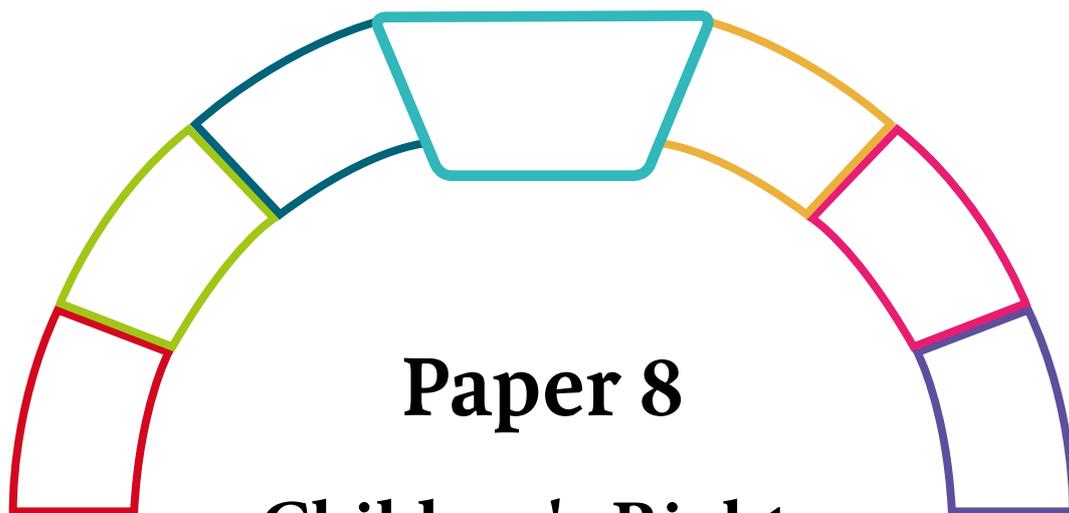


# **GAP**

## **Guidance, Advice and Practice**



### **Paper 8**

## **Children's Rights, Child Safeguarding and the Catholic Church in Ireland**

**November 2020**



THE NATIONAL BOARD FOR  
**SAFEGUARDING CHILDREN**  
IN THE CATHOLIC CHURCH IN IRELAND



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**SAFEGUARDING CHILDREN**  
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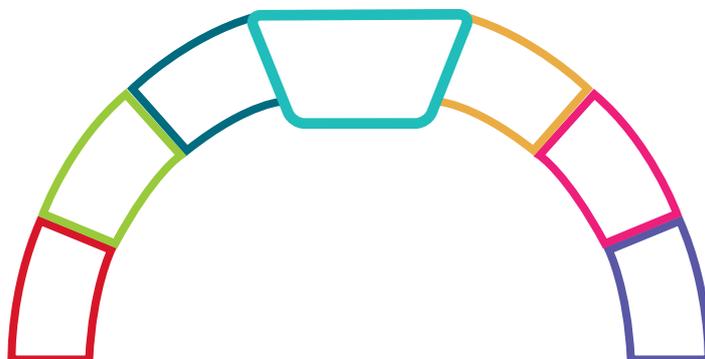
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## What are the GAP Papers



The National Board for Safeguarding Children in the Catholic Church in Ireland (the National Board) was established to provide advice, services and assistance in furtherance of the development of the safeguarding of children within the Roman Catholic Church on the island of Ireland. The National Board also monitors compliance with legislation, policy and best practice and to report on these activities annually, all as comprehensively set out in the Memorandum of Association of the Company, Coimirce.

Article 4 (iii) of the Memorandum and Articles of Association of the Company requires the National Board to: “ report and provide, upon request from the Constituents or any Constituent, support, advisory and training services to such Constituents or Constituent on policies and practices relating to safeguarding of children.”

The National Board already provides comprehensive Guidance to support the implementation of *Safeguarding Children, Policy and Standards for the Catholic Church in Ireland 2016*. These series of Guidance, Advice and Practice (GAP) papers further complement that detailed Guidance on topics of current interest to constituents.

The bridge logo above encapsulates the aim of these GAP papers, each brick represents one of the seven safeguarding standards; the keystone signifies the importance of quality assuring compliance with the standards, which is the responsibility of the Church authority. A major part of quality assurance is becoming aware of new challenges or gaps to safeguarding as they emerge. This series of papers aims to provide the reader with information on guidance, advice and practice, which will assist in developing best practice in safeguarding children, identifying where there are risks and how to minimise these risks. To do this, these papers draw on the experiences of the National Board, research and information already available to the reader from other sources.

The GAP papers are not intended to be read as definitive positions on the chosen topic. The National Board does not claim to have inserted all available research and knowledge; nor do we claim to be masters of best practice offering indisputable views. Each of these papers will focus on a particular gap in terms of safeguarding children, and each paper will provide guidance advice and practice to help overcome these gaps, building the reader’s knowledge on the subject and in informing practice, which will be underpinned by the seven safeguarding standards.

Effectively using **G**uidance, **A**dvice and **P**ractice to bridge the **GAP**.

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## 1. Introduction

‘Our generation will show that it can rise to the promise found in each young person when we know how to give them space. This means that we have to create the material and spiritual conditions for their full development; to give them a solid basis on which to build their lives; to guarantee their safety and their education to be everything they can be [...]’<sup>1</sup>

In the first year of his papacy in 2013, Pope Francis used these words during World Youth Day, which provide a clear direction for the value the Church must place on young people. His words intimate the concept of the rights of children, the interconnected, indivisible and multifaceted nature of these rights, and how we each must strive to create the conditions to fulfil the promise in each young person.

A similar sentiment is expressed in the Child Safeguarding Policy of the Catholic Church in Ireland which states:

‘As a constituent member of the Catholic Church in Ireland, we recognise and uphold the dignity and rights of all children, are committed to ensuring their safety and well-being, and will work in partnership with parents/guardians to do this. We recognise each child as a gift from God, and we value and encourage the participation of children in all activities that enhance their spiritual, physical, emotional, intellectual and social development.

All Church personnel (including clergy, religious, staff and volunteers) have a responsibility to safeguard children through promoting their welfare, health and development in a safe and caring environment that supports their best interests and prevents abuse.’<sup>2</sup>

To safely develop the potential of each young person as articulated by Pope Francis requires a fulfilment of their rights. But in order to fulfil rights, it is necessary to understand what these rights are and what their place is within the Catholic Church in Ireland.

This GAP paper will begin by exploring the definition of children’s rights, and the role of the Holy See in the realisation of these rights. Consideration will then be given to specific rights relevant to ChildSafeguarding mentioned within the United Nations Convention on the Rights of the Child (UNCRC), as they apply to safeguarding children in the Catholic Church in Ireland.

Finally, the paper will discuss what constitutes a children’s rights approach, and the contribution that Church child safeguarding personnel can make towards upholding rights in practice.

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<sup>1</sup> Pope Francis (2013) *Apostolic Journey to Rio De Janeiro on the Occasion of the XXVII World Youth Day Welcome Address 22nd July*. Vatican City: Libreria Editrice Vaticana. p. 2.

<sup>2</sup> NBSCCCI (2016) *Safeguarding Children Policy and Standards for the Catholic Church in Ireland*. Dublin: Veritas, p. 8.

## 2. What do we mean by ‘children’s rights’?

One way of understanding children’s rights is that they are human rights that are specific to children, because the nature of childhood needs particular protection.

‘Human rights are the fundamental rights and freedoms that belong to every single one of us, anywhere in the world. Human rights apply no matter where you are from, what you believe in, or how you choose to live your life.

Human rights can never be taken away, but they can sometimes be restricted – for example if a person breaks the law, or in the interests of national security. These rights and freedoms are based on values like dignity, fairness, equality, respect and independence. But human rights are not just abstract concepts – they are defined and protected by law.<sup>3</sup>

The international community have outlined three core principles to human rights:

- Universal – they belong to all of us, to everybody in the world
- Inalienable – they cannot be taken away from us
- Indivisible and interdependent – governments should not be able to pick and choose which rights are respected.<sup>4</sup>

Like all other humans, children have rights which protect them during their development to adulthood. However, given their special vulnerabilities, the UN created the *Convention on the Rights of the Child* in 1989, recognising each child as an individual, and as a member of their family and community, while not being either the property of their parents or helpless subjects of protection.

