health, the regional health boards and the Medical Council turned a blind eye.[38] While an inquiry is ongoing survivors of the surgery also demand "equitable access to comprehensive benefits and entitlements … and the setting aside of the statue of limitations, which has acted as a barrier to redress."[39]

1 *The Irish Times*, 21 Aug. 2003.

2 *The Irish Times*, 15 Apr. 2004.

3 Ibid.

4 *The Irish Times*, 29 Aug. 2003.

5 *The Irish Times*, 10 Nov. 2010.

6 *The Irish Times*, 21May 2010.

7 Ibid.

8 *The Irish Times*, 11 Sept. 2010; 22 Sept. 2009

9 *The Irish Times*, 21 May 2010; 10 Sept. 2010.

10 *The Irish Times*, 10 Sept. 2010.

11 *The Irish Times*, 14 Sept. 2010.

12 *The Irish Times*,25 May 2010.

13 *The Irish Times*, 26 May 2010.

14 *The Irish Times*, 22 June 2011.

15 *The Irish Times*, 3 July 2010.

16 *Commission to Inquire into Child Abuse, Third Interim Report, December 2003*, p. 209.

17 Ibid. p. 210.

18 Ibid., pp 211 – 12.

19 Ibid. p. 212.

20 Ibid.

21 Ibid., pp 222-3.

22 *The Irish Times*, 12 June 2004.

23 Ibid.

24 *Commission to Inquire into Child Abuse, Third Interim Report, December 2003*, p. 223; *Irish Independent*, 27 Aug. 2010.

25 One hundred and thirty-six (136) correspondents indicated that they were not part of a vaccine trial; one hundred and eighty-four (184) correspondents indicated that they did not know whether they were involved in a vaccine trial or not; and thirty-seven (37) correspondents failed to complete the relevant portion of the questionnaire. Some provided details in relation to siblings who were resident in institutions in the past and some submitted medical records with their questionnaires. *Commission to Inquire into Child Abuse, Third Interim Report, December 2003*, pp 214-5.

26 Ibid.

27 *The Irish Times*, 22 June 2011.

28 Marie O'Connor, *Bodily Harm, Symphysiotomoy and Pubiotomy in Ireland 1944-92* (Mayo, 2011) p. 7.

29 Ibid., p. 12.

30 Ibid.

31 'Statement on Symphysiotomy ,17/02/2010', Institute of Obstetricians & Gynaecologists of the Royal College of Physicians of Ireland Statement on Symphysiotomy. See http://www.rcpi.ie/News/Pages/StatementonSymphysiotomy.aspx (accessed 14 Aug 2011).

32 Ibid.

33 O'Connor, *Bodily Harm*, pp 14-15.

34 Ibid., p. 14.

35 Ibid., p. 13.

36 Ibid., p. 14.

37 Ibid., p. 15.

38 Ibid. p. 16.

39 Ibid.

Annex 3


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