

# AMNESTY INTERNATIONAL



## BRIEFING

### CLERICAL CHILD ABUSE IN NORTHERN IRELAND

The case for a human rights response by the Northern Ireland Executive

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#### INTRODUCTION

In December 2012, legislation was passed in the Northern Ireland Assembly making provision for a public inquiry into historical institutional child abuse in Northern Ireland.<sup>1</sup> Broadly, the inquiry aims to examine and report on issues of accountability and responsibility for this abuse, including failings in institutional and state behaviour, and to offer victims and survivors of this abuse an opportunity to recount their experiences, and to have those experiences acknowledged and validated. However, the terms of reference of the inquiry restrict its focus to an examination of historical abuse that took place in residential institutions for children. As a result, the inquiry excludes some victims and survivors of historical child abuse. This paper focuses on the inquiry's exclusion of victims and survivors of clerical child sexual abuse<sup>2</sup> perpetrated in the community, 'who were molested in churches, church halls, private homes and other locations outside children's institutions'.<sup>3</sup> The overall aim of the paper is to examine the human rights case for a public inquiry into this clergy-perpetrated child sexual abuse.<sup>4</sup>

#### EXCLUSION FROM NI INQUIRY INTO HISTORICAL ABUSE

This section elaborates on the scope and nature of the Northern Ireland Executive's current inquiry into historical child abuse in order to illustrate in more detail (1) how the inquiry's terms of reference<sup>5</sup> exclude any investigation of clerical abuse in the community, and (2) how this exclusion adversely impacts adult victims and survivors of clerical abuse.

The terms of reference of the Northern Ireland Executive's ongoing inquiry into historical abuse provides for:

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<sup>1</sup> The legislation referred to here is the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013.

<sup>2</sup> As used in this paper, the term 'clerical child sexual abuse' refers to childhood sexual abuse perpetrated by clergy from any denomination.

<sup>3</sup> Amnesty International UK, 'Northern Ireland: Amnesty and abuse victims call for clerical abuse inquiry'. *AIUK*, 20 November 2012 [Online]. Available at

[http://www.amnesty.org.uk/news\\_details.asp?NewsID=20454](http://www.amnesty.org.uk/news_details.asp?NewsID=20454). The victim quoted is Michael Connolly.

<sup>4</sup> To that end, the paper is informed and guided by a general human rights framework developed by the Scottish Human Rights Commission to address historical institutional abuse in Scotland; but subsequently used by Amnesty International Ireland, to address residential-institutional abuse *and* clerical abuse in the community, and thus shown as relevant to the examination of both types of historical abuse.

<sup>5</sup> Northern Ireland Executive, 'Terms of Reference'. NIE: Belfast. Available at: <http://www.hiainquiry.org/index/documentation/terms-of-reference.htm>

- An acknowledgement forum, where victims and survivors can recount their experiences in confidence.
- A research and investigative team, which will report on information received by the acknowledgement forum and provide analysis of the historical context within which the abuse occurred.
- An inquiry and investigation panel with a statutory power to compel the release of documents and require witnesses to give evidence, which will produce a final report on all evidence received. The final report will also make recommendations concerning an apology and memorial/tribute to, and redress for, victims and survivors of historical abuse.<sup>6</sup>

However, the terms of reference of the inquiry restrict its focus to an examination of historical child abuse perpetrated in residential institutional settings given the following narrow parameters:

the NI Executive's Inquiry and Investigation to historical institutional abuse will examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1922-1995. For the purposes of this Inquiry "child" means any person under 18 years of age; "institution" means any body, society or organisation with responsibility for the care, health or welfare of children in Northern Ireland, other than a school (but including a training school or borstal) which, during the relevant period, provided residential accommodation and took decisions about and made provision for the day to day care of children; "relevant period" means the period between 1922 and 1995 (both years inclusive).<sup>7</sup>

As a result of these framing terms, the Northern Ireland Executive's current inquiry into historical child abuse only offers *some* victims and survivors access to processes in which they can recount their experiences of abuse and have these experiences acknowledged, validated and investigated. The substantive point is this: victims and survivors of child abuse perpetrated in locations outside of residential-institutional settings, including clergy-perpetrated abuse in the community, have been denied access to similar processes of acknowledgement, validation and investigation within the context of a public inquiry.