The focus of this GAP paper will be on children’s rights as set out in the United Nations Convention on the Rights of the Child (UNCRC). The four overarching principles of which are:

- **Non-discrimination** means that all children have the same right to develop their potential in all situations and at all times.
- **The best interests of the child** must be a primary consideration in all actions and decisions concerning a child.
- **The right to survival and development** underscores the vital importance of ensuring access to basic services and to equality of opportunity for children to achieve their full development.
- **The views of the child** mean that the voice of the child must be heard and respected in all matters concerning his or her rights.

Whilst the Convention contains 42 specific rights which are often grouped together under the general principles listed above, for the purposes of safeguarding children in the Catholic Church, a number of these Articles are of particular relevance (though all Rights bear equal weight). The rights are listed below and are quoted directly from the UNCRC:

### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

<sup>3</sup> Amnesty (2020) *What are Human Rights?* Available at <https://www.amnesty.org.uk/what-are-human-rights> (Accessed 1st September 2020).

<sup>4</sup> Amnesty (2020) *Principles of Human Rights*. Available at <https://www.amnesty.ca/our-work/issues/international-human-rights-principles> (Accessed 1st September 2020).

**Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

**Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order or of public health or morals.

**Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

In order to understand the relevance of children's rights to the work of child safeguarding in the Catholic Church, it is helpful to consider to whom rights apply, how they are forged, and the concept of statehood.

## A. Statehood, Human Rights and the Catholic Church

The United Nations recognised the Holy See as a State with a 'dual nature of [...] the Government of the Vatican City State and also as a sovereign subject of international law having an original, non-derived legal personality independent of any territorial authority or jurisdiction'.<sup>5</sup>

Membership of the United Nations also coincided with what has been described as 'one of the most significant of the 20th century revolutions'<sup>6</sup> as the Church began the process of incorporating human rights into its teaching.

The academic and author Ethna Regan<sup>7</sup> charts this journey, and in particular the influence of Pope John XXIII who stated in the encyclical *Pacem in Terris*:

'...that each individual man is truly a person [...] he has rights and duties which together flow as a direct consequence of his nature. These rights and duties are universal and inviolable and there altogether inalienable.'<sup>8</sup>

The language used in this quote directly echoes the wording of the Universal Declaration of Human Rights;<sup>9</sup> and this encyclical for the first time gives a complete and systematic list of human rights and their place in Catholic teaching.<sup>10</sup>

## B. The Holy See and the United Nations Convention on the Rights of the Child (UNCRC)

The progress of recognition of human rights within Catholic teaching resulted in the Holy See becoming the fourth State to sign and ratify the United Nations Convention of the Rights of the Child (UNCRC)<sup>11</sup> in 1990.<sup>12</sup> Not only was it an early adopter of the UNCRC, but the Holy See played an active role in navigating 'the difficult path to international consensus on the Conventions terms.'<sup>13</sup>

The unique dual role that the Holy See has, as both the administration of a religion and as a state, means that in ratifying the UNCRC, the Holy See must ensure not only that the law of the Vatican City State complies with the principles of the Convention, but that the Church will use its moral authority to encourage others to implement the Convention.<sup>14</sup>

In ratifying the Convention, the Holy See issued a declaration stating that:

'...by acceding to the Convention on the Rights of the Child, the Holy See intends to give renewed expression to its constant concern for the well-being of children and families. In consideration of its singular nature and position the Holy See, in acceding to this Convention, does not intend to prescind in any way from its specific mission which is of a religious and moral character.'<sup>15</sup>

5 United Nations Committee on the Rights of the Child (2014) *Concluding Observations of the Second Periodic Report of the Holy See*. Geneva: United Nations, p. 2.

6 Calo, Z.R. (2015) *Catholic social thought and human rights*. American Journal of Economics and Sociology, 74, pp 93-112.

7 For fuller discussion see Regan, E. (2010) *Theology and the Boundary Discourse of Human Rights*. Georgetown: Georgetown University Press.

8 Pope John XXIII (1963) *Pacem in Terris*. Vatican City: Liberia Editrice Vaticana.

9 Universal Declaration of Human Rights 1948. Available at: [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

10 For fuller discussion see Langan, J. (1982) *Human Rights in Roman Catholicism*. Journal of Ecumenical Studies Philadelphia, 19, pp25-39.

11 United Nations Convention on the Rights of the Child, 1989, United Nations.

12 For fuller discussion see Moore, N. (2020) *The Understanding and Acceptance of Children's Rights Amongst Those in Formation (or Recently Ordained) to Become Catholic Priests in Ireland: An Exploratory Study*. Belfast: Queens University Belfast.

13 McAleese, M. (2017) *The Holy See and the 1989 United Nations Convention on the Rights of the Child- Is a once promising journey now going backwards? Discourse given as part of the Royal Irish Academy Series*. Dublin: Royal Irish Academy, p. 4.

14 United Nations Committee on the Rights of the Child (2011) *Second Periodic Report of the Holy See*. Geneva: United Nations, p. 5.

15 United Nations (1990) *Declarations and Reservations of the Holy See to the UNCRC*. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec) (Accessed 28th May 2020).



This is an important statement and one which puts forward the unique identity of the Holy See vis-a-vis that of other member states of the United Nations. It recognises that although the Holy See is a state, it exists to support the function and mission of the Catholic Church.

Expanding upon this declaration, the Holy See issued a number of reservations which are permitted to it under Article 51 of the UNCRC. One of these reservations relates to the specific unique status of the Holy See and its ability to implement the UNCRC in the same way as other states. Another reservation relates to the definition of the phrase ‘family planning’ under Article 24(2) which the Holy See will only interpret as that which it considers morally acceptable. The final reservation is related to the Holy See only:

‘...interpreting the articles of the Convention in a way which safeguards the primary and inalienable rights of parents, in particular insofar as these rights concern education (articles 13 and 28), religion (article 14), association with others (article 15) and privacy (article 16).’<sup>16</sup>

Stating these reservations allows the Holy See to remain consistent with its tradition and beliefs, while promoting and upholding the articles of the Convention.

Most countries throughout the world have now signed and ratified the UNCRC, among them the Republic of Ireland in 1992, and Northern Ireland as part of the UK in 1991. Therefore, the Catholic Church and both jurisdictions in Ireland are signatories to the UNCRC, and all three have committed to the legally binding promise to transpose the articles of the Convention into domestic law.

## C. The UNCRC

Work on the development of the UNCRC began because of a growing recognition that the *Universal Declaration of Human Rights*<sup>17</sup> failed to take account of the specific conditions and circumstance of childhood. The UNCRC contains 54 articles, 42 of which describe specific rights of children that states must uphold. It should be understood that the UNCRC is part of an overall human rights framework and sits in addition to the rights afforded to all humans as part of the *Universal Declaration of Human Rights*. The rights contained within the UNCRC follow the same principles that were articulated by Pope John XXIII<sup>18</sup> - that the rights themselves are inviolable, inalienable and universal.

‘The Convention must be seen as a whole: all the rights are linked and no right is more important than another. The right to relax and play (Article 31) and the right to freedom of expression (Article 13) have equal importance as the right to be safe from violence (Article 19) and the right to education (Article 28).’<sup>19</sup>

It is important to recognise that by being inalienable from the human person, rights should never be contingent upon responsibilities, a mistake often made when attempting to educate children on their rights.

The main task of monitoring the implementation of the UNCRC falls to the United Nations Committee on the Rights of the Child (the Committee). State parties such as the Holy See, Ireland and the United Kingdom, report to the Committee at regular intervals on the progress they are making towards full implementation of the Convention. In response, the Committee issues ‘Concluding Observations’ to assist the State Party with the work of implementation by offering critique and guidance.

