

Legal Context: Ireland

There have been a number of inquiries into institutional child abuse in the Republic of Ireland. These have included the Ferns Report,ⁱ the Ryan Report,ⁱⁱ the Murphy Reportⁱⁱⁱ the Cloyne Report^{iv} While the Murphy Report is the publication one that most directly focuses on children in residential settings, the other reports concern sexual abuse by Roman Catholic priests, some of which took place in out of home care settings. Moreover, as the RC church still runs well over 90% of the RoI's elementary schools and over 50% of secondary schools, we might also consider the reports on clerical sexual abuse of children under the umbrella term 'institutional abuse'. The McAleese Report^v and the Quirke Report^{vi} reported on the State's response to survivors of the RoI's carceral Magdalene Laundry system in which girls as well as women were coercively confined and forced to unpaid, hard labour on the pretext that these socio-economically vulnerable girls and women were being given 'care' by four specific Catholic religious orders (specifically the Sisters of Our Lady of Charity (OLC), the Good Shepherd Sisters, the Sisters of Mercy, and the Sisters of Charity).

Television documentaries^{vii}, print journalism^{viii}, memoirs by adult survivors of abuse^{ix} academic analyses^x, and campaigns by activist groups continue to highlight the widespread abuse of children in institutions run by religious orders on behalf of the State and the Catholic church's cover up, obfuscation, denial and general failures in handling abuse complaints. Concerted public pressure was brought to bear on the then Taoiseach, (Prime Minister), Bertie Ahern, who issued the first public political apology to victims of institutional child abuse on behalf of the Irish State in May 1999. Legislation was enacted to establish the Commission to Inquire into Child Abuse^{xi} and The Residential Institutions Redress Board was also set up as a compensation scheme for victims of institutional abuse.^{xii} In the controversial Congregational Indemnity Agreement concluded in 2002, the State indemnified the congregations against any subsequent legal action by abuse victims in consideration for a relatively small contribution to the overall costs of the redress scheme.

The first of these reports, the Ferns Report, was published in October 2005. It investigated the handling of over 100 allegations of child sexual abuse against 21 priests in the diocese between 1966 and 2002. The Report highlighted the failure of the Church, and bishops in particular, to respond to complaints of abuse, chiefly by non-removal of priests from active ministry and the non-reporting of complaints to the civil authorities. It also underlined the subsequent failures of State agencies, including the Gardaí and the health authorities, to investigate effectively and prevent the further abuse of victims.

Over the course of nine years, the Commission to Inquire into Child Abuse investigated the treatment of children in residential institutions run by Catholic religious orders, dating back to 1936. The publication of the Commission's five-volume Report in May 2009 generated widespread media coverage and public outcry throughout Ireland and beyond. The Report was highly significant

because it highlighted the fact that the abuse of children (physically, sexually, emotionally and through neglect), and the failure of Church and State authorities to adequately respond to the problem, was *systemic* in Irish child care institutions.

The Report of the Commission of Investigation into the Catholic Archdiocese of Dublin, more popularly known as the Murphy Report, had been established under legislation enacted in 2004^{xiii} and it published a few months later in November 2009. It examined the handling of complaints of child sexual abuse by Church and State authorities in the Archdiocese from 1975 to 2004. The Report concluded that clerical child sexual abuse was routinely and systematically hidden and in effect facilitated and allowed to continue during this period.^{xiv} Successive Archbishops and bishops failed to report information to the Gardaí,^{xv} and often the suspected perpetrator was transferred to another parish or diocese where they continued to have access to children and the opportunity to abuse again. Further, there were inappropriate communications between Church and State authorities in relation to the handling of abuse allegations.^{xvi}

The Commission's Report into the Catholic Archdiocese of Cloyne was published in July 2011. It examined the handling of allegations and concerns about child sexual abuse during the period 1 January 1996–1 February 2009. The historical remit is significant because it covers the period in which the Catholic Church in Ireland first put in place procedures to deal with allegations of abuse. The Report concluded that the response of the Church was 'inadequate and inappropriate'^{xvii} and that it had failed, inter alia, to carry out proper canonical investigations; to report all complaints to the Gardaí or health authorities; and to implement an independent advisory panel which could assist Church authorities in taking appropriate action when an allegation of abuse was made.