In response to their exclusion from these processes, victims and survivors of clerical abuse in the community have called for an additional inquiry into their own experiences of abuse. As one victim has put it:

the [Executive's] inquiry into institutional child abuse ... does nothing for me and the hundreds of other victims of clerical abuse who were molested in ...locations outside children's institutions...Our abuse was no less and our call for justice is no less deserving of being heard. If the Northern Ireland Executive is committed to excluding clerical abuse victims from this inquiry, then they

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

must now make a public commitment to establishing a separate inquiry into clerical sex abuse of children in this jurisdiction.<sup>8</sup>

Research evidence shows that child abuse can have ‘significant adverse long-term effects’ on victims and survivors, and that ‘more severe’ child abuse can give rise to ‘more adverse outcomes’ in adulthood.<sup>9</sup> These effects include problems in terms of adult physical and mental health, psychosocial adjustment, educational and occupational achievement, and alcohol and substance abuse.<sup>10</sup> For adult victims and survivors of sexual abuse, acknowledgement and validation are ‘essential components of healing’, recovery and ongoing development.<sup>11</sup>

So the exclusion of clerical sexual abuse from the Executive’s inquiry on historical child abuse has the potential to obstruct the healing processes of adult victims and survivors of this abuse.

### *Summary*

- The Northern Ireland Executive’s current inquiry into historical abuse offers *some* victims and survivors access to processes in which they can recount their experiences of abuse and have these experiences acknowledged, validated and investigated, *but excludes others*.
- Victims and survivors of clerical abuse in the community are excluded from the current inquiry: they will not have the opportunity to recount their experiences; they will not be listened to; they will not have their experiences acknowledged, validated and investigated.
- By denying victims and survivors of clerical abuse in the community access to processes of acknowledgement and validation within the context of the current inquiry, the Executive has denied them access to ‘essential components of healing’.

## **CLERICAL ABUSE IN THE COMMUNITY IN NORTHERN IRELAND – BACKGROUND**

In the absence of an independent public inquiry, the actual nature and scale of clerical child sexual abuse in the community in Northern Ireland remains unknown, and it is consequently difficult to establish a full and accurate picture of the Northern Ireland case. For this reason, questions of responsibility and accountability, of institutional and state failings, of what happened and the context in which it happened, remain inadequately addressed in the public sphere. But in an effort to give some indication of nature and scale, this section focuses on what is arguably the most important source of disclosure of this abuse to have emerged in recent years: the release of ‘reviews’ of child protection practices in Northern Ireland Catholic

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<sup>8</sup> AIUK, op. cit. Victim quoted: Michael Connolly.

<sup>9</sup> A. Carr, B. Dooley, M. Fitzpatrick, E. Flanagan, R. Flanagan-Howard, K. Tierney, M. White, M. Daly and J. Egan, ‘Child abuse & neglect adult adjustment of survivors of institutional child abuse in Ireland’, *Child Abuse & Neglect*, 34 (2010), p.478.

<sup>10</sup> Ibid.

<sup>11</sup> P. Gilligan, ‘Contrasting Narratives on Responses to Victims and Survivors of Clerical Abuse in England and Wales: Challenges to Catholic Church Discourse’, *Child Abuse Review*, Vol. 21 (2012), p.424.

dioceses, from the National Board for Safeguarding Children in the Catholic Church (hereafter, NBSCCC).

Reports of clergy-perpetrated child sexual abuse have emerged in many countries across the world.<sup>12</sup> Much of this reporting has focused on abuse perpetrated by clergy in the Catholic Church. In the Republic of Ireland, for example, evidence of Catholic clergy-perpetrated abuse has been reported in five major inquiries.<sup>13</sup> Of course, clerical abuse is not by any means limited to the Catholic Church. The Anglican Church, for example, recently reported on child protection practice in England.<sup>14</sup>

That said, to date within the Northern Ireland case, most available indicators of the nature and scale of historical clerical sexual abuse has concerned abuse by Catholic clergy. These indicators include victims' and survivors' accounts of their experiences, the prosecution of individuals for this abuse<sup>15</sup> and media coverage.<sup>16</sup> More recently, further insight into this abuse has been provided by the release of diocesan reviews into historical child abuse from the NBSCCC. The remainder of this section considers what these reviews can tell us about clerical abuse in the Northern Ireland case.