<sup>16</sup> United Nations (1990) *Declarations and Reservations of the Holy See to the UNCRC*. Available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec) (Accessed 28th May 2020).

<sup>17</sup> United Nations Universal Declaration of Human Rights (1948).

<sup>18</sup> Pope John XXIII (1963) *Pacem in Terris*. Vatican City: Liberia Editrice Vaticana.

<sup>19</sup> The United Nations Convention on the Rights of the Child (1990). Available at: <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/> (Accessed 19th August 2020).

### 3. Misperceptions about Children and Childhood

The Convention on the Rights of the Child (UNCRC) coincided with developments in thinking about the place that children occupy within society. A number of traditionally held views regarding children have influenced our collective understanding of children as rights holders, and indeed may have affected our willingness to accept that they *do* have specific rights. Howe and Covell identify five of these traditionally held views: These are,

‘...children as parental property, children as incapable not-yets, children as innocent creatures in need of protection against politicization, children as unruly creatures unfit for the rights and responsibilities of citizenship, and children’s rights as an individualistic and anti-social concept’.<sup>20</sup>

Staying with this theme, Moore<sup>21</sup> identifies how these prevailing misperceptions of children and childhood are present across various professional groupings, including teachers, social workers, youth workers, judges and health care staff, and internationally as well. He tracks how these misperceptions can influence the acceptance and understanding of the rights of children by professionals, and those seminarians in formation and recently ordained for the Catholic Church in Ireland; which in turn can dilute the likelihood of children’s rights being fully realised. The academic Priscilla Alderson in commenting on this risk uses the helpful analogy of plumbing, arguing that patterns of thinking and belief ‘...tend to be invisible and ignored until something goes obviously wrong, such as leaks or blockages. Then people realise how vitally their lives are affected by hidden pipes (or beliefs) and see that the most practical thing to do is sort out the (mental) plumbing.’<sup>22</sup>

The link between the history of safeguarding within the Catholic Church and the impact that this collective historical understanding of children has on the ‘mental plumbing,’ is an area on which this paper will now focus.

20 Howe, R. & Covell, K. (2007) *Empowering Children: Children’s Right Education as a Pathway to Citizenship*. London: University of Toronto Press, p.151.

21 Moore, N. (2020) *The Understanding and Acceptance of Children’s Rights Amongst Those in Formation (or Recently Ordained) to Become Catholic Priests in Ireland: An Exploratory Study*. Belfast: Queens University Belfast.

22 Alderson, P. (2000) *Young Children’s Rights Exploring Beliefs, Principles and Practice*. London: Jessica Kingsley Publishers.



#### 4. Why are children's rights relevant to Safeguarding Children in the Catholic Church in Ireland?

The history of the abuse of children in parishes, religious orders, care and educational establishments by Catholic priests, religious and lay staff is well documented.<sup>23</sup> Whilst not diminishing the good ministry, care and education provided by Catholic Institutions in Ireland and Northern Ireland, it is important to remember (so as not to repeat the mistakes of the past) that for a large number of children, their rights and best interests were disregarded by some adults who abused them physically, emotionally and sexually.

During the World Meeting of Families in 2018, Pope Francis outlined how both historical behaviours and neglect have together led to the erosion of the most fundamental of human rights. He stated that,

'I cannot fail to acknowledge the grave scandal caused in Ireland by the abuse of young people by members of the Church charged with responsibility for their protection and education... The failure of ecclesiastical authorities – bishops, religious superiors, priests and others – adequately to address these repellent crimes has rightly given rise to outrage, and remains a source of pain and shame for the Catholic community.'<sup>24</sup>

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23 For more information, see Murphy, F., Buckley, H. & Joyce, L. (2005) *The Ferns Report*. Dublin: Government Publications; Commission to Inquire into Child Abuse (2009) *Report of the Commission to Inquire into Child Abuse, Volumes 1-5*. Dublin: Commission to Inquire into Child Abuse; Department of Justice and Equality (2009) *Report of the Commission of Investigation into the Catholic Archdiocese of Dublin*. Dublin: Department of Justice and Equality; Department of Justice and Equality (2010) *Commission of Investigation Report into the Catholic Diocese of Cloyne*. Dublin: Department of Justice and Equality; Historical Institutional Abuse Inquiry (2017) *Report of the Historical Institutional Abuse Inquiry*. Belfast: Department of Finance.

24 Pope Francis (2018) *Apostolic Visit of His Holiness to Ireland on the Occasion of the IX World Meeting of Families* Vatican City: Libreria Editrice Vaticana.

## 5. Particular Rights to Consider

In order to further understand how children in the Church can be affirmed and asserted through safeguarding, there are particular rights to be considered. These are set out below.

### A. Child Protection Rights - Article 19

The misdeeds of the past were a key focus of the United Nations Committee on the Rights of the Child (the Committee) latest (2014) concluding observations on the second periodic report of the Holy See, when they highlighted the following:

‘The Committee takes note of the commitment expressed by the delegation of the Holy See to hold the dignity and entire person of every child inviolable. The Committee nevertheless expresses deep concern about child sexual abuse committed by members of the Catholic Church operating under the authority of the Holy See, whereby clerics have been involved in the sexual abuse of tens of thousands of children worldwide.’<sup>25</sup>

The Committee went on to outline a number of areas which needed to be specifically addressed by the Holy See, including:

‘(a) Well-known child sexual abusers have been transferred from parish to parish or to other countries in an attempt by the Church to cover-up such crimes. This practice has been documented by numerous national commissions of inquiry. The practice of offenders’ mobility has allowed many priests to remain in contact with children and to continue to abuse them, and places children in many countries at high risk of sexual abuse by clerics. Dozens of child sexual offenders are reported to be still in contact with children’

‘(b) In cases where child sexual abuse has been addressed by the Holy See, it has been treated as *a grave delict against the moral* through confidential proceedings providing for disciplinary measures which have allowed the vast majority of abusers and almost all those who have concealed child sexual abuse to escape judicial proceedings in States where the abuses were committed’

‘(c) Due to a code of silence imposed on all members of the clergy under penalty of excommunication, cases of child sexual abuse have hardly ever been reported to the law enforcement authorities in the countries where the crimes were committed. On the contrary, cases of nuns and priests who were ostracized, demoted and defrocked for not respecting the obligation of silence have been reported to the Committee...’

‘(d) Reporting to national law enforcement authorities has never been made compulsory and was explicitly rejected in an official letter addressed to members of the Irish Episcopal Conference by Bishop Manuel Moreno and Archbishop Luciano Storero in 1997. In many cases, Church authorities, including at the highest levels of the Holy See, have shown reluctance and in some instances, refused to cooperate with judicial authorities and national commissions of inquiry.’ In this regard it is important to note the recent publication of the Independent Inquiry into Child Sexual Abuse in England. Which highlighted significant failures in relation to cooperation with national law enforcement.<sup>26</sup>

‘(e) Limited efforts have been made to empower children enrolled in Catholic schools and institutions to protect themselves from sexual abuse.’<sup>27</sup>

Significant work had been taking place within the Catholic Church in Ireland, in terms of policy and practice before this process of review by the Committee, and significantly more has been accomplished since the Committee published these very critical observations.

<sup>25</sup> UN Committee on the Rights of the Child (2014) *Concluding Observations on the Second Periodic Report of the Holy See*. United Nations: Geneva, p. 9. Available at: <https://www.refworld.org/docid/52f8a1544.html> (Accessed 10th November 2020).

<sup>26</sup> Independent Inquiry into Child Sexual Abuse (2020) *The Roman Catholic Church*. Her Majesty's Stationary Office, London.

<sup>27</sup> UN Committee on the Rights of the Child (2014) *Concluding Observations on the Second Periodic Report of the Holy See*. United Nations: Geneva. Available at: <https://www.refworld.org/docid/52f8a1544.html> (Accessed 10th November 2020). p. 9.

