



22/08/2011

RAP/RCha/IRE/VIII(2011)Add

REVISED EUROPEAN SOCIAL CHARTER

NGO Report
on the
8th National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF IRELAND

(Articles 17
for the period 01/01/2005 – 31/12/2009)

Report registered by the Secretariat on 29 July 2011

CYCLE 2011

Briefing for the examination of Ireland by the Council of Europe Committee of Social Rights under Article 17 of the Social Charter

25 Red Lion Square

London WC1R 4RL

TEL: 020 7404 3126

FAX: 0870 762 8971

EMAIL: enquiries@secularism.org.uk

WEB: www.secularism.org.uk

Submitted 29 July 2011

This briefing was prepared by the UK National Secular Society as an extension of work undertaken by its Executive Director at the UN Human Rights Council (as an international representative of the International Humanist and Ethical Union). The National Secular Society is concerned that all citizens, regardless of religion or belief, are treated equally, and that religious organisations, while enjoying the same freedom of expression as individual citizens, are not accorded any special privileges or concessions.

The Society would like to pay tribute to the work of those compiling the Council of Europe's report *Child abuse in institutions: ensure full protection of the victims*¹ and in particular its rapporteur Ms Marlene Rupprecht MdB. We wish to expand on what the report summarised about Ireland, and taking the reports together and additional material (some of which has emerged since), draw some wider conclusions and suggest some further recommendations.

As this Report was being finalised, the Irish Prime Minister made a Parliamentary speech² admitting much of the substance of this Briefing. We hope this signals a major improvement in Ireland's response to these issues.

These conclusions and recommendations are supported by Appendices containing summaries of evidence.

Conclusions

1. The many reports into the abuse are mutually reinforcing and indicate that abuse was known about since at least 1970 and has continued into this century. The sexual abuse problems have ruined many victims' lives and those of their families. Both the physical and mental cruelty needs also to be treated seriously.
2. By any standards, abuse of children in Ireland in state and church controlled institutions has occurred on a per capita scale hitherto unknown in Europe, and as far as has been ascertained, the world. The total sums of compensation paid to victims of sexual abuse are around 1.4 billion Euros.³ Even this level of compensation appears to be much less than is justified, and is exceeded in the world only by the United States of America, a country with around 50 times the population of Ireland.
3. We allege serious and long-standing breaches by Ireland of Article 17.1 Charter of Social Rights of the Council of Europe on a scale unprecedented in Europe since the inception of the Charter. The Reports included in this dossier allege/suggest breaches of the International Labour Organisation's Forced Labour Convention, the ECnHR (please see Appendix 7's Conclusions 8 and 9 and para 92).

It is likely that there have been serious breaches of the UN Convention on the Rights of the Child (UNCnRC). Geoffrey Robertson QC (Distinguished Jurist Member, United Nations Internal Justice Council, 2008-2012) has stated that he considers the Holy See to be in breach in respect of child abuse of Article 3(1), Article 6, Article 19, Article 34, Article 39 of the UNCnRC, per Appendix 1. It

¹ Doc. 12358 (20 September 2010) <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12358.htm>

² <http://debates.oireachtas.ie/dail/2011/07/20/00013.asp> (20 July 2011 Vol. 737 No. 11)

³ <http://www.bloomberg.com/news/2010-04-16/ireland-asks-catholic-church-to-pay-half-1-8-billion-bill-for-child-abuse.html>

is likely that Ireland is similarly in breach, and we strongly recommend that the Committee seek legal advice on this. (Recommendation 8 and Appendix 1)

4. Ireland is also in breach of Article 44 of the UNCnRC (reporting - like the Holy See, although less overdue than the Holy See). Ireland's third and fourth periodic (quinquennial) reports were due in 2004 and 2009. Ireland was requested by the UN to submit combined reports "before 27 April 2009", but appeared not to have done so by the end of 2010, the latest information available⁴. (Recommendation 8)
5. The institutional child abuse in Ireland has shocked the world, but did not even merit a mention in the Government's reports to the UN and even in their latest (8th) National Report on the implementation of the Revised European Social Charter. Both reports are complacent and evasive, accepting no blame for the Government's almost total failure to protect hundreds of thousands of children from abuse over many decades. No mention is made of institutional abuse, far less of major concerns about abuse in Church-controlled institutions. (See Recommendation 3.)
6. Supplementary information was sought by the UN (not all of which was provided, and many of the Committee's extensive concluding recommendations are in bold type. (Recommendation 6 and Appendix 1)
7. A major contributory factor to the scale and longevity of the abuse is a culture of deference by the State agencies to the Catholic Church in whose institutions the majority of institutional abuse appears to have taken place. The Government has been and continues to be in thrall to the Church. To the evidence of this included in Appendices 2 - 5 can be added the low proportion of compensation payable that the Church managed to negotiate, and that it has been allowed not to pay most of even that⁵. The failure of the Government to schedule the referendum in 2010 as promised (as reported by Amnesty in Appendix 6) is almost certainly another example, one of many. This also applies to state agencies such as the education authorities and the Gardaí (police). The Murphy Report (Para 1.93) stated "A number of very senior members of the Gardaí, including the Commissioner in 1960, clearly regarded priests as being outside their remit. There are some examples of Gardaí actually reporting complaints to the Archdiocese instead of investigating them."
8. We further allege – as other reports cited in the supporting documents show - that additional crucial changes to legislation and even the Constitution are still needed in Ireland to prevent recurrences, and that attempts to make these changes have been severely delayed, suggesting a disturbing lack of urgency - or even obstruction.
9. Clerics were not challenged and clearly felt, and in some cases still feel, above the law. Clerics were able to keep criminal activities secret and away from secular authorities with impunity, moving known perpetrators of abuse to pastures new without warning anyone in the area to which they were moved or arranging supervision. The exceptional power of clerics over the young puts greater temptation in their way and makes avoidance and reporting by the child more difficult. Loyalty of adults to the religious institution, even when the adults are in a position where they have a professional responsibility to the children, can cause them to betray that responsibility. This has happened on a spectacular scale in Ireland, and in RC institutions worldwide, e.g. the USA, Mexico and a growing number of European countries.
10. We believe the Committee should take a grave view of the failure of the Church to the very highest level, even now in 2011, to co-operate in mitigating its appalling failures, exemplified by the refusal of the Holy See to give evidence⁶. Agencies of the Church continue to frustrate enquiries, without Vatican censure. Indeed the revealing letter from the Apostolic Nunciature in Ireland to the Irish Episcopal Conference and their dioceses shown in Appendix 8 suggests they may be encouraging, even instructing, this.
11. Canon law should not be seen as contributing to the solution. Geoffrey Robertson QC has expressed the legal opinion that it breaches Articles 3, 19 and 34 of the UN Convention of the Rights of the Child (UNCnRC):
"Vatican diplomats may have prepared a devious defence for the Holy See by entering a

⁴ States parties to the Convention on the Rights of the Child and its two Optional Protocols and related status of submission of reports - CRC/C/56/2 dated 2 December 2010

⁵ <http://www.irishtimes.com/newspaper/frontpage/2009/0522/1224247112936.html>
<http://www.guardian.co.uk/world/feedarticle/8947353> , <http://www.independent.ie/opinion/analysis/state-lost-highstakes-game-with-two-nuns-1747597.html> and (Associated Press) http://news.yahoo.com/s/ap/20090527/ap_on_re_eu/eu_ireland_catholic_abuse_5 and <http://www.belfasttelegraph.co.uk/news/local-national/order-wonrsquot-sell-property-to-pay-abuse-claims-14320359.html>

⁶ <http://www.irishtimes.com/newspaper/ireland/2010/0216/1224264554852.html>

'reservation that it will only apply the Convention' when it is compatible with Canon Law. The sections of the Convention dealing with child sex abuse are irrevocably incompatible with Canon Law, which favours the priest at the expense of the best interests of the child (a breach of Article 3(1)); which does not provide effective procedures for investigation, reporting, referral or judicial involvement (a breach of article 19(2)), and has secrecy provisions that preclude national, bilateral and multi-national measures (a breach of article 34)."

On a practical level, Para 1.26 of the Murphy Report showed only two Canonical trials took place in the thirty years covered by the Report, despite the wholesale abuse during that period.

12. The circular letter issued by the Vatican on 3 May 2011 to assist the drawing up by dioceses of child abuse guidelines in effect asserts the primacy of Canon law over secular law and gives diocesan bishops the power to veto taking accusations forward. Both seriously - perhaps totally - undermine the effectiveness of the resulting guidelines. They also demonstrate the Vatican's Command and Control, as does the requirement for Vatican approval of the resultant guidelines (more detail in Appendix 8).
13. The Church has evaded accountability by exploiting the fact that its headquarters are held to be a sovereign state. It has resisted legitimate enquiries and requests to release information held in Ireland and also in Rome, on the pretext that requests should be directed through diplomatic channels, those requests then being ignored. Such behaviour strongly indicates Command and Control from Rome, as does the material in Appendices 8-10.
14. The supporting documentation in Appendix 11 reveals serious problems throwing doubt on the ability of the National Board for the Safeguarding of Children in the Catholic Church in Ireland (NBSCCC) to function.
15. Some inmates of the Magdalene Laundries, forced labour camps finally closed in 1996, were children. Convention breaches are alleged in Appendix 7 and inmates/prisoners have both been denied compensation on a specious pretext and the Irish Human Rights Commission (IHRC) has declined to conduct an enquiry requested by Justice for Magdalenes.

Recommendations

1. Any solutions should take into account the exceptional scale of the abuse, the period over which it has endured, the likely Convention breaches, the almost total failure of appropriate control mechanisms both in the Church and in Government agencies, the failure of much of the Church to accept responsibility for its actions, and the Church's continuing obstruction up to the very highest level.
2. An action plan with deadlines should be agreed with Ireland arising out of this examination and progress should be reviewed annually for the foreseeable future by the Committee.
3. The scale of the problem suggests it could be beneficial for a joint study and/or sharing of information between the Council of Europe, the UN and the EU. The Government should be required to analyse the reasons for its failure and to explain why no mention is made of the crucial institutional/Church element and what additional action is needed in respect of this.
4. The Council of Europe should formally request complete co-operation by the Church in instructing its agencies to provide all information sought by Irish secular authorities investigating abuse, and in any further matters arising from action needed to enable Ireland to meet its Convention obligations. It would be helpful if representations to the Holy See were made jointly with the above bodies, but not if so doing caused them to be unreasonably delayed or diluted.
5. The legislative and constitutional changes recommended in the reports in the Appendices (incl. Appendices 2, 3 and 7) should be examined by the Committee and further recommendations made if appropriate.
6. Ireland should be required to submit its late quinquennial reports to the UNCRC and for the foreseeable future the Committee of Social Rights should examine these and future quinquennial reports and any responses by the UNCRC. (As shown in Appendix 1, Ireland failed to provide: (a) number of reported cases of child abuse; and (b) number and percentage of reports which have resulted in either a court decision or other types of follow-up. We strongly recommend that the Committee also request this information.) (See also next recommendation.)
7. We recommend an ongoing independent investigation is conducted, responsible directly to the Prime Minister's office, into the extent to which suspected child abusers have not been referred to the civil authorities, are being supported by the Church, are being supervised, and how effective that supervision is. This investigation should be ongoing as further information emerges and the intention should be to have all abuse allegations investigated with a view to prosecution where there is sufficient evidence.
8. Independent lawyers should be retained to express an opinion, based on available evidence, about (a) the likely extent of Ireland's breach of the international conventions to which it is a signatory since Ireland's ratification of the UN Convention on Human Rights in 1953, (b) the extent to which any breaches are continuing.
They should also advise on (i) what needs to be done to for Ireland to become compliant, (ii) the extent to which any historic breaches can be mitigated retrospectively, and (iii) the extent to which resolution of any of these likely breaches will need further co-operation by the Catholic Church both in Ireland and at the Vatican and (iv) what additional considerations arise from that.
These opinions should be published and require a Governmental response.
9. An independent report should be compiled, with the help of statute-backed evidence-taking powers, into the failure by departments of the State that allowed child abuse to continue largely unchecked for so many decades. It should seek to examine the last, say thirty, years (or back to Ireland's ratification of the UN Convention on Human Rights in 1953) to determine the extent of this problem, the root causes and recommend safeguards to prevent recurrence. Ministers and managers responsible should be identified where appropriate.
10. The IHRC's concluding recommendation about a statutory mechanism investigating Magdalene Laundries should be implemented, as shown in Appendix 7.
11. The requirement to report suspected child abuse (even that learned in the confessional) to statutory authorities should be made a legal obligation with penalties for failure to do so (despite "following detailed consideration, the Government decided not to introduce mandatory reporting of child abuse" per para 474 of 2nd Ireland report to UNCRC, detailed in Appendix 1). The statute of limitations should be lifted in respect of child abuse, both in respect of criminal and civil cases. Obligatory Criminal Record checks should apply to clerics and Church employees.
12. An independent report should be conducted into the effectiveness and independence of the NBSCCC including an assessment of the implications of concerns raised in Appendix 7.

13. All concerns and accusations about abuse (whether in person, in writing, electronically or verbally, should be made exclusively to secular agency with no Church connections reporting directly to the Prime Minister's office and that staff and management be rotated annually and the records be made available to personnel in relevant international organisations.
14. An assessment should be made of the ability of non-statutory bodies such as the NBSCCC to fulfil their safeguarding role effectively, particularly taking into account the data protection obstacles and the wholesale failure of the Church (similarly to Massachusetts) to inform them of credible allegations, and to make recommendations.

Summary of appendices

The evidence of abuse which this briefing seeks to bring to the attention of the Committee comprises the following recently published or released material, from which short extracts are shown. The Ryan and Murphy Reports are also referred to in Ms Marlene Rupprecht MdB's report. Appendices of the corresponding number provide more detail, including (where available) a URL source:

1. **UN Committee on the Rights of the Child.** The case is made for the breach by Ireland of *six* Articles of the UNCnRC. One of these Articles relates to reporting; two quinquennial reports are overdue, and even the information that has been volunteered provides so little detail about this problem that it demonstrates unimaginable complacency or, more likely, a deliberate strategy to keep the grim reality from the UNCRC. It is therefore of no surprise that the UNCRC sought significant supplementary information, not all of which was provided. A particularly crucial omission is referred to in Recommendation 6 relates to an analysis of the outcome of all suspected cases, for example being brought to court. Predictably, many of the UNCRC's 86 paragraphs of concluding observations are shown in bold. Extracts of key passages of Ireland's submissions and the UNCRC's response are included.
2. **The Cloyne Report (2011)** showed that as recently as 2009 there was minimal adherence to the Church's child protection guidelines. The Bishop of Cloyne had failed to act on numerous accusations of abuse in contravention of the guidelines, and dissembled on a wholesale scale when giving evidence to the Cloyne Commission. He was also the only individual to have been private secretary to three popes - Paul VI, John Paul I and John Paul II. The Vatican/Holy See was heavily criticised in the Report for subverting the administration of justice of another state by secretly encouraging bishops to ignore guidelines on "mandatory reporting". The Report led to the Irish Prime Minister berating the Catholic Church and the Vatican in the Irish Parliament on 20 July 2011 with unprecedented ferocity, following which the Papal Nuncio/ambassador was recalled to Rome.
3. **Office of the Children's Ombudsman** [for Ireland]
4. **The Commission to Enquire into Child Abuse (the Ryan Report)** involves many thousands of children in residential institutions and seeks to establish the scale of abuse from 1936 – 2009. It discloses continuing endemic physical, emotional and sexual abuse on an almost industrial scale continuing into the current century. It is implausible that these activities can have been carried out without the tacit acceptance of the regulatory and judicial bodies. There is evidence of secret files being kept in Rome and failure of Christian Brothers to take responsibility, even now. The first item in the Appendix comprises references to the Ryan Report by the UN Committee against Torture (17 June 2011).
5. **Dublin Archdiocese Commission of Investigation (the Murphy Report)** which examined a representative sample of complaints of clerical abuse between 1975 and 2004 and the church and state response thereto. At least one further report is expected from other archdiocese(s), but this Report's publication has been continually delayed because of objections from persons accused of wrong-doing, and concerns that references in the Report may prejudice trials. The Report provides evidence of abuse on a breathtaking scale and children being treated worse than would be appropriate for animals. It shows a culture of secrecy, especially to secular authorities. The Report dismisses the religious authorities' claims that they did not understand what was happening, and notes they often expressed no remorse. The discovery of an almost identical situation in Christian Brothers' facilities in Massachusetts is powerful evidence of the failure being systemic. It is recognised that current law or procedures are nowhere near sufficient to prevent recurrences.
6. **Amnesty International Annual Reports 2010/11** refer to the failure of the Irish state to protect 30,000 children placed by it in Catholic institutions since 1936, or to investigate complaints and the wholesale cover up of abuse by the Church and Police. It notes Government commitments to remedy "serious gaps in current child protection and care systems", but these have not yet been effected and "A referendum on the incorporation of children's rights in the Constitution was further delayed". Crucial delays complained of in Amnesty's 2010 report still remained unresolved at the time of the 2011 report.