#### *NBSCCC Reviews*

The NBSCCC was established by the Catholic Church in Ireland in 2006 to monitor practice, and advise on best practice and the development of policy and procedures, in relation to child protection in the Church. Its release of diocesan reviews of child protection practice detail allegations of clerical abuse, and how Church authorities responded to these allegations. So far, three NBSCCC diocesan reviews pertaining to Northern Ireland have been released. These involve the dioceses of Clogher, Derry and Dromore. In total, the reviews detail 89 allegations of abuse against 46 priests reported to police, and 90 reported to social/health services.<sup>17</sup> The report for the Derry diocese details allegations against 23 priests: 31 allegations were reported to the police in Northern Ireland and the Republic of Ireland, and 33 allegations were made to social services. The report for Dromore details allegations of abuse against

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<sup>12</sup> For example, reports of clerical abuse have emerged in Austria, Australia, Belgium, Canada, the Czech Republic, France, Germany, Peru, the Philippines, Mexico, New Zealand and the U.S. D. Pilgrim, 'Child Abuse in Irish Catholic Settings: A Non-Reductionist Account', *Child Abuse Review*, Vol. 21, (2012), p. 411.

<sup>13</sup> These comprise the Ferns Report (2005), the McCoy Report (2007), the Commission to Inquire into Child Abuse (2009) (also called the Ryan Report), the Murphy Report (2009) and the Cloyne Report (2011).

<sup>14</sup> *Interim Report of the Commissaries Appointed by the Archbishop of Canterbury in Relation to a Visitation Upon The Diocese of Chichester*. 30 August 2012. Available at <http://www.archbishopofcanterbury.org/articles.php/2604/archbishops-chichester-visitation-interim-report-published>.

<sup>15</sup> These cases include the case of Brendan Smyth, who was prosecuted for dozens of offences stretching back over decades. See BBC News, 'Profile of Father Brendan Smyth', *BBC News*, 15 March 2010 [Online]. Available at [http://news.bbc.co.uk/1/hi/northern\\_ireland/8567868.stm](http://news.bbc.co.uk/1/hi/northern_ireland/8567868.stm).

<sup>16</sup> For example: the UTV documentary on abuse perpetrated by Brendan Smyth. Ulster Television, *Suffer Little Children* (6 October 1994), *UTV Counterpoint* [Online]. Available at <http://www.u.tv/utvplayer/video/134172>. See also, BBC News, 'Clogher clerical abuse report: Former bishop accepts criticism', *BBC News*, 24 April 2013 [Online]. Available at <http://www.bbc.co.uk/news/uk-northern-ireland-22276000>; and, '85 priests were accused of abuse - Catholic Church reviews', *BBC News*, 30 November 2011 [Online]. Available at <http://www.bbc.co.uk/news/uk-northern-ireland-15960621>.

<sup>17</sup> These concern allegations made against priests in the dioceses from 1<sup>st</sup> January 1975 until the date of the reviews.

10 priests, and 35 reported allegations to police and social services. In the case of Clogher, 23 allegations were made against 13 priests, 23 allegations were reported to An Garda Síochána and 22 to health services.

The reviews note different kinds of inadequacies in how Church authorities responded in the past to allegations of abuse. These shortcomings are summarised in Figure 1.

**Figure 1. NBSCCC Diocesan Review Findings: Inadequacies in Church Responses to Allegations of Child Abuse**

*Clogher Review*<sup>18</sup>

- Preventive interventionist opportunities ‘were consistently missed when concerns of abuse by clergy were highlighted’.
- In one case, there was ‘an unacceptable delay’ in dealing with a priest and removing him from ministry, despite a ‘credible allegation’ of abuse against him.
- In another case, a priest suspected of being a serial-abuser was not removed from ministry, but instead transferred to another parish and then sent overseas. Although he was eventually extradited back, he died before he could be prosecuted.
- The response to concerns about abuse ‘was often unsatisfactory’ and ‘risky behaviour was not addressed as strongly as it should have been’.

*Derry Review*<sup>19</sup>

- Priests about whom ‘clear concerns’ were raised, were ‘not robustly challenged or adequately managed’. Instead, they were dealt with by transfer to other postings, and ‘abusive behaviour continued to be exhibited by priests who were moved on in this manner’.
- Evidence of ‘a delay in referring cases to the statutory authorities’.
- Case recording was ‘poor and unstructured’.
- Use of canonical disciplinary procedures ‘was the exception rather than the rule’.
- Failure to conduct risk assessments of priests against whom allegations or reports of concerns had been received.
- Evidence that recommendations contained in psychological and/or psychiatric assessment reports of priests accused of abuse ‘were not acted on’.
- In terms of case management strategies, there were ‘no consistent, coherent and effective’ strategies put in place.