Using the same order employed by the Committee in listing areas about which it was concerned, the following developments in the Catholic Church in Ireland can be highlighted:

- i) The Catholic Church in Ireland revised its Child Safeguarding Policy and Standards and identifies Children's Rights as one of its underpinning foundations. These updated Standards specifically reference reporting requirements (Standard 2); and caring for and managing a respondent (Standard 4). In particular, the Guidance which accompanies these Standards sets out the need for openness and transparency in how allegations are processed, through civil and canonical investigations.
- ii) This transparency has been highlighted further by Pope Francis' promulgation of *Vos estis lux mundi*<sup>28</sup> (VELM), and the more recent accompanying *Vademecum*<sup>29</sup> of the Congregation of the Doctrine of the Faith (CDF), which outlines in detail the process to be followed when allegations are received about clerics, Religious, or Church authorities. This CDF guidance addresses very practical matters, including dealing with anonymous allegations of abuse;<sup>30</sup> responding to allegations brought forward through other mediums;<sup>31</sup> and in managing those reports which may at first appear doubtful<sup>32</sup>.

It does so in ways that are designed to give all allegations due attention,<sup>33</sup> to increase transparency, and to take all appropriate actions.

This commitment to increasing transparency is also addressed regarding the sacramental seal; the *Vademecum* states that while the sacramental seal is absolute, the confessor, once he learns of a safeguarding issue, should 'seek to convince the penitent to make that information known by other means in order to enable the appropriate authorities to take action.'<sup>34</sup> This echoes the National Board guidance, 2.1G<sup>35</sup>, in which the confessor reminds the penitent of the limits of the sacramental seal and offers them the opportunity to meet outside the confessional to assist with reporting to the statutory authorities. Professor Miriam Wijlens, a canon lawyer and a member of the Pontifical Commission for the Protection of Minors highlighted how the inclusion of dealing with allegations in the Sacrament of Reconciliation within the *Vademecum* puts forward '...a task for the future of the Church to see what kind of education do confessors have to listen attentively, to listen and to hear what penitents are really saying, and also what we, as canon lawyers, call helping the person bring something from the internal forum into the external forum...'<sup>36</sup> The National Board, as part of its safeguarding training in formation with seminarians, provides guidance to them on managing allegations received within the sacramental seal.

iii) The National Board's National Case Management Committee<sup>37</sup> has helped to ensure that in the management of cases of alleged abuse of a child, both civil law and canon law procedures are followed. This includes the utilisation of risk assessment to identify, address, reduce, and hopefully eliminate risks to children.

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28 Pope Francis (2019) *Vos estis lux mundi*. Vatican City: Libreria Editrice Vaticana.

29 Congregation for the Doctrine of the Faith (2020) *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*. Vatican City: Libreria Editrice Vaticana.

30 Congregation for the Doctrine of the Faith (2020) *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*. Vatican City: Libreria Editrice Vaticana, Article II 11.

31 Congregation for the Doctrine of the Faith (2020) *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*. Vatican City: Libreria Editrice Vaticana, Article II 9.

32 Congregation for the Doctrine of the Faith (2020) *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*. Vatican City: Libreria Editrice Vaticana, Article II 12.

33 Congregation for the Doctrine of the Faith (2020) *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*. Vatican City: Libreria Editrice Vaticana, Article II 13.

34 Congregation for the Doctrine of the Faith (2020) *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*. Vatican City: Libreria Editrice Vaticana, Article II 14.

35 NBSCCCI (2018) *Guidance on Standard 2*. Available at <https://www.safeguarding.ie/images/Pdfs/Standards/Standard%202.pdf>, p.19 (Accessed 18th August 2020).

36 Vatican News (2020) *Vademecum a Major Step Forward in Protecting Minors*. Available at: <https://www.vaticannews.va/en/vatican-city/news/2020-07/miriam-wijlens-protection-of-minors-interview-cdf-vademecum.html> (Accessed 18th August 2020).

37 For more information see <https://www.safeguarding.ie/index.php/national-case-management-committee>.

iv) The introduction of the crime of reckless endangerment of children through the Criminal Justice Act 2006 (section 176) inhibits the practice of transferring dangerous abusers from parish to parish.

v) The full enactment of the 2015 Children First Act<sup>38</sup> in the Republic of Ireland and of the 1967 Criminal Law Act<sup>39</sup> in Northern Ireland require that all clergy and Religious who receive an allegation of abuse must pass this on to the statutory authorities if it meets the threshold for reporting; and this was further strengthened by VELM and the *Vademecum*. In addition, VELM deals directly with non-compliance with statutory authorities, in that if a cleric or Religious is found in their actions or omissions to be attempting to cover up, they can now be found guilty under canon as well as civil law.

vi) Alongside the National Board guidance referenced above, Pope Francis in 2019 abolished the defence of the *pontifical secret* in canon law for allegations relating to child abuse.<sup>40</sup>

vii) The Catholic Church's Safeguarding Children policy and standards document<sup>41</sup> in Standard 5 (Training and Support for Keeping Children Safe), and Standard 6 (Communicating the Church's Safeguarding Message) sets out the requirement to train children and young people in understanding what they need to do if they are worried or concerned in relation to the possibility of abuse. This is an area of work which is being further enhanced by the National Board in creating new training resources for young leaders (people under the age of 18 who facilitate ministry with other young people) to help strengthen young people's ability to be participants in safeguarding themselves.

This is not an exhaustive list, but it signposts the amount of ongoing work that has and is taking place within the Catholic Church to address the failures of the past in relation to the protection rights contained with the UNCRC.

### **Relevance to Child Safeguarding in the Catholic Church in Ireland**

At the core of child safeguarding ministry should be the desire to protect children from harm, in line with Article 19 of the UNCRC. Inquiries and investigations in both jurisdictions in Ireland have highlighted significant inadequacies in the prevention of abuse to children and in responding promptly and effectively once an allegation was made. As discussed above, the Holy See as a signatory to the UNCRC, reported in 2014 to the Committee and had its children's rights record reviewed by the United Nations. The Holy See was primarily questioned by the Committee on a number of issues which the Committee members considered to constitute significant deficits in upholding children's rights, including in particular, the global scale of sexual abuse of children within the Church by clergy and Religious, and the inability of the Holy See to take responsibility for 'cover-ups' by significant people in authority.

The Committee was strong in its findings that the Pope as Head of the Catholic Church was responsible for the systemic failure to effectively protect children.

The abuse of children, and the failure across the Catholic Church to respond appropriately to this, are undeniable. In order to move forward from the disheartening past and to genuinely uphold UNCRC Article 19, we have to acknowledge all failures; and at the same time, to put in place systems to ensure prioritising children's voices, the prompt reporting of safeguarding concerns, and the assessment and management of risk across all Church ministries.

38 Children First Act (2015) *Republic of Ireland*. Available at: <http://www.irishstatutebook.ie/eli/2015/act/36/enacted/en/html> (Accessed 10th November 2020).

39 Criminal Law Act (Northern Ireland) (1967) Northern Ireland. Available at: <https://www.legislation.gov.uk/apni/1967/18/contents> (Accessed 10th November 2020).

40 Pope Francis (2019) *RESCRIPTUM EX AUDIENTIA SS.MI*: Rescriptum of the Holy Father Francis to promulgate the Instruction on the confidentiality of legal proceedings 17.12.2019. Available at: <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217b.html> (Accessed on 3rd August 2020).

41 NBSCCCI (2016) *Safeguarding Children, Policy and Standards for the Catholic Church in Ireland*. Veritas: Dublin



However, these steps alone will not protect children from harm. The National Board has cautioned several times against complacency and against an unreflective adherence to rules simply out of a fear of exposure during audit, review or inspection. We strongly believe that there has to be a transformation of hearts and mind. One example of where we have tried to promote a move from adopting a bureaucratic approach to genuinely understanding and believing in a child's right to protection is through the National Board's *Head to Heart* Formation training.<sup>42</sup>

### **B. Best Interests of the Child as a Primary Consideration - Article 3**

Article 3(1) of the Convention places an obligation on State parties to ensure that the best interests of the child is a primary consideration in all actions concerning them, '...whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.' Article 3(2) places an accompanying duty on states to ensure each child '...such care and protection as is necessary for his or her wellbeing', taking into account the rights and duties of those directly responsible for them.<sup>43</sup>

Article 3(3) places a further obligation on States Parties to ensure that the '...institutions, services and facilities responsible for the care or protection of children conform to minimum standards as established by competent authorities.'<sup>44</sup>

The principle of 'best interests' however is open to diverse interpretations, which can contribute to conflict between parties who hold contrasting understandings. The interpretation of the 'best interests' principle can also come into conflict with the application of Article 12 right to express their views and to have these taken into consideration when their view on what is best for them is different to that of others involved in decision making processes.

