

challenging religious privilege

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A Scotland for Children

A response from the National Secular Society
To the Scottish Government Consultation on a
Proposed Children and Young People Bill

25 September 2012

SUMMARY OF RECOMMENDATIONS

Male Genital Mutilation

We believe that non-therapeutic infant circumcision to male infants and children is a breach of Scottish children's rights and will also be a breach of children's rights under the Convention. We request that the Scottish Government recognises this and provides accordingly in its Children and Young People legislation to ban the practice.

Female Genital Mutilation

We recommend that the Scottish Government reasserts its commitment to FGM in the Children and Young People legislation, and provides an objectively verifiable and accountable mechanism for the robust investigation and reporting of cases, in particular in minority ethnic communities where the practice is known to be continuing with little or no sanction.

Child abuse in religious institutions

We urge the Scottish Government to pay particular attention to the appalling record of sexual, physical and psychological abuse perpetrated on Scottish children by religious organisations, and further ask the Scottish Government that it includes in its Children and Young People Bill provision to:

- 1) make it a criminal offence not to report reasonable suspicions of child abuse
- 2) make it a criminal offence for supervisory employees or officers e.g. diocese administrators to act in such a way that is likely to facilitate a criminal act
- 3) enable religious bodies to be sued for civil damages arising from the acts of those acting under their auspices, whether classed as employees or not
- 4) remove any time bar, either criminal or civil, applied to child abuse cases, but leaving the judge the opportunity to re-impose it in the light of the circumstances;
- 5) ensure that all child protection codes produced mandate the reporting of abuse or concerns about it without exception to the appropriate and accountable secular authorities;
- 6) ensure that concerns about abuse in religious contexts are not limited to sexual abuse and rape, but will also focus on physical and psychological abuse;
- 7) require by law all schools and institutions with children and vulnerable adults to display notices giving contact details (including Freephone numbers) for the reporting of abuse or concerns about it to independent secular authorities;
- 8) to consider as a matter of some urgency the Holy See's reliance on its own Canon Law in dealing with cases of child sex abuse, and how it is to ensure that law passed in Scotland by the Scottish Government takes primacy in all cases;
- 9) to give the same consideration to all other religious institutions which rely on the primacy of their own internal laws in dealing with such cases. In particular, we recommend that contact is made with www.roshni.org.uk which appears to be tackling the additional taboo of sexual exploitation in minority ethnic communities.

Religious Observance in Non-Denominational Schools

We recommend that in framing the Children & Young People legislation, the Scottish Government abolishes religious observance in non-denominational schools in order to place the rights of children before the rights of parents and faith groups in all publicly-funded religious settings.

We also recommend that non-denominational schools be required to publish for all parents a list of faith organisations invited by head teachers to visit schools and address assemblies, and to provide details of the content of such assemblies at parent's request.

About the National Secular Society

The National Secular Society is the UK's only organisation working exclusively towards a secular society. Founded in 1866, with associated secularist groups also formed in Scotland in the 19th century, we campaign from a non-religious perspective for the separation of religion and state and promote secularism as the best means to create a society in which people of all religions or none can live together fairly and cohesively.

The NSS sees secularism - the position that the state should be separate from religion - as an essential element in promoting equality between all citizens. We campaign for a society where law and the administration of justice are based on equality, respect for human rights and objective evidence, without regard to religious doctrine or belief. We campaign for both freedom of religion and freedom from it.

We work in the UK and Europe to challenge the disproportionate influence of religion on governments and in public life. We provide a secular voice in the media, defending freedom and equality as a counterbalance to powerful religious lobbies and some of the more destructive religious impulses that can threaten human rights worldwide.

We are a non-party-political organisation with members from across the social and political spectrum. Our Honorary Associates include MPs and peers, as well as leading figures from politics, journalism, law and the arts.

Our response to this consultation

We applaud the Scottish Government's intention to bring to the Scottish Parliament a Children and Young People Bill to include a range of legislative provisions for the delivery and protection of children's rights and services across Scotland.