7. **Magdalene Laundries - UN Committee against Torture (17 June 2011) and Assessment of the Human Rights Issues Arising in relation to the “Magdalene Laundries” November 2010.** Magdalene Laundries were forced labour camps run in the 20th century, almost exclusively by the Catholic Church, with most inmates referred there by the state or its agencies. Some of the inmates had not committed any offence and most, if not all, deprived of their liberty for indeterminate periods, often the remainder of their lives. The victims included girls, as was recognised by the Kennedy report, 1970, as shown in Appendix 4, albeit apparently not on a great scale in 1970. The victims were deprived of even their names and the deaths of many were not recorded and they were buried in mass/communal graves. The Church was paid for their upkeep and for the fruits of their labour, but paid them nothing. The last camp ceased operating as a commercial laundry only on October 25, 1996, and it appears that this was prompted by publicity sparked by the discovery of a mass unmarked grave in land sold off by the laundry. The Irish Government refuses former inmates compensation on the specious ground that the state was not involved, even though many were referred there formally or informally by State agencies and it was paying some, if not all, of the inmates’ maintenance.
8. **Text of Letter of January 31, 1997 from the Apostolic Nunciature in Ireland to the Irish Episcopal Conference and their Dioceses, only revealed in 2011.**
9. **Evidence that the Vatican was offended by requests that the Papal Nuncio be required to give evidence (per Wikileaks as reported by the *Irish Times*) – emerged only in late 2010.**
10. **Circular Letter from Congregation for the Doctrine of the Faith Dated 3 May 2011** “To assist episcopal conferences in developing guidelines for dealing with cases of sexual abuses of minors perpetrated by clerics”. We indicate why we believe that the guidelines that will flow from these instructions will be fatally flawed, and why they demonstrate continuing Vatican command and control in this area.
11. Catholic Church authorities *recently* withheld 219 abuse complaints from its own independent watchdog, the **National Board for the Safeguarding of Children in the Catholic Church in Ireland**. Its 2010 Annual Report and media coverage allege that bishops and religious leaders impeded investigation, that clericalism culture is identified as the problem, a culture that will take some time to overcome. Appendix 11 gives a source for the Board’s Annual Report for 2010 and two newspaper accounts about it, published on 12 May 2011.
12. **Reports to the UN Human Rights Council by the International Humanist and Ethical Union** concerning the role of the Vatican/Holy See relative to child abuse, both alleging wholesale breaches by the Vatican/Holy See of multiple Articles of the UN Convention on the Rights of the Child, (*six* Articles according to Geoffrey Robertson QC, Distinguished Jurist Member, United Nations Internal Justice Council, 2008-2012)

There are other reports, which we have *not* included, into various dioceses and archdioceses that have been published, and others still to be published, often delayed by interventions by the Church and individuals.

APPENDIX 1

The case for investigating the potential breach of six articles of the UN Convention on the Rights of the Child:

(These are based on similar conclusions made by Geoffrey Robertson QC about what he believes to be evidence of failure by the Holy See to meet its Conventional obligations. The equivalent passages about the Holy See immediately follow.)

Article 3(1) (Best interests of the child) and Article 34a of the UNCnRC requires “appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity” The report as a whole shows the inadequacy of national measures for decades and continual delays in implementing measures. In particular see Appendix 2 (Volume 4 Chapter 1). The concluding observations by the UNCRC in Appendix 1, especially nos 24 and 31 imply dissatisfaction on this point.

Article 6 of the Protocol obliges state parties to assist each other with providing all the evidence at their disposal - an obligation which the Vatican continues to evade. (It may also be a breach of Article 34a).

This appears to have been broken and remains so in the case of Father Bill Carney⁷ who was dismissed after admitting multiple abuse. He was paid off by the Church and has lived in Scotland for ten years. Reportedly “Irish authorities knew his address but no-one, either from the Church or the Irish state, thought to warn his new wife about his past, or protect any children who might be at risk”⁸.

Article 19(1)⁹: “This placed an international law duty on Ireland to make arrangements for reporting child sex abuse to law enforcement authorities. The Catholic Church maintains secrecy on this for offences committed in Ireland. The Murphy Report (Para 1.93) stated “A number of very senior members of the Gardaí, including the Commissioner in 1960, clearly regarded priests as being outside their remit. There are some examples of Gardaí actually reporting complaints to the Archdiocese instead of investigating them.

Article 39 There is minimal evidence of “measures to promote physical and psychological recovery and social reintegration” to victims, as required by Article 39. The Executive Summary of the Ryan Report (Appendix 4) includes the following passage about Volume 3 “Chapter 10 and Sections of Chapters 13 to 18 Chapter 10 and Sections of Chapters 13 to 18 deal with positive experiences. Among the positive experiences reported by witnesses was the kindness of some religious and lay staff in the schools and institutions, including a number who provided support in times of difficulty after they were discharged.” On the other hand, there are a number of references to rehabilitation and psychological support for the abusers.

Article 44 (Reporting) This is very late and, we consider, has been misleading, as shown in Conclusion 4, above.

We are pleased to note, however, that Garda Commissioner Martin Callinan was reported on 24 May 2011 as having “asked members of the force to investigate if charges can be brought against Irish missionaries and priests who are alleged to have abused children while working outside the State”¹⁰.

We draw attention to the allegations of breaches of the UN CnRC by the Holy See by Geoffrey Robertson QC given in more detail in Appendix 12 (2011 report), which we believe apply *mutatis mutandis* to Ireland.

He notes in his book *The Case of the Pope* that the following Articles of the CRC are likely to have been breached:

⁷ Appendix 3 para 1.26 of this report

⁸ <http://news.bbc.co.uk/1/hi/programmes/newspaper/8556659.stm>

⁹ *The Case of the Pope* by Geoffrey Robertson QC publ 2010 Penguin 2010 ISBN 978-0-241-95384-6 ¶163 page 113-4]

¹⁰ <http://www.irishtimes.com/newspaper/breaking/2011/0524/breaking28.html>

___Article 3(1)¹¹: “The evidence shows that the primary consideration in dealing with children’s allegations has been the good name and reputation of the Catholic church and the protection of the priesthood from scandal. The best interests of the child requires the church to act immediately to stop the abuse and protect other children by precluding any prospect of re-offending. That meant calling in the police and social welfare services and providing counselling to the child and the family - steps the Vatican resolutely refused to envision when it published its new Canon Law norms in July 2010.”

Article 6¹²: “Article 6 of the Protocol obliges state parties to assist each other with providing all the evidence at their disposal - an obligation which the Vatican continues to evade.”

Article 19(1)¹³: “This placed an international law duty on the Holy See to make arrangements for reporting child sex abuse to law enforcement authorities - a duty that has been blatantly breached from the outset by subjecting all allegations to the ‘pontifical secret’ procedures of Crimen, and then of the 2001 apostolic letter, and most recently of the July 2010 decree, which insists on Canon Law jurisdiction over abusive priests.”

Article 34¹⁴: “The Holy See, through its responsible agency the CDF (the Congregation of the Doctrine of the Faith), took no ‘national, bilateral or multi-national measures’ other than by issuing the 2001 Ratzinger letter, which served to delay investigations of accused priests and failed to require notification to law enforcement agencies. The Holy See has most scandalously breached its obligations under Article 34, and remains in breach through its 2010 insistence on Canon Law process and ‘pontifical secrecy’.”

Article 39¹⁵: “It is also relevant to note the Holy See’s unwillingness to afford ‘measures to promote physical and psychological recovery and social reintegration’ to victims, as required by Article 39 ...”,

Articles 3, 19 and 34 – Re Canon Law¹⁶: “Vatican diplomats may have prepared a devious defence for the Holy See by entering a ‘reservation that it will only apply the Convention’ when it is compatible with Canon Law. The sections of the Convention dealing with child sex abuse are irrevocably incompatible with Canon Law, which favours the priest at the expense of the best interests of the child (a breach of Article 3(1)); which does not provide effective procedures for investigation, reporting, referral or judicial involvement (a breach of article 19(2)), and has secrecy provisions that preclude national, bilateral and multi-national measures (a breach of article 34).”

Article 44¹⁷: “The Holy See was next due to report on 1 September 1997 and then again on 1 September 2002: it did not do so on either occasion and indeed has never submitted another report, a complete abdication of its duties under the Convention.”

[End of Extract of text from Geoffrey Robertson QC]

Comments on Ireland's reports to the UNCRC and the latter’s response:

Ireland’s Initial Report to the UN Committee on the Rights of the Child in 1996 did give some clue to the scale of the abuse problem, but no detail about the huge institutional element of it¹⁸ “Boards are now receiving almost 5,000 reports of alleged abuse each year, of which about 1,500 cases are confirmed, including about 600 cases of sexual abuse. Reports of cases of physical and sexual abuse and neglect have been reported extensively in the media and have given rise to considerable public disquiet.”

¹¹ *The Case of the Pope* by Geoffrey Robertson QC publ 2010 Penguin 2010 ISBN 978-0-241-95384-6 ¶163 page 113-4]

¹² *The Case of the Pope* by Geoffrey Robertson QC publ 2010 Penguin 2010 ISBN 978-0-241-95384-6 ¶167 page 117

¹³ [Ibid ¶163 page 113-4]

¹⁴ [Ibid ¶163 page 113-4]

¹⁵ [Ibid ¶ 164 page 115]

¹⁶ [Ibid ¶ 166 page 115]

¹⁷ [Ibid ¶ 163 page 113]

¹⁸ Ref CRC/C/11/Add.12 due 1994, filed on 17 June 1996

The Second Report¹⁹ filed in 2005 and despite the mass of information known about child abuse by then, simply referred to the above and painted a rosy picture: “Ireland’s First Report (1996) outlined in some considerable detail the recognition of child abuse as a significant social problem in Ireland, the inquiries that brought this issue to light and the policy and legislative responses put in place to tackle the issue. As is clear from this report, there have been considerable improvements in both the law and the policy responses to ensure the safety and quality of services being provided by the State, having regard to the rights of the child and the child’s best interests.” (Para 471).

We also draw attention to para 474. “As outlined in the Introduction to this report, following detailed consideration the Government decided not to introduce mandatory reporting of child abuse. National guidelines were issued in 1999 (entitled Children First: National Guidelines for the Protection and Welfare of Children) and legislation was enacted in the form of the Protections for Persons reporting Child Abuse Act, 1998.” We commend Ireland for enacting this 1998 legislation, but in view of the comprehensive and failure of the State to tackle endemic child abuse over so many decades, mandatory reporting is, we consider, needed. A [UK] National Society for the Prevention of Cruelty to Children report *An examination of local, national and international arrangements for the mandatory reporting of child abuse: the implications for Northern Ireland*²⁰ gives details of other countries’ mandatory reporting.

Given what was known by 2005, this report was far from candid and was complacent in the extreme. There remained no clue from the words “significant social problem” as to the source of much of the institutional abuse or the ongoing systemic failures. The Committee sought additional information, some of which was provided, and included statistical information about child abuse. The number of reported cases of child abuse – 2003, 2004 and 2005 were 8,421, 6,336 and 18,442 cases respectively.²¹

An important question not answered was question 6, page 11: With reference to child abuse, please provide disaggregated data (by sex, age, and ethnic and minority groups and types of violations reported) covering the last three years on the (a) number of reported cases of child abuse; and (b) number and percentage of reports which have resulted in either a court decision or other types of follow-up.

The answer included the following sentence: **“Information regarding prosecutions or resultant court decisions to respond to these questions is still being compiled and a response will be forwarded as soon as is practicable.”** It is not known whether this information has been provided subsequently. The Committee of Social Rights may care to enquire about this.

The Committee for the Rights of the Child (CRC) reacted to Ireland’s response and supplementary information with 17 pages of concluding observations²². Many of the 86 paragraphs are in bold, and include the following – the emboldening is that applied by the Committee:

7. The Committee urges the State party to make every effort to address the recommendations issued in the concluding observations on the initial report which have not yet been fully implemented, and to address the list of concerns contained in the present concluding observations related to the second periodic report.

8. The Committee welcomes the steps taken to further develop the legal framework but remains concerned about the slow pace of enactment of specific provisions, in particular the Children Acts 1997 and 2001, that hampers effective implementation of the legal framework.

The Committee expresses regret that the Convention has not been incorporated into domestic law as recommended by the Committee in its previous concluding observations.

¹⁹ Committee On The Rights Of The Child Concluding observations: on Ireland’s Report CRC/C/IRL/2 due on 27 October 1999, but filed on 11 August 2005 (latest report available)

[http://www.unhchr.ch/tbs/doc.nsf/c12563e7005d936d4125611e00445ea9/8d69692f4788b109c125725d002ff0c6/\\$FILE/G0645074.pdf](http://www.unhchr.ch/tbs/doc.nsf/c12563e7005d936d4125611e00445ea9/8d69692f4788b109c125725d002ff0c6/$FILE/G0645074.pdf)

²⁰ http://www.nspcc.org.uk/Inform/publications/downloads/mandatoryreportingNI_wdf51133.pdf (2007) page 4, also

Ben Mathews and Maureen C. Kenny, “Mandatory Reporting Legislation in the United States, Canada, and Australia: A Cross-Jurisdictional Review of Key Features, Differences, and Issues”, *Child Maltreatment*, February 2008, vol. 13 no. 1, pp. 50-63.

<http://cmx.sagepub.com/content/13/1/50.abstract>

²¹ CRC/C/IRL/Q/2/Add.1 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/a1ce149b97eecec5c1257202004687f8?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/a1ce149b97eecec5c1257202004687f8?Opendocument)

²² CRC/C/IRL/CO/2 [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.IRL.CO.2.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.IRL.CO.2.En?Opendocument)

9. The Committee urges the State party to take, as a matter of priority, all necessary measures, including the allocation of resources, to enact the outstanding provisions in the relevant Children Acts for the protection of children's rights. The Committee encourages the State party to undertake further action to incorporate the Convention into domestic law.

14. The Committee recommends that the State party, together with the Ombudsman for Children, review and propose amendments to the specific provisions which limit the scope of the Ombudsman's Office investigative powers with a view to eliminating possible gaps which may result in a violation of children's rights.

15. In order to ensure the independent functioning of the Office of the Ombudsman, the Committee recommends that the State party seek ways and means to provide the Office of the Ombudsman with financial resources directly through the Oireachtas (National Parliament) and the Department of Finance. The Committee also draws the State party's attention to the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child.

17. The Committee recommends that the State party take further measures, including through strengthening the role of the Central Statistical Office and other governmental departments and agencies to develop a systematic and comprehensive collection of disaggregated data in compliance with the Convention, which should be used for the creation, implementation and monitoring of policies and programmes for children.

19. The Committee encourages the State party to further strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by both adults and children, including through periodic and nation-wide public awareness-raising campaigns that also include child-friendly material, and through targeted campaigns and necessary training for professionals working with and for children, in particular within schools and health and social services, and legal professionals and law enforcement officials.

23. The Committee recommends that the State party: (a) Ensure that the general principle of the best interests of the child is a primary consideration without any distinction and is fully integrated into all legislation relevant to children; and (b) Ensure that this principle is also applied in all political, judicial and administrative decisions, as well as projects, programmes and services that have an impact on children.

25. In the light of article 12 of the Convention, the Committee recommends that the State party: (a) Strengthen its efforts to ensure, including through Constitutional provisions, that children have the right to express their views in all matters affecting them and to have those views given due weight, in particular in families, schools and other educational institutions, the health sector and in communities; (b) Ensure that children are provided with the opportunity to be heard in any judicial and administrative proceedings affecting them, and that due weight is given to those views in accordance with the age and maturity of the child, including the use of independent representations (*guardian ad litem*) provided for under the Child Care Act of 1991, in particular in cases where children are separated from their parents; and (c) Take into account the recommendations adopted on the Committee's day of general discussion on the right of the child to be heard held on 15 September 2006.

29. The Committee recommends that the State party: (a) Undertake an extensive review of the support services provided under the different governmental departments to assess the quality and outreach of these services and to identify and address possible shortcomings; and (b) Extend the social work services provided to families and children at risk to a seven-day, 24-hour service.

31. The Committee recommends that the State party: ... (c) Ensure that the principle of the best interests of the child is always a primary consideration when making decisions involving children under any legal or administrative procedures.

33. The Committee recommends that the State party: (a) Consider measures to create a statutory basis for the Social Services Inspectorate to function and extend its mandate to

all children without parental care, irrespective of the care required; and (b) Strengthen its efforts to ensure and provide for follow-up and after-care to young persons leaving care centres.