It must also be borne in mind that what is in the best interests of one child, may not be in the best interests of another. The balancing of rights - particularly where rights conflict - is an area which causes much confusion in relation to Article 3. Sometimes the phrase, 'the paramouncy principle' is used to explain this article, suggesting that children's best interests trump all other parties' rights; but this is not a straightforward principle, and its application in reality is more nuanced.

Discussing the concept of paramouncy, the Committee had the following to say:

'The expression "primary consideration" means that the child's best interests may not be considered on the same level as all other considerations. This strong position is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests, and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked...'

'The best interests of the child – once assessed and determined – might conflict with other interests or rights (e.g. of other children, the public, parents, etc.). Potential conflicts between the best interests of a child, considered individually, and those of a group of children or children in general have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child's best interests. If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.'<sup>45</sup>

<sup>42</sup> *Head to Heart Child Safeguarding in Formation*- is a formation programme delivered by the National Board to seminarians in Redemptoris Mater, St Patricks College Maynooth and the Pontifical Irish College in Rome.

<sup>43</sup> NICCY (2008) *Children's Rights: Rhetoric or Reality* NICCY: Belfast, p. 59.

<sup>44</sup> NICCY (2008) *Children's Rights: Rhetoric or Reality* NICCY: Belfast, p. 59.

<sup>45</sup> United Nations Committee on the Rights of the Child (2013) *General Comment Number 14 on the right of the child to have his or her best interests taken as a primary consideration*. UNCR: Geneva, section 37-39. Available at: <https://www.refworld.org/docid/51a84b5e4.html> (Accessed 10th November 2020).

Therefore, rather than the overriding notion of paramountcy, it is perhaps more accurate to understand that children's best interests weigh more heavily when rights conflict, but they do not in themselves always outweigh all other considerations.

### **Northern Ireland**

A review conducted by the Northern Ireland Commissioner for Children and Young People in 2004 into the implementation of children's rights in Northern Ireland, found confusion and inconsistency around 'best interests'.<sup>46</sup> Sixteen years later, the same lack of consistency in interpreting the 'best interests' principle was commented on in the concluding observations issued by the Committee to the United Kingdom when it was stated that:

'With reference to its general comment 14 on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party, in all parts of its territory:

Ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions and in all policies, programmes and projects that are relevant to and have an impact on children;

Develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration.'<sup>47</sup>

### **Republic of Ireland**

The debate around best interests of the child was mentioned in the report of the Kilkenny Incest Investigation, which outlined that, 'The very high emphasis given to the rights of the family in the Constitution may consciously or unconsciously be interpreted as giving a higher value to the rights of parents than to the rights of children.'<sup>48</sup> The investigation team went on to recommend that 'the Constitution should contain a specific and overt declaration of the rights of born children.'<sup>49</sup>

In calling for separate constitutional provisions for born children, the Kilkenny investigation team was pointing out that, at birth, children lose a certain amount of constitutional protection because they have no explicitly stated constitutional rights of their own.

The reasoning behind the need for such a specific clause in the Constitution was to get around the competing rights (the parents' and the child's) that arises in child care proceedings.<sup>50</sup>

Following a Referendum, Article 42A was added to the Constitution in 2015, which states that:

'The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.'<sup>51</sup>

Article 42A, subsection 4.1 specifies that:

'Provision shall be made by law that in the resolution of all proceedings –

i) brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or

46 NICCY (2004) *Children's Rights in Northern Ireland*. NICCY: Belfast, p.4. Available at: [https://www.niccy.org/media/2199/youngp\\_report.pdf](https://www.niccy.org/media/2199/youngp_report.pdf) (Accessed 10th November 2020).

47 UNCRRC (2016) *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*. United Nations: Geneva, section 27.

48 South Eastern Health Board (1993) *Kilkenny Incest Investigation*. Stationary Office: Dublin p. 96.

49 South Eastern Health Board (1993) *Kilkenny Incest Investigation*. Stationary Office: Dublin p. 96.

50 For more information see [https://www.ucc.ie/academic/law/irishlaw/blogger/archive/2009\\_11\\_29\\_up\\_archive.html](https://www.ucc.ie/academic/law/irishlaw/blogger/archive/2009_11_29_up_archive.html)

51 Constitution of the Republic of Ireland, 2020, Republic of Ireland.

ii) concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.<sup>52</sup>

The best interests of the child as a primary consideration is enshrined in Article 42 (2) of the Fundamental Rights of the European Union. In relation to family reunification (related to point ii above) whilst best interest is mentioned in European Directive 2003/86/EC jurisprudence from the European Courts of Justice has found that it has not been systematically applied.<sup>53</sup>

This provision goes beyond the Committee on the Rights of the Child's recommendation in its General Comment Number 14,<sup>54</sup> and recognises that children's best interests are to be understood as the paramount consideration. However, whilst the provision within the Irish Constitution is welcome, the Committee in its latest concluding observations to Ireland stated that it is concerned that the right of the child to have his or her best interests taken as a primary consideration has yet to be fully implemented as a positive obligation in all relevant legislation and administrative procedures and decision-making processes.<sup>55</sup>

### **The Holy See**

Similar to its comments concerning the United Kingdom and the Republic of Ireland, the Committee recommended in its latest concluding observations to the Holy See that: 'The Committee is concerned that children's right to have their best interests taken into account as a primary consideration has been insufficiently addressed by the Holy See... The Committee is particularly concerned that in dealing with allegations of child sexual abuse, the Holy See has consistently placed the preservation of the reputation of the Church and the protection of the perpetrators above the child's best interests, as observed by several national commissions of inquiry.' 'The Committee... recommends that the Holy See strengthen its efforts to ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects that are relevant to and have an impact on children. In this regard, the Holy See is encouraged to provide guidance to all relevant persons in authority with a view to ensuring that the best interests of the child is a primary consideration in every area, including when dealing with cases of child sexual abuse.

The Committee also urges the Holy See to disseminate such guidance to all Catholic churches, organizations and institutions worldwide.<sup>56</sup>

### **Relevance to Child Safeguarding in the Church in Ireland**

The confusion and potential tension in relation to children's best interests becomes apparent when consideration is given to the following key areas related to child safeguarding in the Catholic Church in Ireland:

52 Constitution of the Republic of Ireland, 2020, Republic of Ireland.

53 Klassessn, M. and Rodrigues, P. (2017) The Best Interests of the Child in EU Family Reunification Law: A Plea for More Guidance on the Role of Article 24(2) Charter. Available at [https://brill.com/view/journals/emil/19/2/article-p191\\_4.xml?language=en](https://brill.com/view/journals/emil/19/2/article-p191_4.xml?language=en). (Accessed 24th November 2020).

54 UNCR (2013) *General Comment Number 14 on the right of the child to have his or her best interests taken as a primary Consideration*. United Nations: Geneva,

55 UNCR (2016) *Concluding Observations on the Combined third and fourth periodic reports of Ireland*. United Nations: Geneva, section 29.

56 UNCR (2014) *Concluding Observations on the Second Periodic Report of the Holy See*. United Nations: Geneva, Sections 29 and 30.