We particularly welcome the intention to legislate for the rights of children and young people across Scotland in line with the United Nations Convention on the Rights of the Child (the Convention). We recognise and acknowledge the evolving child-centred approach of the Scottish Government, evident for example in the Children (Scotland) Act 1995 which reflects the Convention's key principles, in particular the principle of best interests (Article 3) and of the right of the child to express views freely in all matters affecting the child (Article 12). Other legislation such as the Protection of Vulnerable Groups (Scotland) Act 2007 and Protection of Children and Prevention of Sexual Offences (Scotland) Act 2003 are welcome initiatives to protect the vulnerable. However, we also note that while the Children (Scotland) Act 1995 makes specific reference to parental rights, as in Part 1, there is nowhere in the Act a separate section headed 'Children's Rights' which neatly defines and encodes the rights of the child. The Children and Young People Bill will address this anomaly. We also welcome that there is a key role for Scotland's Commissioner for Children and Young People and further that the Scottish Government proposes that their powers should be extended to undertake investigations on behalf of individual children and young people.

In approaching this consultation, we are specifically concerned that the Scottish Government will be lobbied to adopt different approaches to dealing with the issue of children's rights as and between secular and religious institutions charged with their care, education, health and welfare. Our concern is based on experience with the application of equality legislation in Scotland and the rest of the UK, where religious groups and organisations with a religious constitution or character have been granted significant exemptions and concessions in order that they may continue to practise discrimination and prejudice against specific groups. These include women, gay men and women, and indeed children. For the proposed Children and Young People legislation to confer the universal rights enshrined in the Convention, there must be full and unequivocal compliance with its provisions - there must be no exemption or concession awarded to any institution on the grounds of religious belief. The NSS believes the Scottish Government would be in breach of the principles of the Convention if any concession or exemption was adopted.

We demonstrate in this consultation response a significant number of breaches of the Convention by religious institutions, many affecting children in Scotland, to support our call for an across-the-board application of the children's rights legislation. For many religious organisations, children's rights come a poor third behind first, the organisation's rights and then parents' rights. We ask the Scottish Government to bear this in mind when framing the Children and Young People Bill.

Male Genital Mutilation - MGM

We draw the Scottish Government's attention to a ruling on 26th June 2012 whereby a district court in Cologne, Germany, ruled that parents do not have the right to circumcise their children without a medical reason.¹ The case centred on a 4 year old boy who was circumcised by a doctor at the request of his Muslim parents in 2010. Two days later the boy suffered bleeding complications from which he later made a full recovery. Charges of grievous bodily harm were brought against the doctor. Although the doctor was acquitted because the law had not been sufficiently clear at the time, the court ruled that it would now be unlawful for circumcision to be performed on a child without a medical reason. Circumcisions for medical reasons or on consenting adults are not affected by this ruling.

Parental consent to religious circumcision was judged to be in conflict with the best interests of the child. The court ruled that the "fundamental right of the child to physical integrity and self-determination outweighed the fundamental rights of the parents", stating that there was an inherent constitutional limit to the religious rights of the parents. The child was too young to give consent and the parents did not have the right to consent on his behalf to a procedure that would lead to his body being 'permanently and irreparably changed' and that could affect his own religious interests later.

Considerations of 'social adequacy' or necessity for him to be a part of his culture were judged inadequate to justify a breach of Germany's basic law, which is similar to the European Convention on Human Rights (ECHR).

Chancellor Merkel has reacted to intemperate opposition to the court decision and has "promised a new law to protect the right to circumcise male infants", but fellow German MP Marlene Rupprecht supported the Court's ruling on the grounds of non-violence and compliance with the Convention.²

We note that both before and after the Cologne decision, individuals in the Jewish community have spoken publicly against the practice of genital mutilation of male infants, including men on whom the procedure was imposed as children and who are aggrieved at the violation of their bodies and the resultant suffering. Further, although we cannot testify to its influence, we note the existence of an association called Jews Against Circumcision.³

We do recognise that male infant circumcision has a long-standing religio-cultural history about which feelings run high. Nevertheless, harmful religio-cultural practices have been abandoned in recent centuries and we hope that this Statement will start a debate that will raise awareness and pave the way for the replacement of infant circumcision with some symbolic but harmless ritual. In any case, the Convention states unequivocally in Article 24(3) that:

"States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

Our legal advice is that this court decision, and other similar legal opinions, are based on sound analysis and contend that non-consensual, non-therapeutic circumcision of male children breaches the Convention. We offer the Scottish Government a summary of the growing body of legal and also medical opinions that support this view, and to support our case for asking the Scottish Government to ban the practice of male genital mutilation on the grounds of the religious beliefs of the parents.