*Dromore Review*<sup>20</sup>

<sup>18</sup> National Board for Safeguarding Children in the Catholic Church in Ireland, *Review of Safeguarding Practice in the Diocese of Clogher*. NBSCCC: Dublin. 2012. Available at [http://www.safeguarding.ie/wp-content/uploads/2013/04/Clogher\\_NBSCCCI\\_Report\\_2013.pdf](http://www.safeguarding.ie/wp-content/uploads/2013/04/Clogher_NBSCCCI_Report_2013.pdf)

<sup>19</sup> National Board for Safeguarding Children in the Catholic Church in Ireland, *Review of Safeguarding Practice in the Diocese of Derry*. NBSCCC: Dublin. 2011. Available at [http://www.safeguarding.ie/wp-content/uploads/2011/11/Derry\\_Review\\_Nov\\_2011.pdf](http://www.safeguarding.ie/wp-content/uploads/2011/11/Derry_Review_Nov_2011.pdf)

- Failure to promptly refer all allegations to statutory investigating agencies.
- 'Very limited evidence' that complainants were offered a support person.

These inadequacies in response to allegations of abuse have been interpreted by commentators as examples of how Church authorities prioritised the protection of reputation over the protection of children:<sup>21</sup> 'the avoidance of scandal, the preservation of the reputation of individuals and of the Church... took precedence over the safety and welfare of children'.<sup>22</sup>

Research suggests that Catholic Church accounts of its responses to those disclosing sexual abuse by clergy to diocesan safeguarding commissions can 'contrast' with the experiences reported by victims and survivors.<sup>23</sup> This contrast can manifest itself as a 'mismatch' between how the Church and some victims and survivors perceive the investigative and reporting value of the reviews.<sup>24</sup> Clearly the NBSCCC presents the reviews as dealing with the wrongs of the past. However for some victims and survivors, the reviews themselves represent a further attempt by the Church to prioritise reputational considerations over the needs of victims and survivors.<sup>25</sup> As one victim of abuse in the diocese of Derry has put it, the review process represents

a PR exercise by the Church to get people back into Mass...It's a disgrace, this is only about saying 'look at what we've put in place, look how great we are now'. Well it's too late, not even a hint of an apology... If you look at the report... there is no mention of any type of help or support for those people still suffering to this day due to the abuse.<sup>26</sup>

Victims and survivors take issue with different aspects of the reviews. One key criticism is that the reviews do not examine cases of abuse prior to 1975. Another concerns the absence of victims' and survivors' perspectives from the reviews.

Gilligan describes the latter issue thus

the Catholic bishops ... and the nominally 'independent' agencies they commission promote a discourse about the nature of the Church's response to victims and survivors of clerical abuse *which appears to give little voice to the views of individual victims and survivors about what they have experienced*. This tends to alienate many [victims and survivors].<sup>27</sup>

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<sup>20</sup> National Board for Safeguarding Children in the Catholic Church in Ireland. *Review of Safeguarding Practice in the Diocese of Dromore*. NBSCCC: Dublin. 2011. Available at [http://www.safeguarding.ie/wp-content/uploads/2011/11/Dromore\\_Review\\_Nov\\_2011.pdf](http://www.safeguarding.ie/wp-content/uploads/2011/11/Dromore_Review_Nov_2011.pdf).

<sup>21</sup> Gilligan, op. cit.

<sup>22</sup> Derry Journal, 'Diocese 'disgraced' by church abuse', *Derry Journal*, 30 November 2011 [Online]. Available at <http://www.derryjournal.com/news/local/diocese-disgraced-by-church-abuse-1-3296423>. The individual quoted is Monsignor Eamon Martin, the Diocesan Administrator for Derry, commenting on how church authorities responded to allegations of abuse detailed in the Derry diocesan review.

<sup>23</sup> Gilligan, op. cit.

<sup>24</sup> *Ibid.*, p. 423.

<sup>25</sup> *Ibid.*, p. 414.

<sup>26</sup> BBC News, '85 priests'. The individual quoted is John Heaney.

<sup>27</sup> Gilligan, op. cit. p.423. The author is referring to reporting by the National Catholic Safeguarding Commission in England and Wales.