### 1) Information Sharing<sup>57</sup>

The introduction of the General Data Protection Regulations (GDPR) through the Data Protection Acts<sup>58</sup> in Northern Ireland and the Republic of Ireland, has had implications across the whole of society in terms of how and when personal data is used; and this is the case in relation to child safeguarding. It should be understood that all information regarding child protection suspicions, concerns, knowledge or allegations which meet the threshold for reporting (current or retrospective) should be shared with the statutory authorities, in the interest of the child. The provision of information to the statutory authorities for the protection of a child is not a breach of confidentiality or of data protection, and failure to share this information with the statutory authorities is an offence in law.

This in itself is a way to uphold the principle of acting in children's best interests, so that information is shared with the relevant statutory authorities to ensure that the child is safe from harm.

However, the implications of data protection legislation mean that whilst the sharing of appropriate information with the statutory authorities is always lawful, there is potentially an issue when considering how child safeguarding information can be shared with other third party organisations, such as other Church bodies, the National Board, or relevant dicasteries within the Holy See. Various reviews conducted into child sexual abuse in Ireland have highlighted the need for better sharing of information between Church authorities for the protection of children.

In principle this appears straight forward, but in reality it is much more complex, as each Bishop/Provincial must adhere to data protection legislation, as well as consider what is in the best interests of safeguarding children.

Most recently the *Vademecum* and *Vos estis lux mundi* set forth a number of reporting responsibilities between third party organisations in the interests of transparency and effective decision making to protect children. The implications of data protection legislation mean that sharing of information is far from straightforward and requires a balance of between a person's right to privacy, the justification for breaching this right, and the best interests of a child.

Following her visit to Ireland in 2019, the United Nations Special Rapporteur on the Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material, discussed this issue and noted that:

'Not being a statutory body, the National Board is not entitled to receive information from the authorities about allegations made against church personnel. Furthermore, Garda policy is not to record incidents and proceed with investigations in the case of victims who are referred by a third party, such as a church, but who are initially unwilling to make a complaint. This would affect many victims of clerical abuse, since most choose not to make statements to police, and could lead to clerical abuses being underrepresented in official reports. Together, these policies create a protection gap in which church communities may not be notified despite an incident of abuse being revealed and clerical offenders benefiting from impunity.'<sup>59</sup>

The National Board has issued guidance to Church authorities to assist them in navigating these complicated situations on when and how to share information for the best interests of children<sup>60</sup>, with other third parties in a way that is legal to do so.

57 For Fuller Discussion see NBSCCCI (2020) *GAP Paper 7- Information Sharing*. Available at: <https://www.safeguarding.ie/news/288-gap-paper-7-available-to-download> (Accessed 10th November 2020).

58 Data Protection Act, 2018, Republic of Ireland; Data Protection Act, 2018, Northern Ireland.

59 UN Human Rights Council (2019) *Visit to Ireland - Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children, including child prostitution, child pornography and on the child abuse material*. United Nations: Geneva p. 17.

60 NBSCCCI (2019) *Guidance on Information Sharing*. Available at <https://www.safeguarding.ie/images/Pdfs/Standards/Standard%202.pdf>, p. 62 (Accessed 17th September 2020).

## 2) Reporting allegations

The policy of the Catholic Church in Ireland is clear that all allegations, suspicions, knowledge or concerns that meet the threshold set out in state legislation<sup>61</sup> must be reported to the statutory authorities. Mandatory reporting has been a requirement in the Church before it became a requirement in law in the Republic of Ireland, though this law has been in force in Northern Ireland since 1967. Reporting has not always happened promptly or in line with the best interests of the child, but there has been a steadily improving picture since 2009. Certainly, in relation to reporting allegations against clerics and Religious who are alive and who may continue to present a risk, there has been a strong emphasis in placing the best interests of current children at the fore of the reporting practice.

## 3) Assessing and monitoring risk

As further evidence of how the Church's policy and guidance can prioritise the best interests of the child, there is a requirement for respondents to be risk-assessed throughout the process of the civil and canonical investigation. These risk assessments can result in management plans which place specific obligations and restrictions on the respondent as necessary, in order to limit any potential further harm and to act in children's best interests. The plans also include support mechanisms for the respondent to assist them in living with any potential restrictions and to understand the implications of the allegation on their ministry and wider life.

## C. Participation - Article 12

Participation is often understood as simply providing children with a voice, however it is a much more complex concept.

In reflecting on the history of child safeguarding within the Catholic Church, it is evident that in the past children's voices were not often heard and many victims felt silenced. Indeed, it has been clearly documented that at times greater emphasis was placed on protecting the Church from scandal than on being pastoral.<sup>62</sup>

The concept of participation is often cited in core government texts, and it is also included in the child safeguarding policy statement of the Catholic Church in Ireland,<sup>63</sup> and yet it is a concept which is often not fully understood. Society's understanding of children's rights is not straightforward, and this lack of clarity is exemplified when examining how children's views are weighted in terms of their supposed competency.

Deeming a child to be competent is sometimes linked to fixed age limits,<sup>64</sup> for example, with regards consent to sexual activities,<sup>65</sup> joining the armed forces,<sup>66</sup> or whether someone is or is not a minor.<sup>67</sup>

Consent to various aspects of a child's life can also be linked to the competence of the child regardless of age.<sup>68</sup>

Inconsistent societal perceptions of children and childhood have been commented on by the Committee on the Rights of the Child, which challenged states to make a '...shift away from traditional beliefs that regard childhood mainly as a period...of the immature human...The Convention requires that children be respected as persons in their own right.'<sup>69</sup>

For children to be seen as citizens in their own right requires a shift towards thinking of children as social agents for change, which may be brought about through participative methods.

61 NBSCCCI (2016) *Safeguarding Children, Policy and Standards for the Catholic Church in Ireland*. Veritas: Dublin p. 35

62 For more information see NBSCCCI (2018) *GAP Paper 2- Compassionate Response to Complainants*. Available at [https://www.safeguarding.ie/images/Pdfs/GAP\\_Papers/GAP%20Paper%202%20Compassionate%20Response%20to%20Complainants.pdf](https://www.safeguarding.ie/images/Pdfs/GAP_Papers/GAP%20Paper%202%20Compassionate%20Response%20to%20Complainants.pdf) (Accessed 23rd June 2020).

63 NBSCCCI (2016) *Safeguarding Children Policy and Standards for the Catholic Church in Ireland*. Dublin: Veritas, p. 8.

64 Northern Ireland Commissioner for Children and Young People (2010) *Having Your Say Policy Briefing*. Belfast: NICCY.

65 See Sexual Offences (Northern Ireland) Order 2008; Criminal Law (Sexual Offences Act) 2006, Republic of Ireland:

66 See The Armed Forces (Enlistment) Regulations 2009.

67 Canon Law Society (1983) *Code of Canon Law*, canon 97

68 Fortin, J. (2009) *Children's Rights and the Developing Law* (Third Edition). Cambridge: University Press, P.114.

69 United Nations Committee on the Rights of the Child (2005) *General Comment No.7 Implementing Child Rights in Early Childhood*. Geneva: United Nations, paragraph 5.

Article 12 of the Convention holds that 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

This wide definition is then expanded upon by its second paragraph:

'...for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'<sup>70</sup>

The indivisibility of the other rights contained within the UNCRC is important to consider, as Article 1 of the UNCRC sets out the requirement that all of the rights must be given to all children below the age of 18. This understanding has been developed further by the Committee on the Rights of the Child, when they discussed the practice of some member states to underestimate those which fall within the category of 'early years'.<sup>71</sup>

The Committee reaffirmed to member states the applicability of Article 12 to all children under 18, including the very young who are described as '... acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity.'<sup>72</sup> The UN argue this awareness feeds into children having evolving capacities to have a say by progressively acquiring knowledge and skills.<sup>73</sup>

The idea of participation in Church being available to children of all ages has been highlighted by Pope Francis when he said:

'...children cry, they are noisy, they don't stop moving. But, it really irritates me when I see a child crying in Church and someone says they must go out. God's voice is in a child's tears: they must never be kicked out of Church'<sup>74</sup>

Despite the notion of participation as important, it is often difficult to understand in practical terms. In this regard, Sinclair puts forward the idea that participation is an area which involves many layers of hierarchy from policy makers, researchers and children themselves, but that there is common practice amongst these approaches which must be understood in order to bring about change, '...particularly change that is lasting.'<sup>75</sup>

Sinclair argues that in order to engage honestly with children, adults must have an understanding of the complexities involved in participation.