Religious justifications for ritual circumcision rest on the bankrupt premise that all baby boys born to Jews and Muslims will themselves identify with those religions in adulthood and that they would therefore want this to have been done to them in childhood. Where the child is not endangered, we are

¹ Ref 151 Ns 169/11

² Bundestag 19 July 2012 – Circumcision P22834 "In Art. 24 Abs. 3 der UN-Kinderrechtskonvention steht eindeutig, dass die Vertragsstaaten alles versuchen, um Bräuche, die Kinder verletzen, zu beseitigen".

³ <http://www.jewsagainstcircumcision.org/>

not opposed to parents raising their children in accordance with their own values and beliefs. However, all children deserve to be safeguarded from non-accidental injury whatever the beliefs of their parents. Further, the harms caused by this operation are frequently denied or diminished. Those men who dare to speak out are often humiliated and dismissed or ridiculed for daring to compare the assault on their normal genitals with the suffering of girls and women through female genital mutilation (FGM) even though there is a wide spectrum of harm in both girls and boys when their genitals are cut for no therapeutic reason and the ethical principle is identical.

Questions over the lawfulness of non-therapeutic circumcision on a child

UK Courts have never imposed non-therapeutic circumcision on a male child. The legality of the circumcision of a male child without his personal informed consent has never been the subject of formal legal ruling in UK courts. There are cases, however, which involve the possible circumcision of a child and significantly, in all such cases brought before the court, the court has opted, in the interests of the child, to delay the imposition of circumcision until the child himself can decide. No UK Court has ever found that it is in the interests of a child to be made subject to non-consensual circumcision before he is at least 16.

The underlying principle behind the law's approach to children is that (a) they have certain minimum independent rights and that (b) because of the vulnerability of children, those rights have more need of protection from potential rights abuse than adults. Ordinarily, therefore, where an adult enjoys legal protection from a certain harm, children are afforded *greater* protection, not less. This is clear, for example, in laws against the sexual abuse of children, rights of children to legal representation in court, child protection laws etc. Non-therapeutic circumcision without the child's consent represents an unjustified departure from this principle, exposing a male child to a violation of his bodily autonomy from which any adult male is protected by the ordinary law of assault.

For example, we believe the forcible cutting and scarring of a boy's genitals without a medical indication (and the irreversible amputation which is its result) certainly is enough to constitute actual bodily harm under s.47 of the *Offences Against the Person Act 1861* and is thus, *prima facie*, not lawful, just as it would be unlawful, for example, to amputate his earlobe or little finger. The consent or otherwise of the parents is irrelevant because (a) for policy reasons it is not possible to consent to an assault save in very limited circumstances (see *R v Brown* [1996] HL); (b) even if it were possible, in the law of assault it is the victim's consent that is at issue and no one else's.

Any form of unnecessary cutting, scarring and infliction of pain on a child is in undoubted breach of the prohibition on child cruelty in s.1, *Children & Young Persons Act 1933*, which requires no more than exposure to a practice "likely to cause unnecessary suffering or injury". Non-therapeutic circumcision would fall squarely within that definition precisely because it is unnecessary, painful and causes amputation, scarring, complications and permanent loss.

Current legislation and common law also protects children from acts which could have long-term consequences not foreseen or desired by them. The *Tattooing of Minors Act 1969*, applicable in Scotland, prohibits the tattooing of a child irrespective of the child's desire or consent for precisely the reason that the procedure is irreversible, the child may regret the procedure, and that there is a risk that the child will not understand the long-term consequences. Those principles apply to genital cutting equally if not more. It is inconsistent and risible that a tattooist would be committing a crime if he were to tattoo a boy's foreskin, but no crime at all were he to cut it off forcibly with a knife.

Finally, animal welfare acts in the UK protect animals from mutilation, including, for example, a prohibition on the docking of a dog's tail. This practice was banned in Scotland with effect from 30 April 2007. Section 20 of the *Animal Health and Welfare (Scotland) Act 2006* makes it an offence to perform a procedure on an animal which interferes with its bone structure or sensitive tissue, unless it is a medical procedure or the procedure has been specifically exempted by Regulations made by Scottish Ministers. There are the strongest of policy reasons that a human child enjoys at least the same rights than that of animals, which is not so if the genital cutting of a male child is permissible. This is also all the more risible if the practice of female genital cutting is outlawed.

Religiously-based assault in other contexts is prosecuted

UK courts have rightly prosecuted those who assault their children in decisions which make it clear that the religious beliefs of the assaulter do not excuse such conduct, nor does the parental status of the assaulter. In *R v Adesanya* (1994) (unreported, Central Criminal Court, London; see *Re J* [1999] 2 FCR 345 at 357) a woman who ritually scarred her son's face but defended the act on the basis that she was complying with the religious practices of her tribe was convicted of assault.