37. In the light of article 19 of the Convention, the Committee recommends that the State party: (a) Continue reviewing the Children First: National Guidelines, and consider their establishment on a statutory basis; (b) Ensure that all reported cases of abuse and neglect are adequately investigated and prosecuted and that victims of abuse and neglect have access to counselling and assistance with physical recovery and social reintegration; (c) Develop a comprehensive child abuse prevention strategy, including developing adequate responses to abuse, neglect and domestic violence; facilitating local, national, and regional coordination, and conducting sensitization, awareness-raising and educational activities; and (d) Ensure that evaluation of all employees and volunteers working with children is undertaken prior to recruitment and that adequate support and training is provided for the duration of their employment.

38. In the context of the Secretary-General's in-depth study on the question of violence against children, the Committee recommends that the State party use the outcome of the Regional Consultation for Europe and Central Asia held in Slovenia from 5 to 7 July 2005 as a tool for taking action, in partnership with civil society, to ensure that every child is protected from all forms of physical, sexual or mental violence, and for gaining momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse. In addition, the Committee would like to draw the States party's attention to the report of the independent expert for the United Nations study on violence against children (A/61/299) and to encourage the State party to take all appropriate measures to implement the overarching recommendations as well as setting-specific recommendations contained in this report.

75. The Committee recommends that the State party collect information and undertake research on child prostitution, pornography and other forms of sexual exploitation and sexual abuse of children with a view to developing targeted measures, and requests the State party to provide detailed information in that respect in its next report.

85. The Committee further recommends that the second periodic report and written replies submitted by the State party and related recommendations (concluding observations) adopted by the Committee be made widely available, including through Internet (but not exclusively), to the public at large, civil society organizations, youth groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.

[END OF UNCRC CONCLUDING OBERVATIONS]

APPENDIX 2

The Cloyne Report and the Prime Minister's reaction

The Cloyne Report http://www.rte.ie/news/2011/0713/cloyne_report.pdf

Remit of Cloyne Report

"During the Cloyne investigation the Commission examined all complaints, allegations, concerns and suspicions of child sexual abuse by relevant clerics made to the diocesan and other Catholic Church authorities and public and State authorities in the period 1 January 1996 – 1 February 2009."

Comment

As noted in the summary, the Cloyne Report (2011) showed that as recently as 2009 there was minimal adherence to the Church's child protection guidelines. The Bishop of Cloyne had failed to act on numerous accusations of abuse in contravention of the guidelines, and dissembled on a wholesale scale when giving evidence to the Cloyne Commission. He was also the only individual to have been private secretary to three popes - Paul VI, John Paul I and John Paul II. The Vatican/Holy See was heavily criticised in the Report for subverting the administration of justice of another state by secretly encouraging bishops to ignore guidelines on "mandatory reporting". The Report led to the Irish Prime Minister berating the Catholic Church and the Vatican in the Irish Parliament on 20 July 2011 with unprecedented ferocity, following which the Papal Nuncio/ambassador was recalled to Rome.

Some extracts from the Overview

1.15 The Commission's assessment of the health authorities is limited by the fact that, prior to 2008, they were notified of complaints in only two cases – once by the diocese in 1996 and once by the Gardaí in 2005.

1.18 The reaction of the Vatican to the *Framework Document* was **entirely unhelpful** to any bishop who wanted to implement the agreed procedures (our emphasis). [The reaction] effectively gave individual Irish bishops the freedom to ignore the procedures which they had agreed and gave comfort and support to those who, like Monsignor O'Callaghan, dissented from the stated official Irish Church policy.

1.19 In evidence to the Commission, Bishop Magee said that he was fully committed to the implementation of the *Framework Document* and was shocked to discover in 2008 that it was not being implemented. The Commission considers that this response is totally inadequate.

1.21 Contrary to repeated assertions on its part, the Diocese of Cloyne did not implement the procedures set out in the Church protocols for dealing with allegations of child sexual abuse. The main failures were:

- (a) The failure to report all complaints to the Gardaí;
- (b) The failure to report any complaints to the health authorities between 1996 and 2008;
- (c) and (d) omitted

1.38 Bishop Magee answered the HSE [Health and Safety Executive] questionnaire ... on behalf of the Diocese of Cloyne in January 2007. Among other things, he said that the diocese reported allegations of child sexual abuse "to the HSE and/or An Garda Síochána in keeping with *Children First*". This was not true.

[end of extracts]

New York Times Report July 14, 2011 [Irish Report Finds Abuse Persisting in Catholic Church](http://www.nytimes.com/2011/07/14/world/europe/14church.html?emc=eta1)²³

²³ <http://www.nytimes.com/2011/07/14/world/europe/14church.html?emc=eta1>

An analysis of evidence of obfuscation in the Report prepared by Michael Nugent of Atheist Ireland "[Bishop Magee lied and deliberately misled, says Cloyne Report](http://www.michaelnugent.com/2011/07/20/bishop-magee-lied-and-deliberately-misled-says-cloyne-report/)"²⁴

Motion accepted in the Irish Parliament without a vote:

- notes the publication of the report by the Commission of Investigation into the handling by Church and State authorities of allegations and suspicions of child sexual abuse against clerics of the Catholic Diocese of Cloyne;
- expresses its sympathy with the victims whose suffering is set out in the report;
- expresses its thanks to the Commission of Investigation for their work carried out with sensitivity;
- expresses its dismay at the disturbing findings of the report and at the inadequate and inappropriate response, particularly of the Church authorities in Cloyne, to complaints and allegations of child sexual abuse;
- deplores the Vatican's intervention which contributed to the undermining of the child protection frameworks and guidelines of the Irish State and the Irish bishops;
- welcomes the publication of the Children First National Guidance 2011, the full and consistent implementation of which will be given priority, and welcomes the approval by Government for the preparation of legislation to require statutory compliance with the Children First National Guidance;
- acknowledges that child protection requires a cross-societal awareness and a purposeful co-operative response from all organisations working with children;
- welcomes the publication of the provisions concerning the Criminal Justice (Withholding Information on Crimes against Children and Vulnerable Adults) Bill 2011 and welcomes the announcement made that the heads of the National Vetting Bureau Bill 2011 will be published by the end of July 2011 and furnished to the Joint Committee on Justice, Defence and Equality for a consultative process; and
- affirms its determination that the State will take all necessary measures to protect its children.

Speech by Irish PM Enda Kenny (Extracts of the PM's speech only, but others followed him):

The revelations in the Cloyne report have brought the Government, Irish Catholics and the Vatican to an unprecedented juncture. It is fair to say that after the Ryan and Murphy reports, Ireland is, perhaps, unshockable when it comes to the abuse of children. However, the Cloyne report has proved to be of a different order because for the first time in this country a report on child sexual abuse exposes an attempt by the Holy See to frustrate an inquiry in a sovereign, democratic republic as little as three years ago, not three decades ago. In doing so the report excavates the dysfunction, disconnection and elitism that dominates the culture of the Vatican to this day. The rape and torture of children were down-played or managed to uphold the primacy of the institution, its power, standing and reputation. ...

The Cloyne report's revelations are heart-breaking. It describes how many victims continued to live in the small towns and parishes in which they were reared and abused. Their abuser was often still in the area and still held in high regard by their families and community. ...

The Tánaiste [deputy Prime Minister] left the archbishop clear on two things: the gravity of the actions and attitude of the Holy See and Ireland's complete rejection and abhorrence of same. The Papal Nuncio undertook to present the Cloyne report to the Vatican. The Government now awaits the considered response of the Holy See.

The people, including the many faithful Catholics who, like me, have been shocked and dismayed by the repeated failings of church authorities to face up to what is required. They deserve and require confirmation from the Vatican that it does accept, endorse and require compliance by all

²⁴ <http://www.michaelnugent.com/2011/07/20/bishop-magee-lied-and-deliberately-misled-says-cloyne-report/>

church authorities here with the obligations to report all cases of suspected abuse, whether current or historical, to the State's authorities in line with the Children First national guidance which will have the force of law.

Clericalism has rendered some of Ireland's brightest and most privileged and powerful men either unwilling or unable to address the horrors cited in the Ryan and Murphy reports. ...

... this is not Rome. Nor is it industrial school or Magdalene Ireland, where the swish of a soutane, smothered conscience and humanity and the swing of a thurible ruled the Irish Catholic world. This is the Republic of Ireland in 2011. It is a republic of laws, rights and responsibilities and proper civic order where the delinquency and arrogance of a particular version of a particular kind of morality will no longer be tolerated or ignored.

As a practising Catholic, I do not say any of this easily. Growing up, many of us in here learned that we were part of a pilgrim church. Today, that church needs to be a penitent church, a church truly and deeply penitent for the horrors it perpetrated, hid and denied - in the name of God, but for the good of the institution. ...

This report tells us a tale of a frankly brazen disregard for protecting children. If we do not respond swiftly and appropriately as a State, we will have to prepare ourselves for more reports like this. I agree with Archbishop Martin that the church needs to publish any other and all other reports like this as soon as possible. I note the commission is very positive about the work of the National Board for Safeguarding Children, established by the church to oversee the operation by dioceses and religious orders. The commission notes that all church authorities were required to sign a contract with the national board agreeing to implement the relevant standards and that those refusing to sign would be named in the board's annual report. Progress has been in no small measure due to the commitment of Mr. Ian Elliott and others.

... the behaviour of Bishop Magee and Monsignor O'Callaghan show how fragile even good standards and policies are to the weakness and willful disregard of those who fail to give the right priority to safeguarding our children.

If the Vatican needs to get its house in order, so too does this State. The report of the commission is rightly critical of the entirely unsatisfactory position which the last Government allowed to persist over many years. The unseemly bickering between the Minister of State with responsibility for children and the HSE over the statutory powers to deal with extra-familial abuse, the failure to produce legislation to enable the exchange of soft information, as promised after the Ferns inquiry, and the long period of confusion and disjointed responsibility for child protection within the HSE, as reported by the commission, are simply not acceptable to me nor in a society which values children and their safety.

We are set to embark on a course of action to ensure the State is doing all it can to safeguard our children. The Minister, Deputy Shatter, is bringing forward two Bills, first, to make it an offence to withhold information relating to crimes against children and vulnerable adults, and, second, at long last, to allow for the exchange of soft information on abusers.

As Taoiseach, I want to do all I can to protect the sacred space of childhood and to restore its innocence, especially for our young teenagers, because, regardless of our current economic crisis, our children are, and always will be, our most precious possession of all. Safeguarding their integrity and innocence must be a national priority. This is why I undertook to create a Cabinet ministry for Children and Youth Affairs. The legislation, Children First, proposes to give our children maximum protection and security without intruding on the hectic, magical business of being a child.

The then Cardinal Joseph Ratzinger said: "Standards of conduct appropriate to civil society or the workings of a democracy cannot be purely and simply applied to the Church". As the Holy See prepares its considered response to the Cloyne Report, I want to make it clear, as Taoiseach, 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, because children have to be and will be put first.

End of extract of speech.

APPENDIX 3

Office of the Ombudsman for Children

Extract from Annual Report 2010²⁵

(Page 8) A recent analysis of the casework at OCO provides supporting evidence for the need for public sector reform. It is a dominant feature of our investigations that with few exceptions they highlight a lack of awareness about the impact of civil and public administrative decision-making on the lives and rights of children and their families. In this respect, the individual children appeared to be largely invisible in the decision-making process. The result of this has on occasion been an excessively bureaucratic approach to public decision-making, and often a disconnect between administrative decision-makers and those affected by their decisions.

A particular aspect of this is the absence of an appreciation of how quickly harm can be done to children – by depriving them of education, separating them from their parents, providing for their care etc. – and the relationship between timely decision-making and good administration.

In addition to there being insufficient attention given to the direct or indirect impact of decisions on children, it is clear from our investigations that such decisions are also not routinely informed by children's rights principles. In particular, the core principles of the UNCRC highlighted above – which should act as important parameters for decision-making affecting children – are not used to guide the administrative actions of public bodies to any great extent if at all. On a more general level, my Office has observed a serious lack of awareness of international human rights instruments to which Ireland is party in the course of its investigatory work.

A further worrying theme common to many of the cases examined by my Office is the failure to ensure the implementation of national law and policy. For example, the failure to rigorously apply the best interests principle and to ensure children's voices are heard, as the Child Care Act 1991 requires, is of serious concern, as is the failure to ensure consistent adherence to the Children First National Guidelines across the country.

In short, there is an absence of child impact analyses, broadly conceived, evident in much of the public decision-making regarding children; one of the consequences of this is that the operation of policies do not always meet the needs of the public generally, and children in particular.

(Page 9) The advice provided has frequently been referenced and debated in the course of the Oireachtas' consideration of Bills affecting the rights and welfare of children. The OCO's work on legislative review during 2010 highlighted that, at times, the Oireachtas does not have the opportunity to consider broader issues that have a direct bearing on children which are related to the substance of a Bill but not explicitly addressed in it.

In addition, it continues to be the case that legislation affecting children can be framed in a way that clearly does not operate in their best interests. An example of this in 2010 was the Civil Partnership Bill. Many provisions of the Bill were derived from other areas of family law where there is an obligation on the courts to consider the needs of dependent children of the family. However, in the equivalent sections of the Civil Partnership Bill, references to the need to provide for any dependent children of the family were deliberately removed.

It is concerning that such an approach could underpin our lawmaking process, given that it is so out of step with the principle set out in Article 3 of the UNCRC – that the best interests of the child should be a paramount consideration in all matters affecting them.

(Page 10) However, earlier this year we heard how civil servants in three Departments – health, justice and education – all expressed concern about the proposed wording published in February 2010 by the Oireachtas Committee on the Constitutional Amendment on Children. Concern was expressed about the 'unintended consequences' of such an amendment, including the consequences of enshrining the best interests principle in the Constitution. It is clear to me as Ombudsman for Children that the inclusion of the general principles of the United Nations Convention on the Rights of the Child is a human rights imperative and that any attempt to

²⁵ <http://www.oco.ie/assets/files/annual-report/Annual-Report2010.pdf>

diminish children's best interests should be resisted by Government when proposing to amend the Constitution.

Statement by the Ombudsman for Children on the publication of the Commission of Investigation Report into the Diocese of Cloyne (13 July 2011²⁶)

The significance of the Commission of Investigation Report into the Diocese of Cloyne is the contemporary nature of the abuse it documents and the failure of the Catholic Church in the Diocese of Cloyne to report a single case to the health authorities between 1996 and 2008.

The pain of the experiences of the victims is unimaginable for the vast majority of us. Their courage and bravery is exceptional.

I reiterate my view that it is completely unacceptable that any institution or organisation put corporate reputation ahead of children's best interests and that the State has responsibility to ensure that child protection is paramount.

As with previous reports, we witness more examples in today's report of the placing of institutional loyalty ahead of the best interests of children. The burden of responsibility for reporting abuse should not lie with children. The importance of those in positions of authority referring child protection concerns stems not only from concern for that individual child but for the protection of other children more generally.

However, I am encouraged by the Ministers for Justice and for Children response to the Commission's report. As Ombudsman for Children I am tasked with promoting and monitoring children's rights and welfare in Ireland, this includes ensuring that the State lives up to its responsibility to provide a robust and effective child protection system. My statutory powers include to give advice to Ministers on legislative change affecting children. I have already engaged with the Minister for Children and I have committed to exercising my statutory powers to provide independent advice on the development of a strong legislative and policy framework to give genuine effect to the commitment articulated today.

This report and the difficulties faced by the many thousands of children who have come to my attention, strengthen my resolve to promote a culture where children's inherent value and dignity is respected. [End]

Statement on the Report of the Commission to Inquire into Child Abuse²⁷

27 May 2009

The Report of the Commission to Inquire into Child Abuse [the Ryan Report] documents gross, systemic, and widespread violations of the rights of children placed in institutions in Ireland during the period 1936 to 2000.

As Ombudsman for Children I have a statutory role to promote and safeguard the rights of children. I pledge to exercise this role fully and to strive to overcome any obstacles that may be placed in my way. I will continue to make my Office accessible to children in all settings including prisons, hostels and care settings. My Office is here to champion their rights and best interests.

My Office is currently working on a range of initiatives and projects involving vulnerable children. These include our child death review mechanism initiative, investigation into compliance with Children First and our action projects with separated children and those in contact with the criminal justice system.

I renew my call to anyone with concerns about the way a system has handled a complaint from a child to contact my Office on **1800 202040**.

²⁶ <http://www.oco.ie/whats-new/media/press-releases/statement-by-the-ombudsman-for-children-on-the-publication-of-the-commission-of-investigation-report-into-the-diocese-of-cloyne.html>

²⁷ <http://www.oco.ie/whats-new/media/statements-and-articles/statement-on-the-report-of-the-commission-to-inquire-into-child-abuse.html>

Sixteen of the twenty recommendations set out in the report concern contemporary child protection issues.