With this definition in mind, Sinclair critiques current governmental participatory practice, and suggests that whilst much has been done under the heading of participation, it is limited in terms of achieving real change.<sup>76</sup>

She suggests that for this to happen decision makers must do more to make participation more meaningful in terms of addressing barriers to building cultures of participation, and evaluating the impact of participation tactics, positing that '...more is known about how to support young people to make participation more rewarding for them-but less about how that participation can bring about change...'<sup>77</sup>

<sup>70</sup> UNCRC, 1989, United Nations, Article 12.

<sup>71</sup> United Nations Committee on the Rights of the Child (2005) *General Comment No.7 Implementing Child Rights in Early Childhood*. Geneva: United Nations.

<sup>72</sup> United Nations Committee on the Rights of the Child (2005) *General Comment No.7 Implementing Child Rights in Early Childhood*. Geneva: United Nations, paragraph 11.

<sup>73</sup> For fuller discussion see: United Nations Committee on the Rights of the Child (2005) *General Comment No.7 Implementing Child Rights in Early Childhood*. Geneva: United Nations; Winter, K. (2011b) *The UNCRC and Social Workers' Relationships with Young Children*. *Child Abuse Review*, 20, 395-406; Lansdown, G. (2005) *The Evolving Capacities of the Child*. UNICEF Innocenti Research Centre, Florence.

<sup>74</sup> Pope Francis (2014) *Apostolic Journey of His Holiness Pope Francis to the Republic of Korea on the Occasion of the 6th Asian Youth Day*. Vatican City: Libreria Editrice Vaticana, p. 4.

<sup>75</sup> Sinclair, R. (2004) *Participation in Practice: Making it Meaningful, Effective and sustainable*. *Children and Society*, 18, 106-118, p. 106.

<sup>76</sup> Sinclair, R. (2004) *Participation in Practice: Making it Meaningful, Effective and sustainable*. *Children and Society*, 18, 106-118, p. 111.

<sup>77</sup> Sinclair, R. (2004) *Participation in Practice: Making it Meaningful, Effective and sustainable*. *Children and Society*, 18, 106-118, p. 115.



Throughout all of these areas consideration must be given to ethical standards of involving children and a move away from a child focused approach, to one that is child centred giving children an equal part in a jointly negotiated process.

Lundy<sup>78</sup> states that four factors need to be present to fully implement Article 12: Space, to allow children the safe environment to put forward their views; Voice, to give children the appropriate information to allow even the most vulnerable to contribute; Audience, to take their views seriously; and Influence, to make sure the view is acted upon and that children are given feedback on how their voice has been considered.

Understanding Article 12 in this way truly reflects the preamble of the UNCRC as it clearly links this article with others in the Convention, to reflect the indivisibility and inalienability of rights.

As noted by Stalford, 'there is a tendency to be seen promoting participation rather than promoting participation per se'<sup>79</sup>, and many organisations, governments and Churches have been criticised in this regard. Searle, for example outlines the positive historical roles that children had in the Catholic Church over the previous centuries, playing equal and different roles to adults, but all were considered equal in celebrating faith.

He goes on to argue that the current structure and practice of the Catholic Church across the world has resulted in children's participation in celebration of the Church being altered in a negative way.<sup>80</sup>

To explain this further, Searle cites two examples. The first is of a 'crying room' (sound proof room) being installed in some churches.

Whilst he acknowledges that these can be of immense benefit to parents with restless children, the practice carried out at the discretion of some priests, of insisting that all children go there during Mass or celebrations in effect excludes them. This approach to young children being seen and not heard conflicts with the recent point made by Pope Francis cited above.

The second example that Searle cites as negative practices towards children is what he terms 'children on parade'. This is the notion of lip service being paid to children through initiatives which are not truly participative, and are often tokenistic. The Catechism places emphasis on the importance of meeting together.<sup>81</sup> Thus, as noted by Maria Montessori there is a need for practices which include children and value them as equal to adults in Church celebrations.<sup>82</sup>

However in considering practices which some critics may deem tokenistic, is not to write them off, Lundy<sup>83</sup> argues that such examples of tokenism can be a start towards encouraging children and duty bearers into further action. Therefore, the challenge is how do we elevate our practices in a way which is rights respecting as envisaged by the Catholic Church's Child Safeguarding Policy Statement.

Relevance to the Catholic Church in Ireland In terms of the Catholic Church there are examples where participation of children in Church life and ministry has begun to grow from tokenism to more in depth consideration of rights.

Across the work of the National Board for the Child Safeguarding in the Catholic Church in Ireland, there has been a move to embed the principles of children's rights within the work of the agency. Children were consulted by the National Board and their views were written into the revision of the Church's Safeguarding Children Policy and Standards framework document in 2016.

78 Lundy, L. (2007) *Voice is not Enough*. British Educational Research Journal, Volume 33, p. 927-942.

79 Stalford, H., Cairns, L. & Marshall, J. (2017) *Achieving child friendly justice through child friendly methods: Let's start with the right to information*. *Social Inclusion*, 5, pp 207-218.

80 Searle, M. (1992) *Children in the Assembly of the Church*. In *Children in The Assembly of the Church*. Chicago: Liturgy Training Publications.

81 Catholic Church (1999) *Catechism of The Catholic Church*. London: Geoffrey Chapman, section 2178.

82 Montessori, M. (1965) *The Child in the Church*. Minnesota: North Central Publishing Ltd.

83 Lundy, L. (2018) *In defense of tokenism? Implementing children's right to participate in collective decision-making*. *Childhood*, 25 (3), pp 340-354.

National Board training has two specific child centred aspects – a session of the basic awareness training redrafted in 2019, is dedicated to engaging with children to increase awareness of risk and how to report concerns. More recently in terms of training to support ministry with children online, consideration must be given at each training session to how the active involvement of children is supported by encouraging active participation whilst managing risks and support children’s best interests and right to information. In terms of the recent revision of the methodology to carry out reviews of Church bodies, participation of children and the adults who support them was included as a core component of the reviews, where applicable.<sup>84</sup>

In Ireland the Presentation Brothers involved young people in their Safeguarding Committee to seek their views of how best to implement the safeguarding standards across their ministry. A similar model is also in place in the Diocese of Killaloe, where a consultation group made of young people has been established. Its purpose is to allow young people to put forward their views on particular aspects of safeguarding policy relevant to them, including communications and digital media.

The work of the Pope John Paul II Award is another Catholic based programme with participation of children at its core, rewarding and recognising the unique contribution that children bring to the life of their parish and community through awards based on the level of time children and young people spend volunteering. The award continues to grow, with more than 20,000 young people, in 21 dioceses throughout Ireland and the UK successfully completing the Pope John Paul II Award since it was created in 2006.<sup>85</sup>

These are only some of the many examples where members of the Catholic Church in Ireland are safely engaging with children as part of their faith development, and with meaningful outcomes for those children participating.

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84 For more information see NBSCCI (2020) *Guidance for Standard 7*. Available at <https://www.safeguarding.ie/images/Pdfs/Standards/Standard%207.pdf>, (Accessed 18th August 2020), p. 46.

85 Pope John Paul II Award (2020) What is the award? Available at <https://thepopejohnpauliiaward.com>. (Accessed 17th September 2020).



## 6. Towards a children's rights approach in child safeguarding

As can be seen from the examination of three of these important rights in relation to child safeguarding, implementing rights in reality is inconsistent and a multifaceted process. But holding States to account through the reporting procedure outlined in Articles 43 and 44 of the UNCRC is an integral part of taking rights from rhetoric to reality, and can result in real action, as can be seen in terms of the progress made in relation to child protection rights by the Holy See.