Though the Convention is not part of domestic law, our ratification of the treaty requires the UK to interpret domestic law in accordance with the Convention if possible. Article 24(3) provides

“States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

The forced circumcision of a male child (which involves amputation of the foreskin by cutting; nerve loss; pain; bleeding; scarring; and risk of serious physical and psychological complications) amounts to cruel, inhuman or degrading treatment prohibited by Article 37 of the Convention. Significantly, Article 7 of the UN's International Covenant on Civil and Political Rights (ICCPR) refers, in the context of medical experimentation, to lack of consent as relevant to breach of the Article⁴. The application of Article 24(3) of the Convention would impose a duty on UK tribunals to interpret the criminal law on assault and bodily autonomy in such a way as to prevent “traditional practices prejudicial to children's health” such as non-therapeutic circumcision.

Furthermore, The European Convention on Human Rights (Article 3) prohibits torture, and "inhuman or degrading treatment or punishment". There are no exceptions or limitations on this right. Following the judgment in the case of *Tarhan vs Turkey* (see *Tarhan v Turkey* [2012] ECHR – forced shaving of hair), the trigger threshold is now lower and forced removal of any body part will be likely to trigger the article.

International Articles which do not override the above in respect of infant circumcision include the freedom of religion guaranteed by ICCPR Article 18. This freedom is not absolute but is subject to limitations of protecting (a) health and (b) the fundamental rights and freedoms of others. The right to bodily autonomy is a fundamental right to be protected, especially in the case of a child who is more vulnerable to unwanted physical intrusion upon his/her person. The genital cutting of male infants unacceptably violates both the child's health and his bodily integrity, and thus is not the subject of protection of Article 18 but rather is legitimately to be restricted by the limitations of 18(3).

The rights and duties of parents to provide “direction” as to their child's exercise of freedom of religion and belief (the Convention Article 14(2)) is in protection of the child's beliefs, not the religion of the parents, which are subject to the same restrictions (health and fundamental freedoms of others) as the right to religious expression generally. There is no right to parental “direction” exceeding those restrictions and states may legitimately ban such excesses, and indeed Sweden has done so⁵.

International examples

We offer these examples from around the world on the issue.

- In 2012 Germany - Köln District Court – found⁶ inter alia:
 - a) that the circumcision of a boy who is not capable of giving consent is not in the best interests of the child, even if this is to avoid exclusion within the relevant religious and social environment;
 - b) that the parents' fundamental rights ... are limited by the fundamental right of the child to physical integrity and self-determination; and
 - c) that, in German law, a citizen's [in this case the boy's] rights cannot be compromised by the exercise by others of their freedom of religion (...); (this followed a Frankfurt am Main appeals

⁴ <http://www2.ohchr.org/english/law/ccpr.htm>

⁵ See *X Y & Z v Sweden* (1982) 5 EHRR 147 (Swedish ban on corporal punishment of children upheld – complaint by parents that they had a religious right to use corporal punishment which was violated by the ban was not accepted).

⁶ http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2012/151_Ns_169_11_Urteil_20120507.html Section III

court finding in 2007 that the circumcision of an 11 year old boy without his approval was an unlawful personal injury⁷)

- 1994: UN Security Council reports during hostilities in the Balkans refer explicitly to the forcible circumcision of non-consenting males as a human rights abuse taking place there⁸
- 1993 Australia: a research paper of Queensland Law Reform Commission concludes that "routine circumcision of a male infant could be regarded as a criminal act"⁹
- 1994 – Former Yugoslavia: UN Security Council reports during hostilities in the Balkans refer explicitly to the forcible circumcision of non-consenting males as a human rights abuse taking place there¹⁰.
- 2002 – USA: the National Organization of Circumcision Information Resource Centers (NOCIRC) expresses the conclusion to the Economic and Social Council that "Male circumcision causes permanent and severe harm and violates human rights."¹¹
- 2004 – Canada: The College of Physicians and Surgeons of British Columbia raise emerging widespread concerns about the legality of proxy consent by parents to non-therapeutic circumcision¹²
- 2004 – United Kingdom: Law professors Fox and Thomson challenge British Medical Association (BMA) guidance to doctors arguing that consent cannot be given for non-therapeutic circumcision. They say there is "no compelling legal authority for the common view that male circumcision is lawful."¹³ This appears to have influenced the BMA's viewpoint, as shown below in II e.
- 2007 – Germany: A Frankfurt am Main appeals court finds that the circumcision of an 11 year old boy without his approval was an unlawful personal injury¹⁴
- 2007– Australia: Tasmania's then Commissioner for Children Paul Mason said that other than for medical reasons, it is a breach of the most basic human right to inflict permanent, painful and disfiguring surgery on a boy's body when he was too small to resist.