These include:

- Independent inspections of services for children
- Setting up structures to facilitate the voice of children in care settings
- Consulting children on how to improve services
- Evaluation and review of child protection services
- Accountability for service provision and a culture of adults respecting rules
- Full implementation of Children First, the National Guidelines for the Protection and Welfare of Children

It is imperative that the implementation in full of all of the Commission's recommendations takes place as a matter of urgency. As Ombudsman for Children I have a statutory role to give advice to Ministers on matters relating to the rights and welfare of children. I will exercise this role fully in light of the recommendations of the Commission.

It is incumbent upon me to highlight the following concerns raised by my Office:

>There is currently no independent inspection of residential centres for children with intellectual disabilities in Ireland.

>Children who have come to Ireland from other countries and are here alone without any parents or adults to look out for them are accommodated in private hostels operated outside of the regular child care system. Known as 'separated children', they receive sub-standard services despite their vulnerability and it has been widely reported that over 350 of these children have gone missing from care since 2000.

>Boys aged 16 and 17 continue to be detained in St Patrick's Institution, a prison, despite the adoption of legislation in 2001 which committed the State to removing all children from the adult prison system. Conditions in St Patrick's Institution have been widely criticised by national and international bodies.

>Large numbers of children considered at risk have not been allocated a social worker.

>A significant number of schools in the country are not implementing the Stay Safe programme which aims to develop children's ability to recognise, resist and report risk situations or abusive encounters.

>We still do not have an independent child death review mechanism in Ireland. When children in the care of the State die there is no independent review of the case outside the coronial process.

Note:

The Report of the Commission to Inquire into Child Abuse [the Ryan report] documents gross, systemic, and widespread violations of the rights of children placed in institutions in Ireland during the period 1936 to 2000.

The violations include: torture, inhuman and degrading treatment or punishment; rape; sexual assault; slavery; physical assault; neglect and emotional abuse.

The Report is a shocking account of the brutal treatment of vulnerable children. For the first time, the report sets down in one place a more complete picture of what went on in institutions charged with the care of children. The scale of the abuses suffered by the children is breathtaking in terms of its severity and apparent commonality. Tragically, the report also records the very brave attempts made by some children to tell and the crushing response or deafening silence from those who should have done something to help them.

From 1936 to 1970 a total of 170,000 children were placed in approximately 50 industrial schools in Ireland. This figure represents about 1.2% of the number of children in the State during that time. The vast majority of children were committed because they were poor or otherwise 'needy'. Others were committed on criminal grounds after unfair trial processes or for not attending school.

Some children were committed at a very young age, some as young as three years of age. The average length of stay was seven years.

Nearly 14,000 survivors of abuse have been awarded payments from the Residential Institutions Redress Board and over 1,500 adults met with the Commission to have their voices heard. The pain of their experiences is unimaginable for the vast majority of us. Their courage and bravery is exceptional.

ENDS

APPENDIX 4

The Commission to Enquire into Child Abuse (the Ryan report) involves many thousands of children in residential institutions and seeks to establish the scale of abuse from 1936 – 2009.

<http://www.childabusecommission.ie/rpt/ExecSummary.php>

UN Committee against Torture recommended on 17 June 2011 about this Report:

Follow-up to the Ryan Report²⁸

20. The Committee notes the efforts made by the State party concerning the plan it had adopted in 2009 in order to implement the recommendations of the report of the Commission to Inquire into Child Abuse, known as the Ryan Report. However, the Committee is concerned that, according to a statement made by the Ombudsman for Children in March 2011, significant commitments under the plan have yet to be implemented. The Committee is also gravely concerned that despite the findings of the Ryan Report that “physical and emotional abuse and neglect were features of the institutions” and that “sexual abuse occurred in many of them, particularly boys’ institutions”, there has been no follow-up by the State party. The Committee is also concerned that, despite the extensive evidence gathered by the Commission, the State party has forwarded only 11 cases to prosecution, out of which 8 were rejected (arts. 12, 13, 14 and 16).

The Committee recommends that the State party:

(a) Indicate how it proposes to implement all the recommendations of the Commission to Inquire into Child Abuse and indicate the time frame for doing so;

(b) Institute prompt, independent and thorough investigations into all cases of abuse as found by the report and, if appropriate, prosecute and punish perpetrators;

(c) Ensure that all victims of abuse obtain redress and have an enforceable right to compensation, including the means for as full rehabilitation as possible.

[End of UN Committee against Torture report extract.]

Ryan Report

Executive Summary (Positive, as opposed to adverse, references in *italics*)

Volume I

Chapters 6 to 13 contain the reports on the Institutions owned and managed by the Congregation of the Christian Brothers. This Congregation was the largest provider of residential care for boys in the country and more allegations were made against this organisation than all of the other male Orders combined.

Chapter 6 ... This Chapter also looks at the attitude of the Congregation to allegations of abuse and the apologies it issued. These apologies acknowledged that some abuse had taken place but failed to accept any Congregational responsibility for such abuse. Finally, this chapter examines the Congregation’s engagement with this Commission which was co-operative in terms of production of documents but defensive in the way it responded to complaints.

²⁸ UN Committee against Torture Forty-sixth session 9 May-3 June 2011
Consideration of reports submitted by States parties under article 19 of the Convention
At its 1016th meeting (CAT/C/SR.1016), held on 1 June 2011, it adopted these concluding observations on Ireland
<http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.IRL.CO.1.pdf>

Chapter 7 deals with Artane Industrial School in Dublin. ... All of the witnesses who made allegations against Artane complained of physical abuse.

Paragraphs 7.312 to 7.548, investigate sexual abuse. **Many of the details of this abuse were contained in the Congregation's own records that became known as the 'Rome Files'.**

The Conclusions on sexual abuse which are outlined at Paragraph 7.549 were that sexual abuse of boys in Artane by Brothers was a chronic problem. Complaints were not handled properly and the steps taken by the Congregation to avoid scandal and publicity protected perpetrators of abuse. The safety of children was not a priority at any time during the relevant period.

Neglect and emotional abuse were also found to have been features of Artane. The numbers of children made it impossible for any child to receive an adequate standard of care.

[The National Secular Society notes that the Manager of Artane was a member of the Kennedy report Committee.]

Chapter 8 deals with another Christian Brothers' school, Letterfrack, County Galway. ...

Sexual abuse was a chronic problem.

Chapter 13 deals with the final Christian Brothers School investigated by the Committee, St Joseph's School for the Deaf, in Cabra. ... In addition, the documents revealed that physical punishment of these children continued into the mid-1990s and that staff were protected by management when physical abuse was discovered.

It is significant that the Industrial Schools owned and managed by the Christian Brothers did not keep a Punishment Book as was required by the Rules.

Chapter 14 looks at the career of a serial sexual and physical abuser, given the name of Mr John Brander, who taught children in the primary and secondary school sector in Ireland for 40 years. He was eventually convicted of sexual abuse in the 1980s.

He began his career as a Christian Brother ...At various times during his career, parents attempted to challenge his behaviour but he was persistently protected by diocesan and school authorities and moved from school to school. Complaints to the Department of Education were ignored. The Committee received a large number of complaints from individual national schools and the investigation conducted into the career of Mr Brander, apart from being shocking in itself, also illustrates the ease with which sexual predators could operate within the educational system of the State without fear of disclosure or sanction.

Chapter 15 reports on Daingean Reformatory, Co Offaly. This was the only boys' reformatory in the State for most of the relevant period and was managed by but not owned by the Oblates of Mary Immaculate.

The physical abuse of boys in Daingean was extreme. Floggings which were ritualised beatings should not have been tolerated in any institution and they were inflicted even for minor transgressions. Children who passed through Daingean were brutalised by the experience and some were damaged by it.

... The boy seeking the protection had little option but to comply with the demands of the older boy and the authorities were dismissive of any complaints.

Chapter 16 deals with Marlborough House Detention Centre in Dublin. Boys were remanded to Marlborough House either pending sentencing or whilst waiting for transfer to an Industrial School or Reformatory. The boys were left for long hours with no recreation facilities, no schooling and no proper supervision. It was managed by the Department of Education who appointed a lay supervisor to the role of Manager.

Volume II

Volume II continues the Investigation Committee Report into individual institutions and begins with an investigation into the two institutions owned and managed by the Rosminian Order.

Chapter 1 looks at the founding and organisation of the Rosminian Order and its involvement in residential care in Ireland. ... They accepted that abuse had occurred in their Institutions, that the Institutions in themselves were abusive and that the Order itself must bear responsibility for what occurred.

Chapter 2 ...Included in the documents discovered by the Rosminians ... The Order conceded that punishment was abusive and at times brutal.

The issue of sexual abuse in this institution emerged most strikingly through material that came to the Investigation Committee's attention following a search by the Order of material **in their archive in Rome**, which disclosed a considerable number of documents, 68 in all, dating from 1936 to 1968. They dealt with, among other things, 7 sexual abusers who worked in Upton. These documents provided a valuable contemporary account of how sexual abuse was dealt with.

Chapter 3 covers Ferryhouse, Clonmel, Co Tipperary, which was the second Industrial School owned and managed by the Rosminian Order. ... Order have conceded that there was excessive and severe punishment in the Institution. Complainants spoke of a climate of fear and of harsh and at times brutal punishments. ... During almost all of the period covered by the inquiry, there was at least one sexual abuser present in Ferryhouse. ... Children were underfed and badly clothed and received poor education and training.

Chapter 5 deals with Lota which was a residential school for boys with special needs run by the Brothers of Charity in Glanmire, Co Cork.

... a Brother who was known by the Congregation to have abused in England and was known to the police there, was brought back to Ireland and assigned a teaching position in Lota, where he worked for over 30 years. This Brother admitted to multiple sexual assaults of boys in the school. The circumstances of his return to Ireland and the handling of allegations against him whilst in Lota are a serious indictment of the Brothers of Charity. The Brothers have admitted that abuse took place but, as in the case of other Orders, they have not accepted Congregational responsibility for it.

Chapter 14 deals with St Joseph's Kilkenny which was founded in 1872 and catered for 130 children. *The Sisters of Charity were unique in that they sought out training and guidance in childcare and introduced innovations into their two schools in Kilkenny that were unusual at the time. In particular, they recognised the value of the group system which they introduced to St Joseph's in the late 1940s.*

In general this was a well run institution but it was dogged at two separate periods in its history by serious instances of sexual abuse and the Congregation did not deal with these appropriately or with the children's best interests in mind.

Chapters 15 and 16 are brief reviews of documentary evidence in relation to two schools that offered residential care to deaf girls: St Mary's Girls Cabra which was run by the Dominican Order of Nuns and Beechpark run by the Daughters of Liege.

In general however, the standard of care in these schools was good and particular efforts were made to ensure that the children received the best possible education.

In general, girls' schools were not as physically harsh as boys' schools and there was no persistent problem of sexual abuse in girls' schools although there was at best naiveté and at worst indifference in the way girls were sent out to foster families. A number of girls did experience sexual abuse at the hands of 'godfathers' which they were either unable to report or were disbelieved when they did report it.

There was a high level of emotional abuse in girls' schools, which was a consistent feature of these institutions.

Volume III

Confidential Committee Report

Chapters 7, 9 and 13 to 18 set out the Confidential Committee abuse reports.

Witnesses reported being physically, sexually and emotionally abused, and neglected by religious and lay adults who had responsibility for their care, and by others in the absence of adequate care and supervision. Many of the 216 named settings were the subject of repeated reports of abuse. In excess of 800 individuals were identified as physically and/or sexually abusing the witnesses as children in those settings. Neglect and emotional abuse were often described as endemic within institutions where there was a systemic failure to provide for children's safety and welfare.

Witnesses gave evidence of abuse they directly experienced and also of abuse to others which they witnessed. A number of witnesses stated that they wished to report abuse in senior schools only as they had general but no detailed recall of abuse in their junior schools. Other witnesses wished only to report memories of extreme abuse.

Physical abuse

More than 90% of all witnesses who gave evidence to the Confidential Committee reported being physically abused while in schools or out-of-home care. Physical abuse was a component of the vast majority of abuse reported in all decades and institutions and witnesses described pervasive abuse as part of their daily lives. They frequently described casual, random physical abuse but many wished to report only the times when the frequency and severity were such that they were injured or in fear for their lives. In addition to being hit and beaten, witnesses described other forms of abuse such as being flogged, kicked and otherwise physically assaulted, scalded, burned and held under water. Witnesses reported being beaten in front of other staff, residents, patients and pupils as well as in private. Physical abuse was reported to have been perpetrated by religious and lay staff, older residents and others who were associated with the schools and institutions. There were many reports of injuries as a result of physical abuse, including broken bones, lacerations and bruising.

Sexual abuse

Sexual abuse was reported by approximately half of all the Confidential Committee witnesses. Acute and chronic contact and non-contact sexual abuse was reported, including vaginal and anal rape, molestation and voyeurism in both isolated assaults and on a regular basis over long periods of time. The secret nature of sexual abuse was repeatedly emphasised as facilitating its occurrence. Witnesses reported being sexually abused by religious and lay staff in the schools and institutions and by co-residents and others, including professionals, both within and external to the institutions. They also reported being sexually abused by members of the general public, including volunteer workers, visitors, work placement employers, foster parents, and others who had unsupervised contact with residents in the course of everyday activities. Witnesses reported being sexually abused when they were taken away for excursions, holidays or to work for others. Some witnesses who disclosed sexual abuse were subjected to severe reproach by those who had responsibility for their care and protection. Female witnesses in particular described, at times, being told they were responsible for the sexual abuse they experienced, by both their abuser and those to whom they disclosed abuse.

Neglect

Neglect was frequently described by witnesses in the context of physical, sexual and emotional abuse in addition to accounts of inadequate heating, food, clothing and personal care. Neglect of a child's care and welfare occurred both by actions and inactions by those who had a responsibility and a duty of care to protect and nurture them. Witnesses reported that the failure to provide for their safety, education, development and aftercare had implications for their health, employment, social and economic status in later life. The neglect reported by witnesses referred to the actions and omissions of individual staff and the organisations within which they operated. Untreated injuries and medical conditions were reported to have caused permanent impairment.

Emotional abuse

Emotional abuse was reported by witnesses in the form of lack of attachment and affection, loss of identity, deprivation of family contact, humiliation, constant criticism, personal denigration, exposure to fear and the threat of harm. A frequently identified area of emotional abuse was the separation from siblings and loss of family contact. Witnesses were incorrectly told their parents were dead and were given false information about their siblings and family members. Many witnesses recalled the devastating emotional impact and feeling of powerlessness associated with observing their co-residents, siblings or others being abused. This trauma was acute for those who were forced to participate in such incidents. Witnesses believed emotional abuse contributed to difficulties in their social, psychological and physical well-being at the time and in the subsequent course of their lives.

Knowledge and disclosure

Parents, relatives and others knew that children were being abused as a result of disclosures and their observation of marks and injuries. Witnesses 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, Gardai, 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.

Contemporary complaints were made to the School authorities, the Gardaí, the Department of Education, Health Boards, priests of the parish and others by witnesses, their parents and relatives. Witnesses reported that at times protective action was taken following complaints being made. In other instances complaints were ignored, witnesses were punished, or pressure was brought to bear on the child and family to deny the complaint and/or to remain silent. Witnesses reported that their sense of shame, the power of the abuser, the culture of secrecy and isolation and the fear of physical punishment inhibited them in disclosing abuse.

Children with special needs

Children with learning disability, physical and sensory impairments and children who had no known family contact were especially vulnerable in institutional settings. They described being powerless against adults who abused them, especially when those adults were in positions of authority and trust. Impaired mobility and communication deficits made it impossible to inform others of their abuse or to resist it. Children who were unable to hear, see, speak, move or adequately express themselves were at a complete disadvantage in environments that did not recognise or facilitate their right to be heard.

Chapter 11 and Sections of Chapters 13 to 18 deal with the effects of abuse on later life. ...

Approximately 30% of the witnesses described a constellation of ongoing, debilitating mental health concerns for example; suicidal behaviour, depression, alcohol and substance abuse and eating disorders, which required treatment including psychiatric admission, medication and counselling. ... 70% of witnesses received no second-level education and, while many witnesses reported having successful careers in business and professional fields, the majority of witnesses seen by the Committee reported being in manual and unskilled occupations for their entire working lives.

In conclusion, the Confidential Committee heard evidence that children were severely abused and neglected by those with responsibility for their safety and welfare. Those in care without family contact and with special needs were most at risk. Witnesses reported that the abuse experienced in childhood had an enduring impact on their lives.

Volume IV

Chapter 1 The Department of Education

... The officials were aware that abuse occurred in the Schools and they knew the education was inadequate and the industrial training was outdated.

The Department of Education should have exercised more of its ample legal powers over the Schools in the interests of the children. ...