Whilst the duties and obligations to uphold rights rest with the member State (Holy See, United Kingdom and Ireland) to assist with the full realisation of rights at a very practical local level within Child Safeguarding and the Catholic Church in Ireland, it is necessary to consider a rights based approach. Holding member states to account is a core component of a rights based approach as outlined in the *United Nations Statement of Common Understanding*,<sup>86</sup> which defined a rights based approach as:

- activity which furthers the realisation of human rights as laid down in the Universal Declaration of Human Rights (1948) and other human rights treaties;
- human rights standards should guide all phases of activity and;
- activity should contribute to the development of the capacity of duty bearers to meet their obligations and of rights holders to claim their Rights.<sup>87</sup>

In considering this definition, there are practical things that can be done to begin to take a rights based approach to child safeguarding in the Catholic Church.

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<sup>86</sup> United Nations (2003) Statement of Common Understanding on a Human Rights Based Approach to Development Cooperation. Geneva: United Nations.

<sup>87</sup> United Nations (2003) Statement of Common Understanding on a Human Rights Based Approach to Development Cooperation. Geneva: United Nations, p. 1.

## 7. Work Completed

### Catholic Church's Policy Framework

The Church's Child Safeguarding policy<sup>88</sup> includes the UNCRC as one of its core foundations. In addition, children's rights are explicitly referenced in the policy statement which binds every Catholic Church body in Ireland and which is publicly on display in every church and building where ministry with children is taking place.

### National Board Guidance and Practice

Guidance developed by the National Board - specifically in relation to Standards 1, 5 and 6 - includes specific references to informing children about safeguarding; providing them with procedures to freely choose to participate in the particular ministry and to have their data processed by Church personnel; and developing clear codes of conduct to enable them to feel and to be safe.

A particular focus of the National Boards biennial conference in 2018 was to encourage participants to use safeguarding and a children's rights approach in their ministry with children.<sup>89</sup> Indeed, prior to this the National Board consulted with children and young people to obtain their views on what 'keeps children safe' in the revision of *Safeguarding Children, Policy and Standards for the Catholic Church in Ireland 2016*; further consultation took place with children and young people to enable their participation in National Board's conferences in 2016, and again in 2018.

### Training

• The Church's child safeguarding training, which is written by the National Board and delivered by over one hundred accredited trainers across the Church has compulsory sections on children's rights and the UNCRC. This training seeks to challenge the traditionally held myths about children and childhood discussed earlier in this GAP Paper, to ensure that respect for rights and dignity of children are lived out in Church ministry.

• In addition, the training has specific modules for young leaders who are fundamental to the mission of safeguarding in Church.

• The Head to Heart Child Safeguarding in Formation programme for seminarians includes a specific module on children's rights to allow seminarians to reflect on how their ministry affects the rights of children and encourages them to implement a rights based approach to practice.

### Reviews of Safeguarding Practice

The National Board has revised the methodology for carrying out reviews of safeguarding practice in Church bodies, to include as a core component, the importance of hearing from children, to learn of their experience of safeguarding in the Church. Resources produced by the National Board The creation of a series GAP papers - of which this paper is a part - continually reference the relevant aspects of children's rights to the practice of the Catholic Church.

<sup>88</sup> NBSCCCI (2016) *Safeguarding Children Policy and Standards for the Catholic Church in Ireland*. Dublin: Veritas, p. 8.

<sup>89</sup> For more information see <https://www.safeguarding.ie/national-safeguarding-conference-2018>

## 8. Areas to consider further

Whilst the work undertaken is contributing to upholding the principles and values of children's rights within child safeguarding within the Catholic Church in Ireland, this could be extended by providing support and training to key Church personnel involved in safeguarding, such as Church authorities, Safeguarding Committees and Advisory Panels. This support would involve enabling them to consider a rights based approach in their work, supporting them to assess the impact of their advice on upholding the rights of children.

The work of the 9th European Forum on the Rights of the Child in 2015 outlined 10 principles for integrated child protection systems as:

1. every child is recognised, respected and protected as a rights holder, with non-negotiable rights to protection
2. no child is discriminated against
3. child protection systems include prevention measures
4. families are supported in their role as primary caregivers
5. society is aware and supportive of the child's right to freedom from all forms of violence
6. child protection systems ensure adequate care, including:
  - standards, indicators and systems of monitoring and evaluation
  - child safeguarding policies and reporting mechanisms for organisations working with children
  - certification and training for all professionals working for and with children.
7. child protection systems have transnational and cross-border mechanisms in place
8. no child should be without the support and protection of a legal guardian or other responsible adult or competent public body at any time
9. training on identification of risks is given to teachers, health sector professionals, and social workers

10. safe, well-publicised, confidential and accessible reporting mechanisms are in place.<sup>90</sup>

Whilst the majority of these principles are in place within *Safeguarding Children, Policy and Standards for the Catholic Church in Ireland, 2016*, as well as the guidance offered by the National Board, there are a number of additional questions which could be used to help explore these principles at a more practical level. The framework below could be used to assist with assessing the impact on children's rights using particular policies and procedures created by Safeguarding Committees and case management decisions taken by the Church authority and advisory panels.

<sup>90</sup> European Forum on Child Protection (2015) *Principles for integrated Child Protection Systems*. Available at [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/child-protection-systems\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/child-protection-systems_en) (Accessed on 18th August 2020).

### Questions to consider when developing practice guidelines and ministry with children

What specific rights of the UNCRC, does this ministry involve?

How does this ministry promote the best interests of children?

How can you involve children in this work?

- Can you provide them with a safe space to share their views, including risk assessment, consent etc.?
- Have you considered how you consult with children in a way that is not discriminatory to their abilities or age?
- Have you considered how you will represent the views of children gathered as part of this ministry to a wider audience?
- Are you clear about the expectations of this ministry, and have communicated this clearly with children and their parents as to what will change if anything based on their involvement?
- Have you considered how you use, store and destroy the information you have gathered in a way that is ethical, upholding rights and data protection law?
- How will you feedback to and thank the children and adults involved in this piece of work?
- What safeguards have you put in place to ensure risk to children is assessed and managed?

What safeguards have you put in place to ensure risk to children is assessed and managed?

This approach could be further enhanced by understanding the role of the Holy See and the Church in upholding the rights of children and how this is underpinned by theology. On this point Moore argues that ‘...the Holy See should consider further developments regarding a theology of children, childhood and rights’<sup>91</sup> a point which was to be the subject of recent planned theological laboratory organised by the Centre for Child Protection in Rome. Placing children’s rights within the context of theology roots them within the sacred tradition of the Church and would allow for greater consideration of the importance of children and safeguarding within the Catholic Church in Ireland. This is an area of work the National Board is exploring and will continue to develop over the coming years.

<sup>91</sup> Moore, N. (2020) *The Understanding and Acceptance of Children’s Rights Amongst Those in Formation (or Recently Ordained) to Become Catholic Priests in Ireland: An Exploratory Study*. Belfast: Queens University Belfast, p.171.



## 9. Conclusion

This paper sets out the backdrop to the UNCRC and an overview of its content. Consideration of the ways we think about children in the Church today affects how we view them as rights holders, which in turn influences how we implement those rights. Despite rights being a clear part of the safeguarding policy statement for the Church, perhaps greater consideration of the practical outworking of rights in reality would assist in living out the vision articulated by Pope Francis when he said:

‘We too need to protect, guide, and encourage our young people, helping them to build a society worthy of their great spiritual and cultural heritage. Specifically, we need to see each child as a gift to be welcomed, cherished, and protected. And we need to care for our young people, not allowing them to be robbed of hope [...]’<sup>92</sup>

## 10. Organisations that can help

- The Ombudsman for Children.
- The Northern Ireland Commissioner for Children and Young People.
- National Youth Council of Ireland.
- Tusla, Child and Family agency.
- HSCT.
- NSPCC.
- ISPC.

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<sup>92</sup> Pope Francis (2015) *Homily of Pope Francis at Sunday Mass Rizal Park in Manila* 18th January. Available at: <https://www.azquotes.com/quote/916656> (Accessed 8th June 2020).