On this view, in order to rigorously and robustly investigate clerical child sexual abuse in the community, and to properly identify what happened and the context in which it happened, accounts by institutions such as the Catholic Church about how they respond to victims and survivors of abuse, '*need to be critically analysed using accounts offered by victims and survivors themselves*'.<sup>28</sup> A public inquiry would provide the objective/impartial, investigative and research context within which such important critical analysis could take place, all pertinent evidence could be examined and independent findings could be established and reported. Consequently, victims and survivors of clergy-perpetrated abuse 'alienated' by the reviews in Northern Ireland, have reiterated their calls for an independent public inquiry as the only adequate way to properly uncover the actual nature and scale of clerical abuse. As one survivor has put it, 'only a proper public inquiry can establish the facts, hold to account those responsible and ensure that this can never happen again'.<sup>29</sup>

As a first step toward examining the human rights basis for this called-for inquiry, the next section introduces a general human rights framework developed by the Scottish Human Rights Commission (hereafter, SHRC) to address historical child abuse in Scotland.<sup>30</sup>

#### *Summary*

- Release of NBSCCC diocesan reviews provide insight into the scale of clerical abuse suffered by children in parishes across Northern Ireland and of the inadequacies of institutional responses to it.
- Victims and survivors of clerical abuse have called for an independent public inquiry as the only way to properly investigate and establish responsibility and accountability for their suffering.

### **CLERICAL ABUSE: A HUMAN RIGHTS PERSPECTIVE**

This section addresses two key questions: What is meant by the notion of adapting a human rights based approach to address historical child abuse; and, how can clerical abuse be categorised in human rights terms?

#### *What is a human rights based approach?*

In its development of a general human rights framework to address historical child abuse in Scotland, the SHRC has usefully summarised the main characteristics of a human rights based approach as follows, employing the so-called PANEL model:

- **P**articipation of everyone in decisions which affect their human rights;
- **A**ccountability of those responsible for the respect, protection and fulfilment of human rights;
- **N**on-discrimination [in terms of access to processes of justice, remedy and reparation];

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<sup>28</sup> Ibid.

<sup>29</sup> BBC News, 'Clogher clerical abuse'. Victim quoted is Michael Connolly.

<sup>30</sup> Scottish Human Rights Commission, *A human rights framework for the design and implementation of the proposed "Acknowledgement and Accountability Forum" and other remedies for historic child abuse in Scotland*. Feb. 2010. SHRC: Edinburgh. See also, SHRC and S. Kemp, *A Review of International Human Rights Law Relevant to the Proposed Acknowledgement and Accountability Forum for Adult Survivors of Childhood Abuse*, Feb. 2010. SHRC: Edinburgh.

- Empowerment of rights-holders to know and claim their rights; and,
- Legality: an explicit application of international human rights law and standards.<sup>31</sup>

Application of this approach to address historical childhood abuse is intended to secure effective access to processes of justice, remedies and reparation for victims and survivors, by ensuring that their human rights are respected, protected and fulfilled in both the design and implementation of these processes.<sup>32</sup> To consider this approach in more detail, Figure 2 reproduces the SHRC's summary on achieving accountability in these processes.

**Figure 2. SHRC: A Human Rights Based Approach - Accountability**

1. A human rights based approach demands the identification and fulfilment of responsibilities by different actors.
- Respect, protect, fulfil*
2. Ultimately in international human rights law the State is accountable to respect, protect and fulfil human rights of everyone, everywhere in its jurisdiction (whether at home, in a state or a private institution).
- 'Due diligence'*
3. To comply with this duty the State must ensure that its agents do not conduct abuses. It must also exercise due diligence [*'to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities'*], and take effective measures to prevent abuses of human rights, protect individuals from abuses which it knows or ought to know of.
- Investigate, identify liability and punish perpetrators*
4. Where there are reasonable grounds to believe serious abuses have taken place it must investigate, identify liability and punish perpetrators as appropriate.
  5. The purpose of the investigation should be to identify what happened and the context in which it happened.
  6. The nature of investigation requirements (and particularly the associated duty to prosecute) depend on who the alleged perpetrator is and the gravity of the alleged abuse.
- Other actors*
7. International and domestic human rights law also increasingly recognise responsibilities of other actors, including public authorities, private institutions and individuals.

<sup>31</sup> SHRC, *A human rights framework*, p.15. As the SHRC notes, this PANEL model is 'increasingly endorsed by the United Nations'.