The failures by the Department that are catalogued in the chapters on the schools can also be seen as tacit acknowledgment by the State of the ascendancy of the Congregations and their ownership of the system. The Departments' Secretary General, at a public hearing, told the Investigation Committee that the Department had shown a 'very significant deference' towards the religious Congregations. This deference impeded change, and it took an independent intervention in the form of the Kennedy Report in 1970 to dismantle a long out-dated system.

Conclusions

1. Physical and emotional abuse and neglect were features of the institutions. Sexual abuse occurred in many of them, particularly boys' institutions. Schools were run in a severe, regimented manner that imposed unreasonable and oppressive discipline on children and even on staff.

3. The deferential and submissive attitude of the Department of Education towards the Congregations compromised its ability to carry out its statutory duty of inspection and monitoring of the schools. The Reformatory and Industrial Schools Section of the Department was accorded a low status within the Department and generally saw itself as facilitating the Congregations and the Resident Managers.

Physical abuse

9. The Rules and Regulations governing the use of corporal punishment were disregarded with the knowledge of the Department of Education.

13. Complaints by parents and others made to the Department were not properly investigated.

Sexual abuse

18. Sexual abuse was endemic in boys' institutions. ...

19. ... Perpetrators of abuse were able to operate undetected for long periods at the core of institutions.

20. ... When a member of a Congregation was found to be abusing, it was dealt with internally and was not reported to the Gardaí.

21. The recidivist nature of sexual abuse was known to religious authorities. ...

22. When confronted with evidence of sexual abuse, the response of the religious authorities was to transfer the offender to another location where, in many instances, he was free to abuse again. Permitting an offender to obtain dispensation from vows often enabled him to continue working as a lay teacher. ...

23. Sexual abuse was known to religious authorities to be a persistent problem in male religious organisations throughout the relevant period. ...

24. In the exceptional circumstances where opportunities for disclosing abuse arose, the number of sexual abusers identified increased significantly. ...

26. In general, male religious Congregations were not prepared to accept their responsibility for the sexual abuse that their members perpetrated. ...

29. Sexual abuse by members of religious Orders was seldom brought to the attention of the Department of Education by religious authorities because of a culture of silence about the issue.

...

Emotional abuse

43. The Confidential Committee heard evidence in relation to 161 settings other than Industrial and Reformatory Schools, including primary and second-level schools, Children's Homes, foster care, hospitals and services for children with special needs, hostels, and other residential settings. The majority of witnesses reported abuse and neglect, in some instances up to the year 2000. Many common features emerged about failures of care and protection of children in all of these institutions and services.

Recommendations

3. The lessons of the past should be learned.

The Congregations need to examine how their ideals became debased by systemic abuse. They must ask themselves how they came to tolerate breaches of their own rules and, when sexual and physical abuse was discovered, how they responded to it, and to those who perpetrated it. They must examine their attitude to neglect and emotional abuse and, more generally, how the interests of the institutions and the Congregations came to be placed ahead those of the children who were in their care.

An important aspect of this process of exploration, acceptance and understanding by the State and the Congregations is the acknowledgement of the fact that the system failed the children, not just that children were abused because occasional individual lapses occurred.

NSS comment

We are shocked that this catalogue of persistent abuse, as far as we know unprecedented in peacetime since the Charter's inception, should be concluded only with a "need to reflect and try harder" reminiscent of remonstrations to a recalcitrant but promising child. How much worse would the abuse have needed to be for the Report to have concluded by recommending: cessation of state contracts/endorsement, individual and corporate damages; individual criminal responsibility, corporate criminal negligence – and much stronger legislative and constitutional controls?

APPENDIX 5

Dublin Archdiocese Commission of Investigation (the Murphy report) which examined a representative sample of complaints of clerical abuse between 1975 and 2004 and the church and state response thereto. At least one further report is expected, but reports have routinely been delayed because of objections from named persons, and concerns references may prejudice trials.

<http://www.justice.ie/en/JELR/Part%201.pdf/Files/Part%201.pdf>

Short extracts:

1.7 Child sexual abuse by clerics was widespread throughout [1975-2004]

1.9 Even the reported abuse is a miniscule relative to that perpetrated. One priest admitted abusing over 100 children [presumably some multiple times], another ... fortnightly ... over 25 years.

1.13 [Significant proportions of priests still alive against whom credible complaints have been made continue to be supported financially by the Church, or live within their orders, some even without restrictions.

1.14 ... Officials of the Archdiocese of Dublin and other Church authorities have repeatedly claimed to have been, prior to the late 1990s, on “a learning curve” in relation to the matter. Having completed its investigation, the Commission does not accept the truth of such claims and assertions.

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

1.16 In particular, the Commission is satisfied that all complaints of clerical child sexual abuse made to the Archdiocese and other Church authorities are now reported to the Gardaí. There is no legal requirement for such reporting but the Commission considers that the Gardaí are the appropriate people to deal with complaints. While acknowledging that the current archdiocesan structures and procedures are working well, the Commission is concerned that those structures and procedures are heavily dependent on the commitment and effectiveness of two people – the Archbishop and the Director of the Child Protection Service. The current Archbishop and Director are clearly committed and effective but institutional structures need to be sufficiently embedded to ensure that they survive uncommitted or ineffective personnel.

1.19 ... many of the complaints described in this report first came to the attention of the Archdiocese in the 1970s and 1980s

1.20 In 1981, Archbishop Ryan showed a clear understanding of both the recidivist nature of child sexual abusers and the effects of such abuse on children

1.21 The taking out of insurance [first enquiries made in mid 1980s, per 1.20] was an act proving knowledge of child sexual abuse as a potential major cost to the Archdiocese and is inconsistent with the view that Archdiocesan officials were still “on a learning curve” at a much later date, or were lacking in an appreciation of the phenomenon of clerical child sex abuse.

1.23 it was not until late 1995 that officials of the Archdiocese first began to notify the civil authorities of complaints of clerical child sexual abuse. In this context it is significant, in the Commission’s view, that every bishop’s primary loyalty is to the Church itself. At his consecration every bishop, as well as making a profession of faith, must take an oath of fidelity to the Apostolic See.

1.24 The vast majority [of priests] simply chose to turn a blind eye.

1.26 **Only two canonical trials took place over the 30-year period.** Both were at the instigation of Archbishop Connell and the Commission gives him credit for initiating the two penal processes which led to the dismissal of Fr Bill Carney in 1990 . The Commission recognises that he did this in the face of strong opposition from one of the most powerful canonists in the Archdiocese, Monsignor Sheehy.

Monsignor Sheehy, who had very extensive knowledge of canon and civil law and argued strongly that canon law was capable of dealing with all cases involving allegations of child sexual abuse, actually considered that the penal aspects of that law should rarely be invoked.

1.27 Most officials in the Archdiocese were, however, greatly exercised by the provisions of canon law which deal with secrecy. It was often spoken of as a reason for not informing the Gardaí about known criminal offences.

1.30 The Commission is satisfied that Church law demanded serious penalties for clerics who abused children. In Dublin from the 1970s onwards this was ignored; the highest priority was the protection of the reputation of the institution and the reputation of priests. The moving around of offending clerics with little or no disclosure of their past is illustrative of this.

1.33 Complainants, too, were required by canon law to observe secrecy in their dealings with the Church.

1.35 There was little or no concern for the welfare of the abused child or for the welfare of other children who might come into contact with the priest. Complainants were often met with denial, arrogance and cover-up and with incompetence and incomprehension in some cases.

1.36 All the Archbishops and many of the auxiliary bishops in the period covered by the Commission handled child sexual abuse complaints badly. ... [c.f. 1.110]

1.71 The Commission is very concerned at the fact that, in some cases, full information was not given to the professionals or the treatment facility about the priest's history. This inevitably resulted in useless reports. Nevertheless, these reports were sometimes used as an excuse to allow priests back to unsupervised ministry.

1.83 The requirements of the *Sex Offenders Act 2001* (see Appendix 2) do not mean that there is any real supervision.

1.99 The Commission notes that there was an extraordinary delay in introducing child protection legislation. The need for new legislation was clearly recognised in the early 1970s but it was not actually passed until 1991 and not fully implemented until 1996. That new legislation, the *Child Care Act 1991*, does not sufficiently clarify the powers and duties of the health authorities.

1.100 The primary responsibility for child protection must rest with the State. In enforcing child protection rules and practices, organisations such as the Church cannot be equal partners with the state institutions such as the Gardaí and health authorities. The Church can certainly work in co-operation with the State authorities in promoting child welfare and protection as, for example, the sports bodies do, but it must be remembered that it is not an agency with equal standing.

1.110 The conclusion reached by the Attorney General in Massachusetts was that: "*The widespread sexual abuse of children in the Archdiocese of Boston was due to an institutional acceptance of abuse and a massive and pervasive failure of leadership. For at least six decades, three successive Archbishops, Bishops and others in positions of authority within the Archdiocese operated with tragically misguided priorities. They chose to protect the image and reputation of their institution rather than the safety and well being of the children entrusted to their care. They acted with misguided devotion to secrecy*

1.113 [Conclusion] ... The State authorities facilitated the cover up by not fulfilling their responsibilities to ensure that the law was applied equally to all and allowing the Church institutions to be beyond the reach of the normal law enforcement processes. The welfare of children, which should have been the first priority, was not even a factor to be considered in the early stages. Instead the focus was on the avoidance of scandal and the preservation of the good name, status and assets of the institution and of what the institution regarded as its most important members – the priests. ...

APPENDIX 6

Amnesty International Annual Reports 2010 and 2011

Children's rights (2011 Report) <http://www.amnesty.org/en/region/ireland/report-2011>

The government failed to implement a number of commitments it made in 2009 following the report of the Commission to Inquire into Child Abuse. This included a failure to introduce draft legislation to give child protection guidelines a statutory basis.

In February, the all-party Oireachtas (parliament) Joint Committee on the Constitutional Amendment on Children proposed a new constitutional provision on children's rights. However, the government did not schedule the required referendum in 2010 as promised.

Children's rights (2010 Report) http://thereport.amnesty.org/sites/default/files/AIR2010_EN.pdf

In May, the report of the Commission to Inquire into Child Abuse (Ryan report) outlined the physical, emotional and sexual abuse of over 30,000 children between 1936 and 2000 placed by the state in institutions operated by Catholic religious orders. It found that the Department of Education, health boards and religious orders failed to protect children or to investigate complaints. In July, the government gave commitments to implement the Commission's recommendations, including by providing reparation to abuse survivors and addressing serious gaps in current child protection and care systems.

A report by the Dublin Archdiocese Commission of Investigation (Murphy report) into the handling of clerical child sexual abuse in the Archdiocese of Dublin between 1975 and 2004 was published in November. It found that hundreds of abuse cases were covered up by the church and state authorities, including the police.

A referendum on the incorporation of children's rights in the Constitution was further delayed.

2011 Report – Vatican <http://www.amnesty.org/en/region/vatican/report-2011>

The Holy See did not sufficiently comply with its international obligations relating to the protection of children.

Children's rights – response to child abuse

Increasing evidence of widespread child sexual abuse committed by members of the clergy over the past decades, and of the enduring failure of the Catholic Church to address these crimes properly, continued to emerge in various countries. Such failures included not removing alleged perpetrators from their posts pending proper investigations, not co-operating with judicial authorities to bring them to justice and not ensuring proper reparation to victims.

.... In March, in a letter to the Catholics of Ireland, the Pope admitted that "a misplaced concern for the reputation of the Church and the avoidance of scandals" had resulted in the "failure to apply existing canonical penalties and to safeguard the dignity of every person". He exhorted bishops to fully implement the norms of canon law when addressing child abuse and "to continue to cooperate with the civil authorities in their area of competence".

Amendments to the canon law promulgated in May introduced the "delicts" of paedophile pornography and abuse of mentally disabled people; the maximum punishment for these "delicts" is dismissal or deposition. **Canon law does not include an obligation for Church authorities to report cases to civil authorities for criminal investigation. Secrecy is mandatory throughout the proceedings.**

In November, Holy See representatives conducted an “apostolic visitation” to Ireland, to verify “the effectiveness of processes used in responding to cases of abuse and of forms of assistance provided to the victims”. Results of the visit were due to be announced in 2011.

APPENDIX 7

Magdalene Laundries

Magdalene Laundries were forced labour camps/prisons, most of whose inmates were referred by civil authorities and upkeep for many of the inmates was paid for by the State. The last laundry only ceased operating as a commercial laundry on 25 October 1996. It is believed that this closure resulted directly from the publicity following the discovery of 155 bodies in a mass grave in land sold off by the laundry²⁹

The UN Committee Against Torture wrote on 17 June 2011:

“Magdalene Laundries

“21. The Committee is gravely concerned at the failure by the State party to protect girls and women who were involuntarily confined between 1922 and 1996 in the Magdalene Laundries, by failing to regulate their operations and inspect them, where it is alleged that physical, emotional abuses and other ill-treatment were committed amounting to breaches of the Convention. The Committee is also expresses grave concern at the failure by the State party to institute prompt, independent and thorough investigation into the allegations of ill-treatment perpetrated on girls and women in the Magdalene Laundries. (articles 2, 12, 13, 14 and 16)

“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.”³⁰

Assessment of the Human Rights Issues Arising in relation to the “Magdalene Laundries” November 2010, by the Irish Human Rights Commission (IHRC)..

http://www.ihrc.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdalen_laundries_nov_2010.pdf

Following the IHRC extracts are references to the Magdalene Laundries in the Kennedy Report, 1970

Short extracts of IHRC report

Para 30. (quoting the 1970 “Kennedy” report, relevant section reproduced on next page): “A Number of [girls] considered by parents, relatives, social workers, Welfare Officers, Clergy or Gardaí to be in moral danger or uncontrollable are also accepted in these convents [Magdalene Laundries] for a period on a voluntary basis. From enquiries made, the Committee is satisfied that there are at least 70 girls between the ages of 13 and 19 years confined in this way who should properly be dealt with under the Reformatory Schools’ system.”

Conclusion 1 These laundries were run by Religious Orders, mostly Roman Catholic.

Conclusion 5 The treatment of these women and girls by the Religious Orders appears to have been harsh. They were reputedly forced to work long hours. Their names were often changed to a religious name, they were isolated from society and the girls were allegedly denied educational opportunities. The then Minister for Education and Science told the Oireachtas in 2001 that this treatment was abuse, that it involved an appalling breach of trust and that the victims suffered and continued to suffer.

²⁹ <http://www.irishtimes.com/newspaper/frontpage/2003/0821/1061416443861.html> Irish Times 8 August 2003

³⁰ UN Committee against Torture Forty-sixth session 9 May-3 June 2011

Consideration of reports submitted by States parties under article 19 of the Convention

At its 1016th meeting (CAT/C/SR.1016), held on 1 June 2011, it adopted these concluding observations on Ireland <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.IRL.CO.1.pdf>

Conclusion 8 The State may have breached its obligations on forced or compulsory labour under the 1930 Forced Labour Convention from March 1931 and under the ECHR from 1953 in a) not suppressing/outlawing the practice in laundries particularly regarding women and girls in fear of penalty if they refused to work and b) in engaging in commercial trade with the convents for goods produced as a result of such forced labour.

Conclusion 9 The State may have breached its obligations to ensure that no one is held in servitude insofar as some women or girls in the laundries may have been held in conditions of servitude after the State assumed obligations under Article 4 of the ECHR in 1953.

Para 92 The IHRC is of the view that the current regime applying to the provision of information to adopted persons, including the children of women who resided in the Magdalen Laundries may not fully vindicate their rights under the Constitution, the ECHR, and in the case of children, their rights under the Convention on the Rights of the Child.

108. However the IHRC decided in tandem with exercising its power under Section 9(1)(b) of the Human Rights Commission Act 2000 to refuse the enquiry request, that it would simultaneously exercise its functions under Sections 8(a) and 8(d) of the Human Rights Commission Act 2000 to review the law and practice in the area and to make the following recommendation to Government, in view of the serious human rights issues highlighted in its assessment.

[Concluding] Recommendation [about Magdalene Laundries victims being denied state compensation on the spurious grounds that the Laundries were not state institutions]: That in light of its foregoing assessment of the human rights arising in this Enquiry request and in the absence of the Residential Institutions Redress Scheme including within its terms of reference the treatment of persons in laundries including Magdalene Laundries, other than those children transferred there from other institutions; that a statutory mechanism be established to investigate the matters advanced by [Justice for Magdalenes] and in appropriate cases to grant redress where warranted.

Such a mechanism should first examine the extent of the State's involvement in and responsibility for:

- The girls and women entering the laundries
- The conditions in the laundries
- The manner in which girls and women left the laundries [following major doubt as to if/when inmates (including nominally voluntary ones) were free to leave, and when]
- End-of life issues for those who remained. [involving deaths even past 2000]

In the event of State involvement/responsibility being established, that the statutory mechanism then advance to conducting a larger-scale review of what occurred, the reasons for the occurrence, the human rights implications and the redress which should be considered, in full consultation with ex-residents and supporters' groups.