Concerns expressed by the medical community

No national or international medical association recommends routine circumcision, according to the US based advocacy group the National Organization of Circumcision Information Resource Centres (NOCIRC, www.nocirc.org/). There is growing concern in the medical community that the non-consensual procedure, where not carried out for medical reasons results in frequent complications, some potentially dangerous; may have long term adverse effects; is unnecessary; and is not in the interests of the child.

⁷http://www.lareda.hessenrecht.hessen.de/jportal/portal/t/dz2/page/bslaredaprod.psm!?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=KORE244012007%3Ajuris-r01&doc.part=L&doc.price=0.0&doc.hl=1

⁸ UN Security Council, Commission of Experts' Final Report on the former Yugoslavia, 27 May 1994, doc. S/1994/674/part IV, section F.

⁹ <http://www.cirp.org/library/legal/QLRC/> (in Part 9. Conclusion)

¹⁰ UN Security Council, Commission of Experts' Final Report on the former Yugoslavia, 27 May 1994, doc. S/1994/674/part IV, section F.

¹¹ COMMISSION ON HUMAN RIGHTS Sub-Commission on the Promotion and Protection of Human Rights- 54th session Agenda item 6(c) E/CN.4/Sub.2/2002/NGO/1 23 March 2002.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/140/10/PDF/G0214010.pdf?OpenElement>

¹² <http://www.cirp.org/library/statements/cpsbc2004/>

¹³ Profs Fox M and Thomson M. A covenant with the status quo? Male circumcision and the new BMA guidance to doctors. *J Med Ethics* 2005;31:463-9 <http://www.cirp.org/library/legal/UKlaw/fox-thomson2005/>

¹⁴

http://www.lareda.hessenrecht.hessen.de/jportal/portal/t/dz2/page/bslaredaprod.psm!?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=KORE244012007%3Ajuris-r01&doc.part=L&doc.price=0.0&doc.hl=1

In May 2010, The Royal Dutch Medical Association and a group of affiliated organisations noted four *serious common complications, alongside reports of “penis amputations” and “psychological problems” as a result of the circumcision.* It concluded that “There is no convincing evidence that circumcision is useful or necessary...” and “Non-therapeutic circumcision of male minors conflicts with the child’s right to autonomy and physical integrity.”¹⁵

Evidence of this is also provided for the following countries: Australia^{16 17}; Sweden¹⁸; and UK¹⁹. The CIRP specialist medical website catalogues medically respectable studies indicating the reality of pain and trauma for the circumcised infant, and also studies suggesting long-term harm and sexual problems resulting from infant circumcision.²⁰

Concerns expressed by other NGOs

We note that the following NGOs are opposed to non-consensual infant circumcision: international child rights charity Genital Autonomy (www.genitalautonomy.eu/); the afore-mentioned US coalition NO-CIRC (www.nocirc.org/) and Finnish non-profit sexuality foundation SEXPO (www.sexpo.fi/sexpo-in-english/).

Conclusion

We believe therefore that a child’s right to physical integrity must always be placed before religious and parental rights. We are aware that religious pressure groups have challenged the recent circumcision ruling in Germany despite the known medical complications. We believe that this demonstrates unwillingness by members of those religious groups to place the safety of children above religious interests.

Children must not be restricted from making their own choices when they are old enough to do so. Irreversible, non-therapeutic surgery, particularly on their most intimate body parts, denies people a choice and often causes significant harm. We reject any exception to the existing principle that a child’s body belongs to the child and later the adult, and that parents have responsibilities to protect the children in their care from all forms of serious avoidable harm.

A significant number of children suffer severe, life-threatening complications from a circumcision, which is an operation that has no medical, scientific or ethical basis. All children deserve to be safeguarded; society must not abandon them to ancient cultural rituals. It is likely that many parents requesting ritual circumcisions would reconsider their request if they were given the full facts as to the extent of immediate and long-term harms this operation can cause. In every case, we assert that where individual rights and freedoms clash with the privileges of corporate or organised religion, then individual freedom should always triumph.