<sup>32</sup> Ibid.



*Right to effective remedy*

8. In response to abuses, the State should ensure the victim's right to an effective remedy is upheld.
9. This right demands access to justice in practice, not only in law, for everyone whose human rights are violated and a victim centred proportionate and participatory reparations process which seeks, to the extent possible, to repair the damage caused by abuses. Other institutions, to the extent that they are accountable, should contribute to reparations for survivors.
10. To make this right real, accessible information should be available to all survivors on violations and remedies.<sup>33</sup>

So as Figure 2 illustrates, a human rights based approach is about determining conduct, responsibility and remedies in cases of treatment that amounts to human rights violating behaviour. Application of a human rights based approach to the examination of historical clerical abuse therefore is essentially about recognising the human rights of those individuals who as children suffered clergy-perpetrated abuse.

*Categorising clerical abuse in human rights terms*

Defining clerical abuse in human rights terms is about understanding how those children who experienced rape, sexual abuse and other forms of maltreatment by clerics, experienced treatment which equates to human rights violating behaviour.<sup>34</sup> International and regional human rights treaties spell out the rights of victims of human rights abuses. The international human rights standards that would be engaged by any inquiry into this clerical abuse include provisions on the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.<sup>35</sup> The Amnesty International Ireland report *In Plain Sight* affirms this point, by illustrating how the clerical sexual abuse documented in diocesan reports in the Republic of Ireland 'can be categorised as torture, and cruel, inhuman and degrading treatment under human rights law'.<sup>36</sup>

As Figure 2 indicates, under international human rights law, a state has obligations to respect, protect and fulfil the human rights specified in those treaties to which it is a party. The relevant treaties for ensuring justice for victims of child abuse include

- *The European Convention on Human Rights, 1950* (UK ratification 1951);
- *The International Covenant on Civil and Political Rights, 1966* (UK ratification: 1976);
- *The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* (UK ratification: 1988); and,

<sup>33</sup> Ibid., pp.20-21.

<sup>34</sup> Amnesty International Ireland and C. Holohan. *In Plain Sight: Responding to the Ferns, Ryan, Murphy and Cloyne Reports. All: Dublin* (2011), p.37.

<sup>35</sup> Northern Ireland Human Rights Commission, 'Response on the Inquiry into Historical Institutional Abuse Bill 2012', *NIHRC: Belfast* (2012) [Online]. Available at <http://www.nihrc.org/documents/advice-to-government/2012/NIHRC%20Response%20on%20the%20Inquiry%20into%20Historical%20Abuse%20Bill%202012.docx>.

<sup>36</sup> All and Holohan, op. cit., p.37.

- *The United Nations Convention on the Rights of the Child, 1989* (UK ratification: 1991).<sup>37</sup>

The important point here is that the Northern Ireland Executive is subject to the obligations set out in this legislation given the United Kingdom's ratification of the treaties.<sup>38</sup>

Although clerical abuse in the community is perpetrated by private individuals, for example priests, the state may be held to account.<sup>39</sup> This is because, as the SHRC framework dimension in Figure 2 illustrates, the state is accountable to respect, protect and fulfil human rights of everyone, everywhere in its jurisdiction. This means that the state is required to take 'positive action' to protect persons within its jurisdiction from abuses inflicted by private individuals.<sup>40</sup> And, also as seen in Figure 2, where there is a reasonable basis for supposing that serious violations have been perpetrated, including violations perpetrated by private actors, the state is required to investigate, identify liability and hold perpetrators to account. Figure 2 affirms that the purpose of the investigation should be to identify what happened and the context in which it happened. But holding the perpetrators of child abuse to account within a human rights framework, in processes of justice, remedy and reparation, is also about ensuring that 'systemic lessons are learned to reduce the likelihood of similar abuses in the future'.<sup>41</sup> With regard to the right of an effective remedy in cases of abuses conducted by private actors, state responsibility is clear:

the State is always directly responsible where an individual cannot exercise their right to a remedy for human rights abuses, whether those abuses originated by breach of State actors or private individuals.<sup>42</sup>

The bottom line is this:

from the standpoint of individuals subjected to human rights abuses [by the actions of private actors], such actions by non-State actors and institutions can amount to violations of the rights protected by international human rights law.<sup>43</sup>

### *Summary*

This section set out a general human rights framework for addressing historical abuse, as developed by the SHRC. The SHRC used the framework to address institutional abuse. Amnesty International Ireland has used it to inform and guide its examination of both institutional abuse *and* clerical abuse in the community in the Republic of Ireland. Amnesty's use affirms the relevance of the framework to the examination of clergy-perpetrated abuse. Reliance on this framework to examine the Northern Ireland case of historical abuse illustrates that:

- Clergy-perpetrated abuse, such as that which took place in the community in Northern Ireland, may be categorised in human rights terms.