Kennedy Report (only recognised version)

www.secularism.org.uk/uploads/KennedyReport.html

REFORMATORY AND INDUSTRIAL SCHOOLS SYSTEMS REPORT 1970
("KENNEDY" REPORT) Published by [Irish] Stationery Office

Extract (TEXT RECOGNISED FROM ORIGINAL REPORT)

Girls' Reformatories

6.17 The number of girls detained in the two girls' reformatories is small-only 20 on a recent date. The number fluctuates, however, the average number over the five years 1964 to 1969 being 26. During this period the maximum number detained at any one time was 43, the minimum 17. Not all of these had been committed by the courts, about 15% of those detained being voluntary cases who had been admitted at the request of relatives, clergy or Health Authorities. The small numbers are partly due, however, to the fact already adverted to, that certain types of girl offenders are not accepted in these schools. The courts are faced with a difficulty in dealing with such girls.

6.18 In some cases, these girls are placed on probation with a requirement that they reside for a time in one of several convents which accept them: in other cases they are placed on remand from the courts. A number of others considered by parents, relatives, social workers, Welfare Officers, Clergy or Gardai to be in moral danger or uncontrollable are also accepted in these convents for a period on a voluntary basis. From enquiries made, the Committee is satisfied that there are at least 70 girls between the ages of 13 and 19 years confined in this way who should properly be dealt with under the Reformatory Schools' system.

This method of voluntary arrangement for placement can be criticised on a number of grounds. It is a haphazard system, its legal validity is doubtful and the girls admitted in this irregular way and not being aware of their rights, may remain for long periods and become, in the process, unfit for re-emergence into society. In the past, many girls have been taken into these convents and remained there all their lives. A girl going into one of these institutions may find herself in the company of older, more experienced and more depraved women who are likely to have a corrupting influence on her. In most cases the nuns running these institutions have neither the training nor the resources to enable them to rehabilitate these girls and to deal with the problem. It is accepted, however, that in one institution the handling of this problem is professional and practical because of the existence of trained staff.

No State grants are payable for the maintenance of those in voluntary Magdalen institutions (except in remand cases in respect of whom 7/- per day is paid).

There are generally no proper facilities for the education of these girls many of whom are thought to be retarded; there is a lack of qualified and specialist teachers and the training provided is not geared to getting the girls back into society as quickly as possible as useful citizens. It was noted that as no State grants are made for these purposes there is, consequently, no State control or right of inspection of these institutions.

6.19 The principal form of unacceptable social behaviour which had led to the admission of the girls has been their involvement in prostitution. The great difficulty of rehabilitation and the ease with which the girls slip back into this activity appears to us to be the principal reason for the chronicity which we have detected in these institutions.

6.20 It has come to the notice of the Committee that, owing to the lack of aftercare, some former pupils of Reformatories and Industrial Schools become involved in prostitution on leaving the institution.

The existence of this problem further underlines the inadequacy of the personality formation, social and occupational preparation of these girls prior to their release from these schools. Remedial measures are hampered by the fact that the younger girls involved in this practice are seldom accepted by Girls' Reformatory Schools and that girls who agree in court to go to St. Brendan's Psychiatric Hospital, almost always discharge themselves after a few days. In the case of finding by the court we have been informed that the practice of the girls is to obtain the money to pay the fine by further prostitution. This is obviously a problem requiring immediate full investigation and attention. The girls concerned would not all be suitable for inclusion within a Reformatory School system and there is a necessity for the establishment of homes where their difficulties could be tackled.

6.21 It is, therefore, recommended that a closed psychiatric home for the treatment of teenage girls should be provided as a matter of urgency.

The voluntary bodies at present dealing with prostitution should be helped by the State and local authorities with finance and expertise. Hostels and job-training for these girls should be provided as a joint effort by the voluntary bodies and local authorities. **[End of Section on Magalen[E] Laundries.]**

We note a reference to similar activities in the RC Church in Germany³¹:

15. At the beginning of 2009, the Round Table on Children in Residential Care (*Runder Tisch Heimerziehung*) took up its work, after having been instituted by the German parliament (*Bundestag*) with the aim of investigating the abuse of children, both girls and boys, placed in state and church-run children's homes in the 1950s and the 1960s. The first investigations of this Round Table have shown that out of the 700,000 to 800,000 children living in children's homes, many were subjected to violence, emotional mistreatment and sometimes sexual abuse, and, as they grew older, were forced to work hard without payment in various places such as farms, laundries, sewing rooms or even factories. The extent of the problem has become evident through personal statements of numerous victims. It shows that

³¹ <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12358.htm>

Germany is not facing a few single cases of abuse or an issue linked to the educational spirit of the time, but a problem of systematic child abuse to which children and adolescents “were delivered in rigid, violent and factually and psychologically closed systems without the possibility of getting away from them or ... of complaining to some instance”. In her intermediate statement, the Chairperson of the Round Table, Ms Antje Vollmer, former Vice-President of the *Bundestag*, also stated that there was a “chain of responsibilities” from which no one involved at the time can be absolved today.¹¹

Irish Church's Forgotten Victims Take Case to U.N.

Published in New York Times: May 25, 2011³² written by CAROL RYAN

DUBLIN — For years, it was Ireland's hidden scandal: an estimated 30,000 women were sent to church-run laundries, where they were abused and worked for years with no pay. Their offense, in the eyes of society, was to break the strict sexual rules of Catholic Ireland, having children outside wedlock.

Although it has been over a decade since their story came to light, the women are still waiting for an apology, and possibly compensation.

Now, an advocacy group, Justice for Magdalenes, which has spent the last two years lobbying the Irish government to investigate the history of the laundries, is taking the case to the United Nations, alleging the abuse amounted to human rights violations, and hoping that an official rebuke from the international body will shame the government into action.

“We don’t take any pleasure in embarrassing the government in this way but we have worked the domestic structure as far as we can and still the government has done nothing,” said James Smith of Boston College, a spokesman for Justice for Magdalenes.

The United Nations is examining Ireland’s human rights record this week as part of the Universal Periodic Review, a review of the human rights records of all 192 member states. The U.N. Committee Against Torture invited Justice for Magdalenes to make a statement in Geneva after reading their submission about the alleged abuses in the laundries.

Maeve O’Rourke, a Harvard Law School human rights fellow, presented the Magdalenes’ case last Friday. She told the committee that the Irish government’s failure to deal with the abuse amounted to continuing degrading treatment in violation of the Convention Against Torture. She also said the state had failed to promptly investigate “a more than 70-year system of torture or cruel, inhuman or degrading treatment of women and girls in Ireland’s Magdalene laundries.”

The story of the Magdalene women was uncovered in 1993 when a religious order in Dublin cashed in on the booming Irish property market and sold a portion of its land to a developer. The bodies of 155 women who had died in the laundry were exhumed from unmarked graves and the media began to ask questions. The story went made international headlines with the release of Peter Mullan’s 2002 film “The Magdalene Sisters.”

Until recently, the Catholic Church was the ultimate moral authority in Ireland, and it promoted strict rules on sex. In this climate, the shame of giving birth to an illegitimate child was so great that many unmarried mothers were rejected by their families. They were taken out of “decent society” and put into Magdalene laundries by members of the clergy, government institutions and their own families.

The Magdalene laundries were a network of profit-making workhouses run by four religious communities — the Sisters of Mercy, the Sisters of Charity, the Good Shepherd Sisters and the Sisters of Our Lady of Charity. Named after the Bible’s redeemed prostitute Mary Magdalene, they were initially used to reform prostitutes. By the 1940s, however, most of the residents, or “penitents” as they were called, were young women who had sex outside of marriage (in some cases victims of rape), unmarried mothers, women deemed flirtatious and the mentally disabled.

³² http://www.nytimes.com/2011/05/25/world/europe/25iht-abuse25.html?_r=4

Magdalene women worked long hours, typically seven days a week, without pay. There have been accounts of the harsh conditions the women endured, including allegations of mental, physical and, in some cases, sexual abuse. Many lived and died behind convent walls until the last laundry closed in 1996. Today's Magdalene women are in their 70s or 80s.

Victims of the child sex abuse scandals that have rocked the Irish Catholic Church have received an apology and compensation, but no one has taken responsibility for what happened in the laundries. Cardinal Sean Brady, the most senior Catholic cleric in Ireland, met with Justice for Magdalenes in 2010. He said "by today's standards much of what happened at that time is difficult to comprehend" but that it was a matter for the religious orders who ran the laundries to deal with. The religious orders have declined to meet the women.

The Irish government acknowledged as far back as 2001 that the Magdalene women were victims of abuse but says that because the laundries were privately run, they are outside its remit. It has resisted numerous calls for a statutory inquiry, the latest from the Irish Human Rights Commission in November 2010. The government also rejected proposals for compensation, saying that the state "did not refer individuals, nor was it complicit in referring individuals to the laundries."

However, there is evidence that the state was involved. The Irish courts routinely sent women who were handed down a suspended sentence for petty crimes to the laundries, which operated as a kind of parallel detention system.

Public records show the government also awarded lucrative contracts to the nuns for its army and hospital laundry without ever insisting on fair wages for the "workers," nor did it inspect conditions inside.

Testimony from Magdalene women claim that state employees like the Irish police force and social workers brought women to the laundries and returned those who had escaped.

There is widespread public support for the Magdalene women's requests for an apology, compensation, a statutory pension reflecting their years of work in the laundries and access to their records.

Mr. Smith and his colleagues at Justice for Magdalenes said they hoped that the U.N. would persuade the Irish government to act. They said elderly survivors needed justice sooner rather than later.

"I have always described them as Ireland's disappeared," he said. "They were edited out in the past and unfortunately the government seems to want to forget them in the present. But we won't let that happen."

APPENDIX 8

TEXT OF LETTER OF JANUARY 31, 1997 FROM THE APOSTOLIC NUNCIATURE IN IRELAND TO THE IRISH EPISCOPAL CONFERENCE AND THEIR DIOCESES:

SOURCE <http://sexualityinart.files.wordpress.com/2011/01/vatican-letter-1997-warning-ireland-catholic-bishops-not-to-report-all-suspected-child-abuse-cases-to-police.jpg>

In lower resolution at <http://www.guardian.co.uk/world/2011/jan/18/vatican-irish-bishops-child-abuse>

(Text below followed by facsimile image of letter.)

Apostolic Nunciature In Ireland

N. 808/97

Dublin, 31 January 1997

Strictly Confidential

Your Excellency,

The Congregation for the Clergy has attentively studied the complex question of sexual abuse of minors by clerics and the document entitled "Child Sexual Abuse: Framework for a Church Response", published by the Irish Catholic Bishops' Advisory Committee.

The Congregation wishes to emphasize the need for this document to conform to the canonical norms presently in force.

The text, however, contains "procedures and dispositions which appear contrary to canonical discipline and which, if applied, could invalidate the acts of the same Bishops who are attempting to put a stop to these problems. If such procedures were to be followed by the Bishops and there were cases of eventual hierarchical recourse lodged at the Holy See, the results could be highly embarrassing and detrimental to those same Diocesan authorities.

In particular, the situation of 'mandatory reporting' gives rise to serious reservations of both a moral and a canonical nature".

Since the policies on sexual abuse in the English speaking world exhibit many of the same characteristics and procedures, the Congregation is involved in a global study of them. At the appropriate time, with the collaboration of the interested Episcopal Conferences and in dialogue with them, the Congregation will not be remiss in establishing some concrete directives with regard to these Policies.

To: the Members of the Irish Episcopal Conference – their Dioceses.

- 2 -

For these reasons and because the abovementioned text is not an official document of the Episcopal Conference but merely a study document, I am directed to inform the individual Bishops of Ireland of the preoccupations of the Congregation in its regard, underlining that in the sad cases of accusations of sexual abuse by clerics, the procedures established by the Code of Canon Law must be meticulously followed under pain of invalidity of the acts involved if the priest so punished were to make hierarchical recourse against his Bishop.

Asking you to kindly let me know of the safe receipt of this letter and with the assurance of my cordial regard, I am [sic]

Yours sincerely in Christ,

+Luciano Storero,

Apostolic Nuncio.

Dublin, 31 January 1997

Strictly confidential

Your Excellency,

The Congregation for the Clergy has attentively studied the complex question of sexual abuse of minors by clerics and the document entitled "Child Sexual Abuse : Framework for a Church Response", published by the Irish Catholic Bishops' Advisory Committee.

The Congregation wishes to emphasize the need for this document to conform to the canonical norms presently in force.

The text, however, contains "procedures and dispositions which appear contrary to canonical discipline and which, if applied, could invalidate the acts of the same Bishops who are attempting to put a stop to these problems. If such procedures were to be followed by the Bishops and there were cases of eventual hierarchical recourse lodged at the Holy See, the results could be highly embarrassing and detrimental to those same Diocesan authorities.

In particular, the situation of 'mandatory reporting' gives rise to serious reservations of both a moral and a canonical nature".

Since the policies on sexual abuse in the English speaking world exhibit many of the same characteristics and procedures, the Congregation is involved in a global study of them. At the appropriate time, with the collaboration of the interested Episcopal Conferences and in dialogue with them, the Congregation will not be remiss in establishing some concrete directives with regard to these Policies.

To: the Members of the Irish Episcopal Conference
- their Dioceses

- 2 -

For these reasons and because the abovementioned text is not an official document of the Episcopal Conference but merely a study document, I am directed to inform the individual Bishops of Ireland of the preoccupations of the Congregation in its regard, underlining that in the sad cases of accusations of sexual abuse by clerics, the procedures established by the Code of Canon Law must be meticulously followed under pain of invalidity of the acts involved if the priest so punished were to make hierarchical recourse against his Bishop.

Asking you to kindly let me know of the safe receipt of this letter and with the assurance of my cordial regard, I am

Yours sincerely in Christ,

+ Luciano Storero
Apostolic Nuncio

APPENDIX 9

Murphy requests 'offended' Vatican

<http://www.irishtimes.com/newspaper/breaking/2010/1211/breaking3.html>

December 11, 2010, 08:56 PATSY McGARRY Religious Affairs Correspondent irishtimes.com

Requests for information from the Murphy Commission “offended many in the Vatican” who felt that the Irish government had “failed to respect and protect Vatican sovereignty during the (Commission) investigations”, US embassy cables released by WikiLeaks have disclosed.

A cable entitled “Sex abuse scandal strains Irish-Vatican relations, shakes up Irish church, and poses challenges for the Holy See” claimed that Vatican officials also believed Irish opposition politicians were making political hay from the situation by publicly urging the government to demand a reply from the Vatican following publication of the Murphy report in November 2009.

In September 2006 the Murphy Commission, which was investigating the handling of clerical child sex abuse allegations in the Dublin archdiocese between 1975 and 2004, wrote to the Vatican’s Congregation for the Doctrine of the Faith seeking information on reports of clerical child sex abuse sent to it by Dublin archdiocese over the period.

It also sought information on the Church document ‘Crimen Sollicitationis’, which deals with clerical sex abuse.

The congregation did not reply.

Similar requests by the Commission to the papal nuncio in Dublin were also ignored.

Instead, then Vatican secretary of state, Cardinal Tarcisio Bertone, wrote to the Irish embassy, advising that any requests related to the investigation should come through diplomatic channels.

According to the cable Irish ambassador to the Holy See Noel Fahey told the US diplomat Julieta Valls Noyes that this was the most difficult crisis he had ever managed.

The Irish government wanted “to be seen as co-operating with the (Murphy) investigation” because its own education department was implicated, but politicians were reluctant to press Vatican officials to answer the investigators’ queries.

Mr Fahey’s deputy, Helena Keleher, the cable said, felt the Irish government acceded to Vatican pressure and granted them immunity from testifying. Officials understood that “foreign ambassadors are not required or expected to appear before national commissions”, but Keleher’s opinion was that by ignoring the commission’s requests the clergy had made the situation worse.

The ambassador reported that resentment towards the church in Rome remained very high in Ireland largely because of the institutionalised cover-up of abuse by the Catholic church hierarchy.

In a section of the cables titled “Some Lessons Learned, but Crisis Will Play Out for Years”, the ambassador related that his contacts at the Vatican and in Ireland expected the crisis in the Irish Catholic church to be protracted over several years, as the Murphy commission dealt only with allegations from the Dublin archdiocese.

They believed further investigations into other dioceses would lead, “officials in both states lament, to additional painful revelations”.

In the Dail on December 1st last year the Taoiseach Brian Cowen defended the Vatican and the nuncio. He said that, as the commission was a body set up by government, all communications to the Vatican state should have been routed through diplomatic channels and in accordance with international law and customs.

“The commission and the Holy See, it appears, acted in good faith in this matter, even if the best outcome was not achieved,” he said.