In summary number of recurring themes emerge from these inquiries: many complaints were not formally reported; the abuse normally took place over a number of years and its extent went unrecognised for some time; and the victims were afraid to disclose the abuse, or when they did no action was taken by the authorities, either because there was a conspiracy to keep allegations quiet or a ready acceptance of the denial by the alleged perpetrator.

The Ferns Inquiry and the Ryan Commission made a number of recommendations in relation to improving institutional policies and the provision and management of services for children in care. Although a number of initiatives have been put in place by the Irish government, including reform of social services provision for children, the revelations in the Cloyne Report highlight the fact that the lessons of the past had not been learnt in the interim. It was only in the immediate aftermath of the Cloyne Report that the proposals for wide-ranging reforms were enacted including the *Withholding Information on Crimes against Children and Vulnerable Adults Act 2012*^{xviii} and the *National Vetting Bureau Act 2012* which provides for police background checks to apply to people before they work with children or vulnerable adults.^{xix}

There is currently Commission of Investigation into Ireland's Mother and Baby Homes system^{xx} which was a widespread, largely religious-run network of homes, agencies and individuals who conspired to keep secret the births of 'unwed' mothers and arranged for the adoption of their

babies. This Commission (formally titled the Commission of Investigation into Mother and Baby Homes and Certain Related Matters or MBCoI) is established under the *Commission of Investigations Act* of 2004 and this legislation is problematic in key respects, namely:

- (i) The Act has a presumption in favour of private investigation, and when investigation is in private it's a criminal offence for any person to publish evidence disclosed to Commission
- (ii) witnesses cannot have a transcript of what they said, & those affected don't see evidence;
- (iii) evidence given to the Commission is not admissible in any civil or criminal proceedings;
- (iv) Commissions of Investigation are immune from Freedom of Information obligations, and immune from personal data access requests under the Data Protection Acts
- (v) further inquiries established under this Act appear to be incompatible with clear case law from the European Court of Human Rights on the meaning of an "effective investigation".^{xxi}

Justice for Magdalenes Research (JFMR) are committed as academics and activists to applying a Transitional Justice approach to addressing institutional abuse in Ireland. A Transitional Justice approach seeks to apply the principles of truth recovery, accountability, reparations and guarantees of non-recurrence of the harms inflicted. Transitional Justice has been developed in jurisdictions moving from periods of intense conflict into establishing secure democracies, however given the historical position of the political, social, economic, cultural and symbolic supremacy afforded to Catholicism within the Irish State in the generations of establishing independence from the British Empire, it is useful to consider the RoI as moving from a performing as a confessional, theocratic state, to establishing a more secular democracy. Within the last five years, academics are increasingly considering how Transitional Justice might provide a framework for Ireland in dealing with the widespread abuse of children and vulnerable women in twentieth century Ireland.^{xxii} JFMR are mindful that Commissions of Investigation, established under the Act are inimical to full disclosure of truths; severely hinder the creation of a pertinent and complex publicly accessible archives; and inhibit public participation not merely in truth-telling, but in ensuring there is accountability to address the harms caused and guarantees of non-recurrence of harm and suffering. Hence JFMR, in conjunction with Adoption Rights Alliance (ARA) has established the Clann Project^{xxiii} to help establish the truth of what happened to unmarried mothers and their children in 20th century Ireland.

- Clann is assisting those who wish to give evidence to Ireland's Commission of Investigation into Mother and Baby Homes and Certain Related Matters (MBCoI) by arranging free legal assistance for individuals to make full written statements.
- Clann will also anonymise shared statements, and will gather documentary and archival materials, in order to make a public group report to (1) the MBCoI, (2) the Irish Government, and (3) international human rights bodies.

- Clann will also disseminate archival and contemporary documentary materials via this website.

As part of the Clann initiative, ARA and JFMR are working with Hogan Lovells, a global law firm which is providing *pro bono* assistance to us in compiling statements, documentary materials and legal analysis.