We reject the claim that a parent’s right to religious freedom entitles them to decide for themselves whether they wish to have this intervention carried out. Denying parents any entitlement to make such a decision does not constitute any limitation of the parents’ right to manifest their religion; the child has rights too, not only to religious freedom, but also to the right to physical integrity. This invasive surgery is non-consensual, non-therapeutic, irreversible, unnecessary and not without risk. It should be postponed until the boy is old enough to give (or withhold) informed consent.

Recommendations

In light of our conclusions and the evidence provided, we contend that non-therapeutic infant circumcision to male infants and children is a breach of Scottish children’s rights and will also be a

¹⁵ Royal Dutch Medical Association Report.

<http://knmg.artsennet.nl/Publicaties/KNMGpublicatie/Nontherapeutic-circumcision-of-male-minors-2010.htm>

¹⁶ <http://news.smh.com.au/national/sa-bans-some-surgery-in-hospitals-20071112-19mc.html>

¹⁷ <http://www.abc.net.au/news/2007-12-09/doctors-back-call-for-circumcision-ban/981976>

¹⁸ www.thelocal.se/20900/20090725/

¹⁹ <http://bma.org.uk/-/media/Files/PDFs/Practical%20advice%20at%20work/Ethics/Circumcision.pdf>

²⁰ <http://www.cirp.org/library/> referred to in British Medical Journal website <http://www.bmj.com/rapid-response/2011/10/29/two-wrongs-dont-right-make-so-speak>

breach of children's rights under the Convention. We request that the Scottish Government recognises this and provides accordingly in its Children and Young People legislation to ban the practice.

By way of acceptable alternatives, we suggest:

a) Postponement: that genital cutting be deferred until the boy reaches an appropriate age of medical competence to give or withhold informed consent.

b) Replacement / rethinking: that genital cutting be replaced by a symbolic ritual as suggested by Norway's former ombudsman for children's rights.²¹

Female Genital mutilation FGM

All children deserve equal protection under the law, regardless of their gender, and the UK is obliged to ensure non-discriminatory application of its law under its obligation of non-discrimination in respect of the Convention rights (Article 14).

In 2008 a document entitled "Eliminating female genital mutilation: an interagency statement" was published by the World Health Organisation and endorsed by a number of international UN and other agencies, including UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCHR, UNHCR, UNICEF, and UNIFEM.²²

The practice of female genital mutilation has been a crime in the UK for 25 years. In spite of this, the Foreign & Commonwealth Office estimates that up to 24,000 girls under the age of 15 are at risk annually of female genital mutilation, and refers to it as a "cruel and brutal practice".²³ There is no reason to assume that this estimate excludes female children in Scotland.

When a member of the NSS Council wrote to the Justice Secretary on behalf of the One Law for All campaign asking why it was allowing Islamic sharia tribunals in the UK dealing with matters of family and criminal law to thrive in Britain even though they discriminated against women as a matter of course, the response was "we do not prevent people living in accordance with religious beliefs or cultural practices".²⁴ This may help to explain why, in spite of the legal prohibition against FGM, there has never been a single prosecution and it is widely acknowledged that the practice continues. Merely passing an Act of Parliament is no guarantee that a barbaric outlawed practice will immediately cease. We would urge the Scottish Government to be more pro-active towards identifying, rooting out and eliminating this vile practice than the UK Government in Westminster has shown itself to be.

Given that female infants in Scotland are protected from all forms of genital cutting in the Prohibition of Female Genital Mutilation (Scotland) Act 2005, there can be little argument that the same protection ought to be extended to male children in the light of the evidence of the significant harm done via male circumcision. The principle behind the female genital mutilation ban was the protection of girls from any form of genital cutting, no matter how slight or what the cultural or religious background of the parent.

There is no legitimate basis, nor can there ever be, for denying such protection to boys.

Recommendations

We recommend that the Scottish Government reasserts its commitment to FGM in the Children and Young People legislation, and provides an objectively verifiable and accountable mechanism for the robust investigation and reporting of cases, in particular in minority ethnic communities where the practice is known to be continuing with little or no sanction.

²¹ Reference: <http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=280251>

²² www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf

²³ www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/fgm/

²⁴ <http://www.secularism.org.uk/blog/2012/03/are-you-morally-superior-to-the-taliban>

Child Abuse in Religious Organisations and Institutions

In July this year we responded to the Scottish Government's consultation on The National Framework for Child Protection, Learning and Development in Scotland. We applaud the Scottish Government's protection and prevention work to protect Scottish children from abuse, an area much neglected in the past throughout the world partly because there have been no other consultations which had the capacity to provide data that is both distressing and exceptionally difficult to deal with. The human cost of that neglect has been massive.