“It is regrettable that the failure to acknowledge either letter has given rise to the impression the Holy See was refusing to co-operate with the commission,” he said, adding that its use of diplomatic channels was consistent with international law.

APPENDIX 10

CONGREGATIO PRO DOCTRINA FIDEI (NSS COMMENTS FOLLOW)

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-minori_en.html

ROME, CONGREGATION FOR THE DOCTRINE OF THE FAITH, 3 MAY 2011

CIRCULAR LETTER

TO ASSIST EPISCOPAL CONFERENCES IN DEVELOPING GUIDELINES FOR DEALING WITH CASES OF SEXUAL ABUSES OF MINORS PERPETRATED BY CLERICS

Among the important responsibilities of the Diocesan Bishop in his task of assuring the common good of the faithful and, especially, the protection of children and of the young, is the duty he has to give an appropriate response to the cases of sexual abuse of minors by clerics in his diocese. Such a response entails the development of procedures suitable for assisting the victims of such abuse, and also for educating the ecclesial community concerning the protection of minors. A response will also make provision for the implementation of the appropriate canon law, and, at the same time, allow for the requirements of civil law.

I. General considerations:

a) The victims of sexual abuse:

The Church, in the person of the Bishop or his delegate, should be prepared to listen to the victims and their families, and to be committed to their spiritual and psychological assistance. In the course of his Apostolic trips our Holy Father, Benedict XVI, has given an eminent model of this with his availability to meet with and listen to the victims of sexual abuse. In these encounters the Holy Father has focused his attention on the victims with words of compassion and support, as we read in his [Pastoral Letter to the Catholics of Ireland](#) (n.6): "You have suffered grievously and I am truly sorry. I know that nothing can undo the wrong you have endured. Your trust has been betrayed and your dignity has been violated."

b) The protection of minors:

In some countries programs of education and prevention have been begun within the Church in order to ensure "safe environments" for minors. Such programs seek to help parents as well as those engaged in pastoral work and schools to recognize the signs of abuse and to take appropriate measures. These programs have often been seen as models in the commitment to eliminate cases of sexual abuse of minors in society today.

c) The formation of future priests and religious:

In 2002, Pope John Paul II stated, "there is no place in the priesthood and religious life for those who would harm the young" (n. 3, [Address to the American Cardinals, 23 April 2002](#)). These words call to mind the specific responsibility of Bishops and Major Superiors and all those responsible for the formation of future priests and religious. The directions given in the Apostolic Exhortation *Pastores Dabo Vobis* as well as the instructions of the competent Dicasteries of the Holy See take on an even greater importance in assuring a proper discernment of vocations as well as a healthy human and spiritual formation of candidates. In particular, candidates should be formed in an appreciation of chastity and celibacy, and the responsibility of the cleric for spiritual fatherhood. Formation should also assure that the candidates have an appreciation of the Church's discipline in these matters. More specific directions can be integrated into the formation programs of seminaries and houses of formation through the respective *Ratio institutionis sacerdotalis* of each nation, Institute of Consecrated Life and Society of Apostolic Life.

Particular attention, moreover, is to be given to the necessary exchange of information in regard to those candidates to priesthood or religious life who transfer from one seminary to another, between different dioceses, or between religious Institutes and dioceses.

d) Support of Priests

1. The bishop has the duty to treat all his priests as father and brother. With special attention, moreover, the bishop should care for the continuing formation of the clergy, especially in the first years after Ordination, promoting the importance of prayer and the mutual support of priestly fraternity. Priests are to be well informed of the damage done to victims of clerical sexual abuse. They should also be aware of their own responsibilities in this regard in both canon and civil law. They should as well be helped to recognize the potential signs of abuse perpetrated by anyone in relation to minors;
2. In dealing with cases of abuse which have been denounced to them the bishops are to follow as thoroughly as possible the discipline of canon and civil law, with respect for the rights of all parties;
3. The accused cleric is presumed innocent until the contrary is proven. Nonetheless the bishop is always able to limit the exercise of the cleric's ministry until the accusations are clarified. If the case so warrants, whatever measures can be taken to rehabilitate the good name of a cleric wrongly accused should be done.

e) Cooperation with Civil Authority

Sexual abuse of minors is not just a canonical delict but also a crime prosecuted by civil law. Although relations with civil authority will differ in various countries, nevertheless it is important to cooperate with such authority within their responsibilities. Specifically, without prejudice to the sacramental internal forum, the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed. This collaboration, moreover, not only concerns cases of abuse committed by clerics, but also those cases which involve religious or lay persons who function in ecclesiastical structures.

II. A brief summary of the applicable canonical legislation concerning the delict of sexual abuse of minors perpetrated by a cleric:

On 30 April 2001, Pope John Paul II promulgated the *motu proprio Sacramentorum sanctitatis tutela [SST]*, by which sexual abuse of a minor under 18 years of age committed by a cleric was included in the list of more grave crimes (*delicta graviora*) reserved to the Congregation for the Doctrine of the Faith (CDF). Prescription for this delict was fixed at 10 years beginning at the completion of the 18th year of the victim. The norm of the *motu proprio* applied both to Latin and Eastern clerics, as well as for diocesan and religious clergy.

In 2003, Cardinal Ratzinger, then Prefect of the CDF, obtained from Pope John Paul II the concession of some special faculties in order to provide greater flexibility in conducting penal processes for these more grave delicts. These measures included the use of the administrative penal process, and, in more serious cases, a request for dismissal from the clerical state *ex officio*. These faculties have now been incorporated in the revision of the *motu proprio* approved by the Holy Father, Benedict XVI, on 21 May 2010. In the new norms prescription, in the case of abuse of minors, is set for 20 years calculated from the completion of the 18th year of age of the victim. In individual cases, the CDF is able to derogate from prescription when indicated. The canonical delict of acquisition, possession or distribution of pedopornography is also specified in this revised *motu proprio*.

The responsibility for dealing with cases of sexual abuse of minors belongs, in the first place, to Bishops or Major Superiors. If an accusation seems true the Bishop or Major Superior, or a delegate, ought to carry out the preliminary investigation in accord with *CIC* can. 1717, *CCEO* can. 1468, and *SST* art. 16.

If the accusation is considered credible, it is required that the case be referred to the CDF. Once the case is studied the CDF will indicate the further steps to be taken. At the same time, the CDF will offer direction to assure that appropriate measures are taken which both guarantee a just process for the accused priest, respecting his fundamental right of defense, and care for the good of the Church, including the good of victims. In this regard, it should be noted that normally the imposition of a permanent penalty, such as dismissal from the clerical state, requires a penal judicial process. In accord with canon law (cf. *CIC* can. 1342) the Ordinary is not able to decree permanent penalties by extrajudicial decree. The matter

must be referred to the CDF which will make the definitive judgement on the guilt of the cleric and his unsuitability for ministry, as well as the consequent imposition of a perpetual penalty (SST art. 21, §2).

The canonical measures applied in dealing with a cleric found guilty of sexual abuse of a minor are generally of two kinds:

- 1) measures which completely restrict public ministry or at least exclude the cleric from any contact with minors. These measures can be reinforced with a penal precept;
- 2) ecclesiastical penalties, among which the most grave is the dismissal from the clerical state.

In some cases, at the request of the cleric himself, a dispensation from the obligations of the clerical state, including celibacy, can be given *pro bono Ecclesiae*.

The preliminary investigation, as well as the entire process, ought to be carried out with due respect for the privacy of the persons involved and due attention to their reputations.

Unless there are serious contrary indications, before a case is referred to the CDF, the accused cleric should be informed of the accusation which has been made, and given the opportunity to respond to it. The prudence of the bishop will determine what information will be communicated to the accused in the course of the preliminary investigation.

It remains the duty of the Bishop or the Major Superior to provide for the common good by determining what precautionary measures of *CIC* can. 1722 and *CCEO* can. 1473 should be imposed. In accord with *SST* art. 19, this can be done once the preliminary investigation has been initiated.

Finally, it should be noted that, saving the approval of the Holy See, when a Conference of Bishops intends to give specific norms, such provisions must be understood as a complement to universal law and not replacing it. The particular provisions must therefore be in harmony with the *CIC / CCEO* as well as with the *motu proprio Sacramentorum sanctitatis tutela* (30 April 2001) as updated on 21 May 2010. In the event that a Conference would decide to establish binding norms it will be necessary to request the *recognitio* from the competent Dicasteries of the Roman Curia.

III. Suggestions for Ordinaries on Procedures:

The Guidelines prepared by the Episcopal Conference ought to provide guidance to Diocesan Bishops and Major Superiors in case they are informed of allegations of sexual abuse of minors by clerics present in the territory of their jurisdiction. Such Guidelines, moreover, should take account of the following observations:

- a.) the notion of "sexual abuse of minors" should concur with the definition of article 6 of the *motu proprio SST* ("the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years"), as well as with the interpretation and jurisprudence of the Congregation for the Doctrine of the Faith, while taking into account the civil law of the respective country;
- b.) the person who reports the delict ought to be treated with respect. In the cases where sexual abuse is connected with another delict against the dignity of the sacrament of Penance (*SST* art. 4), the one reporting has the right to request that his or her name not be made known to the priest denounced (*SST* art. 24).
- c.) ecclesiastical authority should commit itself to offering spiritual and psychological assistance to the victims;
- d.) investigation of accusations is to be done with due respect for the principle of privacy and the good name of the persons involved;
- e.) unless there are serious contrary indications, even in the course of the preliminary investigation, the accused cleric should be informed of the accusation, and given the opportunity to respond to it.
- f.) consultative bodies of review and discernment concerning individual cases, foreseen in some places, cannot substitute for the discernment and *potestas regiminis* of individual bishops;

g.) the Guidelines are to make allowance for the legislation of the country where the Conference is located, in particular regarding what pertains to the obligation of notifying civil authorities;

h.) during the course of the disciplinary or penal process the accused cleric should always be afforded a just and fit sustenance;

i.) the return of a cleric to public ministry is excluded if such ministry is a danger for minors or a cause of scandal for the community.

Conclusion:

The Guidelines developed by Episcopal Conferences seek to protect minors and to help victims in finding assistance and reconciliation. They will also indicate that the responsibility for dealing with the delicts of sexual abuse of minors by clerics belongs in the first place to the Diocesan Bishop. Finally, the Guidelines will lead to a common orientation within each Episcopal Conference helping to better harmonize the resources of single Bishops in safeguarding minors.

Rome, from the Congregation for the Doctrine of the Faith, 3 May 2011

William Cardinal Levada
Prefect

+ Luis F. Ladaria, S.J.
Tit. Archbishop of Thibica
Secretary

[END OF LETTER]

NSS COMMENTS

1. We consider that the result of the following passages in the 3 May 2011 letter, which place canonical law above secular law, will be that conforming guidelines will be toothless:
 - a. without prejudice to the sacramental internal forum, the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed.
 - b. when a Conference of Bishops intends to give specific norms, such provisions must be understood as a complement to universal [i.e. canonical] law and not replacing it.
2. We further consider that the effect of the following passage:
“The Guidelines ... will also indicate that the responsibility for dealing with the delicts of sexual abuse of minors by clerics belongs in the first place to the Diocesan Bishop.”
is to give the diocesan bishop a total veto over taking accusations forward. It is beyond contention that numerous bishops and indeed archbishops in both America and Europe have been demonstrated to have gone to extraordinary lengths to cover up high levels of abuse, even from their own safeguarding bodies, as referred to in Conclusion 14. This unnecessary veto sidesteps an opportunity to further discourage this behaviour.
3. The crucial flaws outlined above, seriously - perhaps totally - undermine the effectiveness of the resulting guidelines.
4. The guidelines are required to be written in accordance with the instructions in the circular and to be approved by the Vatican, but they are to be compiled at diocesan level, allowing the Vatican to distance itself from the scandals (as in the case of the Irish bishops) while retaining command and control.
5. We note the letter of January 31, 1997 from the Apostolic Nunciature In Ireland to the Irish Episcopal Conference and their Dioceses (appendix 6), which *inter alia* contains the phrase “In particular, the situation of ‘mandatory reporting’ gives rise to serious reservations of both a moral and a canonical nature” appears to be an attempt by the Vatican to dissuade local diocesan authorities from reporting evidence of child abuse by clerics to secular authorities.

APPENDIX 11

National (Irish) Board for the Safeguarding of Children in the Catholic Church, Annual Report 2010
<http://www.safeguarding.ie/annual-report-2010/AnnualReport2010%28a%29.pdf?attredirects=0&d=1>

Catholic church authorities withheld 219 abuse complaints from its own independent watchdog, National (Irish) Board for the Safeguarding of Children in the Catholic Church, bishops and religious leaders impede investigation. Clericalism culture is identified as the problem, one that will take some time to overcome.

We note³³ that:

1. The Board is funded by “The Conference of Irish Bishops, the Conference of Religious of Ireland and The Irish Missionary Union”.
2. “The Board is seeking to establish a memorandum of understanding with all Church bodies, to enable the unfettered delivery of its functions.” Although the Board appears to have been set up in 2008, this condition precedent to effective operation still appears to be unsatisfied. Similarly, its plans to be incorporated in “early 2009” still appear to be on indefinite hold or have been abandoned - as this aspiration still appears on the website and we can find no company of this name on the Register of Companies.
3. According to the third newspaper cutting below, *Irish Times* 13 May 2011, data protection obstacles related to a non-statutory body such as the Board render it incapable of fulfilling its role.

We also draw attention to the quite extraordinary statements made in the report by the Board’s Chairman John B Morgan in his signed statement introducing the report:

“Role of the Board

“In the context of the Papal letter of March 2010, the Board sees its role as a co-operator in the ‘decisive action carried out with complete honesty and transparency’ which ‘will restore the respect and good will of the Irish people towards the Church’, to use Pope Benedict XVI’s own words. ... Within the remit we have been given we must play a part in contesting with those who say that the Church is not capable of inner renewal. In playing that part we must help demonstrate, instead, its tireless desire for purification. Otherwise, in many respects, our existence is meaningless.

“... In addition, this crisis, at its heart, is a spiritual crisis. However, there are traces, as yet perhaps dim and indistinct, that Christian consciousness in Ireland is beginning to feel the repercussions of this in a ‘collective awakening’, which seeks anew the road of true fidelity to our fundamental vocation as Christians. It will be a long road for us but Faith is the substance of hope.”

So much for “independence”.

We do note however that the Irish Prime Minister in his speech on 20 July 2011 (summarised in Appendix 2) noted “Progress has been in no small measure due to the commitment of [chief executive officer] Mr. Ian Elliott and others.”

Two newspaper accounts about it, published on 12 May 2011 follow. Key passages emboldened, not in originals:

Fury as church withholds abuse complaints from own watchdog

<http://www.independent.ie/national-news/fury-as-church-withholds-abuse-complaints-from-own-watchdog-2644481.html>

By John Cooney Religion Correspondent

Irish Independent, May 12 2011

³³ <http://www.safeguarding.ie/about-us> extracted 14 May 2011. Passages in quotes come directly from this source.

THE Government is under intense pressure from outraged victims of clerical child abuse to order an immediate national probe of all 26 Catholic Church dioceses as well as religious and missionary orders.

The renewed calls for the State to subject the entire Catholic Church to a statutory investigation followed revelations yesterday that church authorities withheld a staggering 219 abuse complaints from its own independent watchdog.

The National Board for the Safeguarding of Children in the Catholic Church (NBSCCC) revealed that its final checks found that from April 1, 2010, until March 31, 2011, the actual number of complaints about sexual, physical or emotional abuse totalled 272.

The board, which in December 2009 was instructed by the bishops to conduct a comprehensive national audit of clerical child abuse, was initially told of only 53 new allegations.

In a further development, it was also revealed that the bishops and religious leaders later placed legal obstacles to impede the board from conducting its audit, which was widely expected to reveal the actual horrendous scale of clerical paedophilia in Ireland.

Dioceses and congregations claimed that data protection concerns prevented their participating in the audit, a position they have now modified. They have now agreed to cooperate with the board under strict confidentiality until its findings are eventually published.

Board chairmen John Morgan and chief executive Ian Elliott told a news conference yesterday that they would not be resigning "in the interest of children". Walking away does not solve the problem, they said.

But they admitted that their remit of compiling a national audit of all 26 dioceses had been delayed because of "legal difficulties" posed by bishops and religious orders, and that it was difficult to break down "a culture of clericalism".

As part of a confidential compromise agreement the board has begun an audit of three unnamed dioceses, but the process will take longer than first expected.

Impeded

Last night the head of the One in Four victims' support group claimed that Mr Elliott's team was "clearly being impeded by forces within the church in their monitoring", and accused the church of consistently failing to reveal the full story of child sexual abuse until it was forced to do so.