JFMR welcomes the commitment to transitional justice measures undertaken by the current Minister for Children and Youth Affairs, Dr Katherine Zappone, who is the Minister in charge of the MBCoI. JFMR is currently organising an international conference “Towards Transitional Justice: Recognition, Truth-telling, and Institutional Abuse in Ireland”^{xxiv} where the Minister will address the conference which will aim to reflect on lessons of best practice from other jurisdictions that have addressed the issue of institutional abuse of children.

ⁱ FD Murphy, H Buckley and L Joyce *The Ferns Report, Presented by the Ferns Inquiry to the Minister for Health and Children* (Dublin: Government Publications, 2005) (‘The Ferns Report’).

ⁱⁱ *Report of the Commission to Inquire into Child Abuse* (Chair: Judge Séan Ryan) (2009), available at <http://www.childabusecommission.ie/> (‘The Ryan Report’).

ⁱⁱⁱ *Commission of Investigation, Report into the Catholic Archdiocese of Dublin* (Chair: Judge Yvonne Murphy) (Dublin: Department of Justice and Law Reform, 2009) (‘The Murphy Report’).

^{iv} *Commission of Investigation, Report into the Catholic Diocese of Cloyne* (Chair: Judge Yvonne Murphy) (Dublin: Department of Justice and Law Reform, 2011) (‘The Cloyne Report’).

^v *Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries* available at <http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013> (‘The McAleese Report’)

^{vi} *The Magdalen Commission Report* (Mr Justice John Quirke) May 2013 available at <http://www.justice.ie/en/JELR/THE%20Quirke%20report.pdf/Files/THE%20Quirke%20report.pdf>

^{vii} For example see: *Suffer Little Children* (1994); *Dear Daughter* (1996); *States of Fear* (1999); *Suing the Pope* (2002).

^{viii} For example see: M. Raftery and E O’Sullivan *Suffer the Little Children: The Inside Story of Ireland’s Industrial Schools* (Dublin: New Island, 1999); B Arnold *The Irish Gulag: How the State Betrayed its Innocent Children* (Dublin: Gill & Macmillan, 2009). F O’Toole ‘Law of anarchy, cruelty of care’, *The Irish Times*, 23 May 2009; F O’Toole, ‘Lessons in the power of the Church’, *The Irish Times*, 6 June 2009 and the work of Conall Ó Fáharta in *The Irish Examiner*.

^{ix} See for example, P Doyle *The God Squad* (London: Corgi Books, 1989); C O’Gorman, *Beyond Belief* (London: Hodder & Stoughton, 2009).

^x See for example, J M Smith, *Ireland’s Architecture of Containment*

^{xi} *Commission to Inquire into Child Abuse Act 2000*, and *Commission to Inquire into Child Abuse (Amendment) Act 2005*.

^{xii} *Residential Institutions Redress Act 2002*.

^{xiii} *Commissions of Investigation Act 2004*.

^{xiv} The Murphy Report para 1.113.

^{xv} The Murphy Report paras 1.32–1.36.

^{xvi} The Murphy Report paras 1.92–1.96, 1.101.

^{xvii} The Cloyne Report para 1.71.

^{xviii} *Withholding Information on Crimes against Children and Vulnerable Adults Act 2012*, available at <http://www.irishstatutebook.ie/eli/2012/act/24/enacted/en/html>

^{xix} *National Vetting Bureau Act 2012* available at <http://www.irishstatutebook.ie/eli/2012/act/47/enacted/en/html>

^{xx} Available at <http://www.mbhcoi.ie/mbh.nsf/page/index-en>

^{xxi} M. O’Rourke, *Right-based policing: How do we get there?* Irish Council for Civil Liberties, January 2018

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^{xxii} See for example: A McAlinden, “An inconvenient truth: barriers to truth recovery in the aftermath of institutional child abuse in Ireland” *Legal Studies*, Vol. 33 No. 2, June 2013, pp. 189–214 and J. Gallen,

^{xxiii} Available at <http://clannproject.org/>

^{xxiv} Available at <https://www.bc.edu/centers/ila/events/TransitionalJustice/About.html>

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