It is vital that the Children and Young People Bill provides a robust mechanism for the reporting of sexual, physical and/or psychological abuse of children by all adults, but especially where those adults are in the trusted position that goes with membership of a faith group or religious order, where there is abundant evidence that the interests of the child victim comes last before the preservation of the reputation of the religious groups concerned.

With regard to child abuse in Scotland, our concerns are therefore specifically in relation to sexual, physical and psychological abuse carried out by representatives of organised religious groups or religious orders on defenceless children. While the majority of abuse may take place elsewhere, there is a wealth of evidence in Scotland, and indeed from around the world, that a high proportion of institutional abuse takes place, or has taken place in religious environments. Further, there is also ample evidence that this abuse, whether sexual, physical and/or psychological, has been routinely and systematically covered up in Scotland and on a global scale by the religious hierarchies concerned. This has meant that abusers have been protected, and indeed further enabled to conduct abuse, while victims have been further humiliated and penalised. We have focused on child abuse on a religious environment for the following reasons:

1. While we accept that the majority of abuse takes place away from religious environments, and generally in the home or homes of relatives, we know from court cases, media reports and internally-authored investigations carried out by religious groups themselves that a high proportion of institutional abuse takes place, or has taken place in religious environments.
2. Such environments are a good cover for those sexually attracted to children.
3. The imbalance of power between religious officials and those in their charge is much greater, particularly where the religious establishment also provides boarding, than in other educational establishments.
4. The power structures within religious organisations create an environment where pressure can easily be put upon pupils and their parents – and indeed staff - not to sully the name of the establishment by the reporting or public disclosure of sexual abuse.
5. There is a well-evidenced tendency of politicians and officialdom generally to treat religious organisations and those within them with undue deference. It will have been noted, for example, in the unfolding tales of child abuse in Ireland in the past ten years and which have been well-documented in the Dublin Government's own independent enquiries, the church and state in that country had become inseparable, and in some cases secular authorities became in effect arms of the church: complaints to the police about child abuse were referred directly to the bishops, often by officers loyal first to their church and their faith, and to society second.

All the above factors have combined to permit much higher levels of child abuse to continue unabated for much longer than they would have done were the institutions to have been under secular control. And within this, we believe that the greatest degree of risk in Scotland is in the following two areas:

a) The Catholic Church - partly because of the scale of its operations in Scotland and also because there has been, and continues to be, a well-documented culture of secrecy. The secrecy extends to, indeed stems from, the very top of the organisation, safely out of Scottish, and even European, jurisdiction: e.g. European arrest warrants are not valid in the Vatican. The Catholic Church, as we demonstrate in this consultation response, is a signatory to the Convention, and is in breach of several of its Articles. It continues to escape sanction for these abuses. We contend that this should be of material interest to the Scottish Government in framing the Children and Young People Bill with the Convention as its template and with regard to its implementation, monitoring and regulation in Scotland

b) Minority faith communities. Although on a much smaller scale, a characteristic of some of these communities is the huge power imbalance between religious officials and their adherents, similar to that prevalent in the Catholic Church when abuse was most prevalent. Further, some of these communities are isolated from the community as a whole, and within them it is regarded as unacceptable, even shameful, to report transgressions. Both of these factors combine to create still greater risk of abuse and a still lesser likelihood of being reported to the secular authorities.

The Catholic Church

While there are some honourable exceptions, we are far from convinced of the sincerity of the Catholic Church's hierarchy generally to tackle its widespread abuse problems.

The scale of child rape and other abuse suffered by minors both male and female when under the care of the Catholic Church (and/or those working under its auspices) has commanded global attention. Even now it is not safe to assume that any country is immune. Since the problem first came to light and became the subject of serious journalistic scrutiny in the US in the late 1990s, there has been a succession of European countries discovering horrific levels of abuse that the Church claims it had no idea existed, and cases continue to come to light on a regular basis, notably most recently spreading to Africa and Australia. Evidence abounds of the Catholic Church's full complicity in covering up abuse of which it was fully aware, and it frequently facilitated the prolonging of abuse by moving known offenders to places unaware of their history where they were able to offend again.