Chief executive Maeve Lewis called on the Fine Gael Labour Government to extend the work of the Murphy Commission of Investigation to the entire church in Ireland.

"Perhaps we need to expand the Murphy Commission's work to every diocese and congregation in the country if we are ever to appreciate the full extent of clerical sexual abuse," Ms Lewis said.

In November 2009 the Murphy report highlighted the horrific scale of abuse and cover-ups in the archdiocese of Dublin, which led to the church mandating its own board into conducting an internal national probe.

The Murphy Commission's remit was extended to the Cork diocese of Cloyne after Mr Elliott found that the then bishop, John Magee, had failed to implement national guidelines and had put children at risk of being abused.

Publication of the Cloyne report, which was expected before Easter is still being delayed by legal difficulties relating to one cleric who faces a criminal trial this summer.

Last night an angry victim of abuse in the archdiocese of Dublin, Andrew Madden, called for Children's Minister Frances FitzGerald to introduce legislation to put the Children First Guidelines on a statutory basis as a matter of absolute urgency.

Earlier, at a news conference in a Dublin city-centre hotel, Mr Elliott said that this year's figure of 272 allegations was an increase on last year's number of 197.

The vast majority of these cases are historic in nature and a precise breakdown was not currently available, he said.

Of the 272 allegations, 166 were against religious orders and 106 against priests in dioceses.

A total of 86 related to dead clerics or religious; 12 who are still in ministry and 174 who had been or were removed from ministry, retired or have left the clerical state through a process of laicisation. END

Further information <http://www.independent.ie/national-news/bishops-silent-on-identity-of-abuse-probe-dioceses-2644482.html> ("Bishops silent on identity of abuse probe dioceses")

Latest actions show church is unreformable

<http://www.irishtimes.com/newspaper/ireland/2011/0512/1224296752704.html>

The Irish Times - Thursday, May 12, 2011

PATSY McGARRY

ANALYSIS: The Catholic Church is more interested in reaching for lawyers than protecting children

THERE WAS that familiar, sickening feeling at yesterday's press conference at the publication of the National Board for Safeguarding Children's annual report for 2010.

It was that nauseating realisation again that despite three devastating statutory reports on its handling of clerical child abuse allegations, with another on the way, the Irish Catholic Church has learned nothing. It has forgotten nothing either of its avid enthusiasm for lawyers.

Yet it is the continuing hypocrisy which is hardest to stomach. As we have seen after every new allegation of clerical child abuse; after every priestly conviction in the courts; after every outrageous statutory report; our Catholic Church authorities can wring their hands with the best of them.

They have promised in abject contrition that all will change, change utterly. But, as with St Augustine's pleas to God that he be made holy, it is always with the qualification "...but not just yet". Possibly, even, a mental reservation. Time passes and they are back to their old ways. It goes on and on.

A perfect example emerged with the launch of the board's annual report yesterday. Seemingly distraught at the uncovering by its chief executive Ian Elliott of "inadequate and in some respects dangerous" child protection practices in Cloyne diocese in 2008, the bishops called an emergency meeting in January 2009 at which they announced that, at their request, of Cori and the IMU, the board was to conduct a review of all such child protection practices in the church in Ireland.

Just a month beforehand we were told they were unable to co-operate with just such a HSE review on legal advice. But indications then were all such worries were over. As soon as the dust settled on Cloyne, they reached for the lawyers again.

They have found other ways of making the board baulk. Last October they withdrew funding for child protection training programmes they asked the board to undertake and, to add insult to injury, they withheld from the board until recent weeks three-quarters of all new clerical child abuse allegations reported to them over the past year.

These are the actions of an unreformable institution. It talks the talk but refuses to walk the walk.

As the board's chairman John Morgan said yesterday, **“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”**.

But why should we wait? Why should any of us wait for the Catholic Church to mend its ways? “The whole problem here is clericalism,” he said. “There has to be a new relationship between the clerical caste and lay people.”

Mr Elliott was as frank. In his 37 years dealing professionally with child protection issues his recent experiences with the Catholic Church have been “the most challenging situation I’ve been in”.

Asked why they did not resign, both men emphasised they were “passionate about the issue of safeguarding children”, as Mr Elliot put it, though it was “a question I have asked myself on several occasions”. Both men met with Apostolic Visitation teams sent recently by Pope Benedict to investigate the Irish church.

“We did relate our frustrations to them,” said Mr Elliott, who spent “12/13 hours” with visitation teams. They were very focused, very interested and committed.”

He said: “If you safeguard children within the church, you will safeguard the church itself. If you protect and value children in the church, you will protect and value the church. However, if you reverse the order you will ultimately end up harming the church.”

But, as he observed in a lecture at Marquette University in Wisconsin last month, “legal opinion is highly prized in the Irish Catholic Church”. When a bishop first hears “of concerns about the behaviour of one of his priests his first action is to call his legal adviser. More often than not, the next action that he takes will be determined by what his lawyer says...”

Those “who receive allegations should ensure that a pastoral response is made rather than one that is driven by legal concerns,” he said.

They might even try reaching for a Bible. END

'Real issues' over church's failing to co-operate with review

<http://www.irishtimes.com/newspaper/ireland/2011/0513/1224296840501.html>

Irish Times 13 May 2011

PATSY McGARRY, Religious Affairs Correspondent

THERE WERE “real issues” around the failure of the Catholic hierarchy to co-operate with the church’s own child protection review, the Archbishop of Dublin Diarmuid Martin said last night.

In January 2009 the Irish Catholic Bishops, the Conference of Religious of Ireland (Cori) and the Irish Missionary Union (IMU) asked their own child protection watchdog, the National Board for Safeguarding Children (NBSC), to undertake a review of all church institutions in Ireland.

It followed an NBSC report on Cloyne diocese, published the previous month, which found child protection practices there to be “inadequate and in some respects dangerous”. It prompted the Government in early January 2009 to extend the remit of the Murphy commission to investigate the handling of clerical child abuse allegations in Cloyne. Its report is expected shortly.

“Data protection issues are real issues,” Archbishop Martin said last night, and that where the review was concerned “the whole question of the legality [of passing on such data by church authorities] was raised by lawyers for the NBSC,” he said.

“There is a real problem with passing on such [sensitive] information to non-statutory third parties, especially in Northern Ireland. Fines under British data protection legislation are enormous,” he said. Lawyers for church authorities and the NBSC had now worked out how there could be co-operation in such a review, he said, but he could understand NBSC chief executive Ian Elliott’s frustration with the length of time this had taken. They “found a way out that leaves the bishop or religious superior in the driving seat” when it came to the provision of such information, he said.

In its annual report for the year ended March 31st, 2011, published on Wednesday, the NBSC said that until recently it was prevented from undertaking the review requested, by legal concerns on the part of church authorities.

It also disclosed that funding for the board’s training programmes in child protection, requested by church authorities, was withdrawn by the church last October, and that 219 new allegations of clerical child abuse made to the church authorities were withheld from the board until recently.

Where funding for training was concerned, Archbishop Martin said that, rather than costs for this coming from the NBSC budget, it was decided that those who availed of such training should be billed for it.

He could not explain why over three-quarters of the 272 new allegations received by church authorities in the year to March 31st last had not been passed on to the NBSC until the last minute. “Perhaps the NBSC should be in greater contact with the dioceses or superiors,” he suggested.

APPENDIX 12

Reports to the UN Human Rights Council by the International Humanist and Ethical Union concerning the role of the Vatican/Holy See relative to child abuse

2009 and 2010 – verbal and written evidence, Holy See response and press reaction.

[http://www.secularism.org.uk/uploads/unhrc-iheudoconholyse-\(2\).pdf](http://www.secularism.org.uk/uploads/unhrc-iheudoconholyse-(2).pdf)

Also available at:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/12/NGO/25&Lang=E>

Video of 2011 verbal evidence

<http://www.secularism.org.uk/nss-director-slams-vatican-failu.html>

IHEU Written statement to UN Human Rights Council (reproduced in full below)

<http://www.secularism.org.uk/uploads/iheuwritten-statement-march-2011.pdf>

Also available at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/113/20/PDF/G1111320.pdf?OpenElement>



General Assembly

Distr.: General
25 February 2011

English only

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/113/20/PDF/G1111320.pdf?OpenElement>
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/113/20/PDF/G1111320.pdf?OpenElement>

Human Rights Council

Sixteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the International Humanist and Ethical Union, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Child abuse and the Holy See**

Our written statement on this dated 28 August 2009 [A/HRC/12/NGO/25] notes the accession of the Holy See to the UN Convention on the Rights of the Child (CRC); the extent and effects of the abuse of children by priests of the Roman Catholic Church; the reaction of the Church to the abuses. We noted the failure of the Holy See to honour its obligations under the UNCRC, including its failure to submit quinquennial reports for 13 years.

We regretted that the Holy See had escaped the level of scrutiny normally applied under the CRC, possibly as a result of the ambiguous nature of the Holy See's responsibility for those working under the Church's authority.

We referred to the above statement in oral interventions in Human Rights Council debates on 22 September 2009 and 16 March 2010.

Clerical abuse is being revealed in more and more countries, often with senior clerics being guilty themselves or concealing the guilty. Links to reports of the most serious to emerge so far can be found at:

<http://www.secularism.org.uk/unhrc-holy-see-child-abuse-ref1.html>

Reaction of the Holy See

The distinguished delegate of the Holy See exercised the Right of Reply to our oral intervention of 22 September 2009 to say (in summary):

1. In the upcoming report of the Holy See to the Committee on the Rights of the Child, which is finalized "as we speak", a paragraph will be dedicated to the problem of child abuse by catholic clergy. (But despite a reminder in our intervention in March 2010, this has still not been filed.)

2. He did not deny our assertions but noted that:

(a) as many as 5% of catholic clergy could be involved. (If true that would equate to approximately 20,000 clergy involved in child abuse).

(b) offenders can be dismissed under Canon Law (but no mention was made of the necessity of reporting suspected abuse to secular authorities).

Legal Commentary by Geoffrey Robertson QC¹

In 2010, Geoffrey Robertson QC published the Case of the Pope². He notes that the following Articles of the CRC are likely to have been breached (all noted in our previous written statement, plus Articles 6 and 39):

** National Secular Society (UK), an NGO without consultative status, also shares the views expressed in this statement.

¹ Geoffrey Robertson QC, Distinguished Jurist and Member, United Nations Internal Justice Council, 2008-2012

² The Case of the Pope. Vatican Accountability for Human Rights Abuse. Geoffrey Robertson, QC. ISBN: 9780241953846

- Article 3(1)³: “The evidence shows that the primary consideration in dealing with children’s allegations has been the good name and reputation of the Catholic church and the protection of the priesthood from scandal. The best interests of the child requires the church to act immediately to stop the abuse and protect other children by precluding any prospect of re-offending. That meant calling in the police and social welfare services and providing counselling to the child and the family - steps the Vatican resolutely refused to envision when it published its new Canon Law norms in July 2010.”
- Article 6⁴: “Article 6 of the Protocol obliges state parties to assist each other with providing all the evidence at their disposal - an obligation which the Vatican continues to evade.”
- Article 19(1)⁵: “This placed an international law duty on the Holy See to make arrangements for reporting child sex abuse to law enforcement authorities - a duty that has been blatantly breached from the outset by subjecting all allegations to the ‘pontifical secret’ procedures of Crimen, and then of the 2001 apostolic letter, and most recently of the July 2010 decree, which insists on Canon Law jurisdiction over abusive priests.”
- Article 34⁶: “The Holy See, through its responsible agency the CDF (the Congregation of the Doctrine of the Faith), took no ‘national, bilateral or multi-national measures’ other than by issuing the 2001 Ratzinger letter, which served to delay investigations of accused priests and failed to require notification to law enforcement agencies. The Holy See has most scandalously breached its obligations under Article 34, and remains in breach through its 2010 insistence on Canon Law process and ‘pontifical secrecy’.”
- Article 39⁷: “It is also relevant to note the Holy See’s unwillingness to afford ‘measures to promote physical and psychological recovery and social reintegration’ to victims, as required by Article 39 ...”,
- Articles 3, 19 and 34 – Re Canon Law⁸: “Vatican diplomats may have prepared a devious defence for the Holy See by entering a ‘reservation that it will only apply the Convention’ when it is compatible with Canon Law. The sections of the Convention dealing with child sex abuse are irrevocably incompatible with Canon Law, which favours the priest at the expense of the best interests of the child (a breach of Article 3(1)); which does not provide effective procedures for investigation, reporting, referral or judicial involvement (a breach of article 19(2)), and has secrecy provisions that preclude national, bilateral and multi-national measures (a breach of article 34).”
- Article 44⁹: “The Holy See was next due to report on 1 September 1997 and then again on 1 September 2002: it did not do so on either occasion and indeed has never submitted another report, a complete abdication of its duties under the Convention.”

³ [Ibid ¶163 page 113-4]

⁴ [Ibid ¶167 page 117]

⁵ [Ibid ¶163 page 113-4]

⁶ [Ibid ¶163 page 113-4]

⁷ [Ibid ¶ 164 page 115]

⁸ [Ibid ¶ 166 page 115]

⁹ [Ibid ¶ 163 page 113]

Robertson concludes:

“It is plain from ... the new Canon Law norms laid down in July 2010 ... that the Vatican will not, under this Pope, yield in its claim that the church is entitled to shelter suspected criminals in its midst from police investigation, public trial and any punishment that they deserve.”¹⁰

- “...the scourge of child abuse within the church itself had for many years gone unpunished as a result of the procedural deficiencies of Canon Law, the selfish desire to protect the church from scandal by harbouring and trafficking paedophile priests, and the negligent supervision of bishops by the Holy See through its CDF office, headed for the previous two decades by Cardinal Ratzinger.”¹¹
- “It is a serious reflection on the competence and resolve of the ‘eighteen experts of high moral standing’ who have been elected to the Committee on the Rights of the Child that they have done and said nothing about the Vatican’s thirteen-year failure to deliver a report, during the period when widespread child abuse by its priests has been extensively publicized.
- “The Holy See’s grave and extensive breaches of the Convention on the Rights of the Child, and its contempt for its reporting obligations over the past thirteen years, should - if the other parties care – justify its expulsion. The other parties, and the UN itself, should care very much, because this is the one and only human rights convention that has near universal support.”¹²

Complicity of the Holy See

Subsequently, two relevant letters have come to light:

1. Letter dated January 31 1984 to Bishop Moreno of Tucson from Sacra Congregazione per Il Clero, Roma (PROT. 172621/1)¹³ It contains the following compromising paragraph:

“To the second question (“Should we allow or disallow civil lawyers from obtaining Father’s personnel records from our Chancery files”) we reply that under no condition whatever ought the afore-mentioned files be surrendered to any lawyer or judge whatsoever. ...we suggest that both the office of the Apostolic Delegate and the legal department of the United States Catholic Conference be informed of the request for Father [redacted]’s files so that all may begin preparing whatever resistance to this request may be necessary.”

2. Letter dated 31 January 1997 to Irish bishops from the Irish Papal Nuncio (N. 808/97), which is considered to have “apparently instructed Irish bishops not to cooperate with civil authorities who were probing reported incidents of sexual abuse by priests”¹⁴ (extracts):

- “The Congregation for the Clergy has attentively studied the complex question of sexual abuse of minors by clerics and the document entitled ‘Child Sexual Abuse:

¹⁰ [Ibid ¶ 170 page 119]

¹¹ [Ibid ¶ 173 page 120]

¹² [Ibid ¶ 165 page 115]

¹³ <http://www.ibtimes.com/articles/103256/20110120/vatican-letter-to-tucson-reveals-cover-up-mentality.htm>

¹⁴ <http://www.guardian.co.uk/world/2011/jan/18/vatican-irish-bishops-child-abuse>

Framework for a Church Response’, published by the Irish Catholic Bishops’ Advisory Committee.

- “The text, however, contains “procedures and dispositions which appear contrary to canonical discipline and which, if applied, could invalidate the acts of the same Bishops who are attempting to put a stop to these problems. If such procedures were to be followed by the Bishops and there were cases of eventual hierarchical recourse lodged at the Holy See, the results could be highly embarrassing and detrimental to those same Diocesan authorities.
- “In particular, the situation of ‘mandatory reporting’ gives rise to serious reservations of both a moral and a canonical nature.
- “ ... I am directed to inform the individual Bishops of Ireland of the preoccupations of the Congregation in its regard, underlining that in the sad cases of accusations of sexual abuse by clerics, the procedures established by the Code of Canon Law must be meticulously followed under pain of invalidity of the acts involved if the priest so punished were to make hierarchical recourse against his Bishop.”

Conclusion

We call upon the Human Rights Council and the Committee on the Rights of the Child to hold the Holy See to account for:

- its breach of its obligations under the CRC;
 - its disregard for its duty of care to the abused children;
 - its systematic cover-up of thousands of cases of abuse.
-