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<sup>37</sup> NIHRC, op. cit.

<sup>38</sup> Ibid.

<sup>39</sup> All and Holohan, op. cit.

<sup>40</sup> Ibid., p.29.

<sup>41</sup> D. Wilson, 'Delivering a Human Rights Compliant Inquiry for the Victims of Historical Child Abuse in Northern Ireland,' in Amnesty International Northern Ireland, *Conference Report, Time for Justice: Delivering a human rights compliant inquiry for the victims of historical institutional child abuse in Northern Ireland*. AINI: Belfast (2010), p.8.

<sup>42</sup> All and Holohan, op. cit., p.84.

<sup>43</sup> Ibid.

- The international human rights standards that would be engaged by any inquiry into this clerical abuse include provisions on the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment, as set out in international treaties.
- Where there are reasonable grounds for supposing that serious violations have been perpetrated, the state is required to investigate, to identify what happened and the context in which it happened.
- The Northern Ireland Executive is subject to these obligations given the United Kingdom's ratification of these treaties.

## **INQUIRY INTO CLERICAL ABUSE: WHAT'S REQUIRED? KEY CONSIDERATIONS**

This section considers in brief and in broad terms what type of public inquiry is required in Northern Ireland to properly (fully and robustly) investigate clerical abuse in the community. In so doing it focuses on some key considerations that would need to be worked out in relation to the framing, logistics and operation of the inquiry. To that end, it draws on a previous submission from Amnesty International UK to the Northern Ireland Executive, which enumerated recommendations on the nature of the then proposed inquiry into historical institutional abuse. Clearly decisions on the precise nature, scope and parameters of an inquiry into clerical abuse in the community should be subject to a consultation process, in the same way that the design of the current inquiry on historical abuse followed a consultation process with affected parties and interested others. So this section is only intended as introductory and, for this reason, will only consider some of the more fundamental elements of what is required of an eventual inquiry into clerical abuse in the community.

In May 2011, Amnesty International UK made several recommendations to the Executive regarding the then proposed inquiry into historical institutional abuse in its jurisdiction.<sup>44</sup> Although these recommendations specifically addressed the proposal of an inquiry on institutional abuse, it is still useful to draw on them in broad terms to consider in brief what kind of inquiry is needed to address clerical abuse in the community in Northern Ireland.

In line with Amnesty International UK's original submission to the Executive regarding an inquiry into institutional abuse, an inquiry into clerical abuse in the community should be 'capable of being independent, impartial, thorough and effective, in accordance with international human rights standards'.<sup>45</sup> To achieve these standards the inquiry should:

- allow for effective victim participation;
- be open to public scrutiny;
- be capable of inspiring trust in its proceedings; and,

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<sup>44</sup> Amnesty International UK, 'Proposed Inquiry into Historic Institutional Abuse in Northern Ireland Submission to the Historical Institutional Abuse Taskforce of the Northern Ireland Executive from Amnesty International UK, May 2011', (2011). AIUK: London [Online]. Available at [http://www.amnesty.org.uk/uploads/documents/doc\\_21546.pdf](http://www.amnesty.org.uk/uploads/documents/doc_21546.pdf).

<sup>45</sup> Ibid.

- be capable of delivering a report, which will clearly outline the systems under which this abuse was allowed to happen and make recommendations to ensure that such circumstances are not allowed to happen again.<sup>46</sup>

These are among the most fundamental areas of consideration of the called-for inquiry into clerical abuse. Others include a requirement to ensure that the inquiry is provided with a statutory power to compel the release of documents and require witnesses to give evidence; and, clarification in respect of, *inter alia*, timeframe, resources, historical scope, satisfaction for victims and guarantees of independence.

The parameters of the current inquiry into historical abuse in Northern Ireland addressed similar recommendations in respect of historical institutional abuse. A separate but similarly framed inquiry could therefore potentially meet these recommendations in respect of clergy-perpetrated abuse in the community. Of course, a second option is also available. Instead of a separate, parallel inquiry into clerical abuse in the community, the Executive could potentially expand the terms of reference of the current inquiry to include the examination of this clerical abuse.

#### *Summary*

An inquiry into clerical abuse in the community is needed that would

- allow victims and survivors to recount their experiences and have their experiences acknowledged and validated; and,
- thoroughly, independently and effectively research, investigate and report on what happened and why it happened, making recommendations based on same.

### **OVERALL SUMMARY**

#### *Limitations of the Northern Ireland Executive's current inquiry into historical abuse*

- Victims and survivors of clerical abuse in the community are excluded from the Executive's current inquiry into historical abuse: they will not have the opportunity to recount their experiences; they will not be listened to; they will not have their experiences acknowledged, validated and investigated.
- By denying victims and survivors of clerical abuse in the community access to processes of acknowledgement and validation within the context of the current inquiry, the Executive has denied them access to 'essential components of healing'.

#### *Clerical abuse - Human rights perspective*

- Clerical abuse in the community may be categorised in human rights terms.
- The international human rights standards that would be engaged by any inquiry into this clerical abuse include provisions on the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment, as set out in international treaties.

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<sup>46</sup> Ibid.

- Where there are reasonable grounds for believing that serious violations have been perpetrated, the state must investigate, to identify what happened and the context in which it happened.
- The Northern Ireland Executive is subject to these obligations given the United Kingdom's ratification of the applicable treaties.

*Functions of the called-for inquiry into clerical abuse in the community:*

- To allow victims and survivors to recount their experiences, and to acknowledge and validate their experiences.
- To thoroughly, independently and effectively research, investigate and report on what happened and why it happened, making recommendations to the Executive based on same.

## **RECOMMENDATIONS TO THE NORTHERN IRELAND EXECUTIVE**

The Northern Ireland Executive should

- Ensure that victims and survivors of clergy-perpetrated child sexual abuse in the community in Northern Ireland are offered an equal opportunity with victims and survivors of residential-institutional abuse, to recount their experiences in the context of a public inquiry, where they can have their experiences acknowledged, validated and investigated.
- Make provision for either (1) a parallel inquiry into historical clerical abuse in the community perpetrated within its jurisdiction, or (2) an extension of the terms of reference of the current historical abuse inquiry, to include this clerical abuse. The inquiry should be capable of thoroughly, independently and effectively researching, investigating and reporting on what happened and why it happened, in accordance with international human rights standards.

## **CONCLUSION**

Clergy-perpetrated abuse, such as that which occurred in the community in Northern Ireland, may be characterised in human rights terms. Victims of human rights abuses have specific rights under international human rights law. Amongst these is the victim's 'right to know' the truth in relation to the violations suffered.<sup>47</sup> As previously noted, the Northern Ireland Executive is subject to obligations regarding the protection, respect and fulfilment of victims' rights given the United Kingdom's ratification of international human rights treaties. Amongst these is the obligation on the state to thoroughly investigate where there are reasonable grounds to suppose serious abuses have occurred within its jurisdiction. But because the abuse they suffered was not perpetrated in residential institutions, victims and survivors of clerical child sexual abuse in the community in Northern Ireland will not be given an opportunity to recount their experiences to the Executive's current inquiry into historical abuse. Their experiences will not therefore be taken into account and

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<sup>47</sup> SHRC, *A human rights framework*, p.41. This 'right to know' relates to the duty to investigate: 'the duty to investigate [in international human rights standards] is often described as a victim's right to know'.

examined by the inquiry's investigation, nor documented in its final report. In so far they have been excluded from the current inquiry into historical abuse, victims and survivors of clerical abuse in the community in Northern Ireland have been denied access to the truth in relation to the violations they suffered. In the absence of a full and proper investigation, the victims' 'right to know' cannot be properly fulfilled.

As things stand therefore, the Executive's current efforts to investigate historical child abuse in Northern Ireland are, at best, partial. The actual nature and scale of that abuse will remain unknown 'unless and until' the victims and survivors of clerical abuse in the community are given an equal opportunity to recount their experiences of abuse within the context of a human rights compliant independent public inquiry.<sup>48</sup>

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<sup>48</sup> As the SHRC and Kemp have put it 'the nature, scope and circumstances of childhood abuse will not be fully known unless and until survivors recount their experiences', op. cit. p.1.