The cover-up has been referred to by the most senior figures in the Church as 'mistakes' or 'errors of judgement' made by bishops, when it is now a matter of known fact that the Church imposed a code of secrecy in dealing with abuse, the breaking of which was punishable by excommunication. The cover-up was and remains a mandated, systematic and organised exercise. The Holy See considers that in so doing, its bishops were in fact obeying 'the law' – by which is meant the Church's own Canon Law. In this regard the Catholic Church put the protection of its reputation and assets before the protection of children. The haphazard pattern of child protection; the fierce resistance to making reporting to secular authorities mandatory without exception; and the acceptance that senior clerics can also be child protection officers; all combine to reinforce our conviction that children are still not anything like as safe in Catholic institutions as they should be.

Arguably one of the most shocking aspects of this dual scandal of abuse and cover-up is the deference shown by Government and governmental agencies to the Church. Had those agencies done their job properly instead of becoming complicit, the abuse could have been stopped in its tracks rather than go on for a half-century or more. This should act as a siren call to the Scottish Government in considering the enforcement and regulatory framework appropriate for ensuring the Convention is applied consistently and thoroughly.

The Catholic Church is faced with huge numbers of victims of child abuse worldwide extending over decades. In the USA alone, nearly \$3bn has been paid out in compensation. Even in Ireland with a population of only 5 million, more than €1bn has been paid out, of which only 10% has been borne by the Church. Victim support groups around the world confirm that figures published by the Church (such as they are) for the number of victims severely understates the true number, which runs into hundreds of thousands.

There is evidence of abuse and a deliberate cover up in Scotland, which has been outraged by the investigation into the children's homes run by the Catholic order the Poor Sisters of Nazareth, with dozens of former residents of homes in Aberdeen, Glasgow, Midlothian and Kilmarnock suffering vicious beatings and sexual abuse.²⁵ This abuse occurred over several decades in the 20th century, went unreported and was kept quiet for many years, in common with similar experiences around the world. In addition, the scandal of St Ninian's in Stirling, run by the De La Salle order, caused widespread shock.²⁶

²⁵ <http://www.guardian.co.uk/world/2003/apr/12/religion.childprotection>

²⁶ <http://www.scotcourts.gov.uk/opinions/2005CSOH121.html>

Scotland's leading Catholic, Cardinal O'Brien, has also been directly and personally involved in failing to report a serial child abusing priest to the civil and secular authorities.²⁷

Evidence submitted to the UN in 2003 sets out typical consequences in later life for abused children: Post Traumatic Stress Disorder, vulnerability to further re-victimisation, difficulties with interpersonal relationships, materially increased risk of self-harm or suicide, aggravated by persistent denials of responsibility by Church authorities.

The hierarchy of the Catholic Church is uniquely privileged in having its hierarchy based in the only absolute monarchy remaining in Europe. This both removes it from the controls to which practically every other state is subject, and grants it immense privileges, for example its access to the United Nations, where it plays a very influential role. Child abuse, whether sexual or otherwise, occurs in all sectors of society and is by no means restricted to religious groups or people. However, there is widespread evidence of a particular reporting and protection issue with regard to religious organisations, whether churches or religious orders, where such groups insist on their own internal "laws" taking precedence over secular civil or criminal law in the countries in which they are represented. The result is that abuse, or concerns about abuse, go unreported to the civil authorities, and are dealt with "in house", often to the further disadvantage and detriment of the victims. In the case of the Catholic Church, child abuse allegations are dealt with and the Church's own "Canon law". This is totally ineffective, and probably even prejudices any subsequent secular trial.

The Church's reaction to its child abuse scandal

Several characteristics typify the cases that have reached the public domain with regard to priests and religious (male and female) in the Catholic Church abusing children:

- Victims have been accused of lying, even in the face of strong evidence to the contrary ("One must not give scandal to the church" is ingrained in every priest) or of simply seeking financial compensation. The victims in Scotland have even been accused by former Glasgow Archbishop Mario Conti of being seekers not of justice but of "pots of gold".²⁸
- In most cases, sometimes over many years, local dioceses have failed to inform the civil authorities and have covered up allegations, whether or not they believe their instructions from the Holy See require this. Moreover, dioceses have moved alleged abusers from one location to another, resulting in repetition of the abuse.
- Although many clerics from all levels have resigned, mostly involuntarily, others have tried to face it out. One who had papal support was Bernard Law, Archbishop of Boston, who was forced to resign when he was proved to have systematically covered up abuse in 2002. He still enjoys papal support as archpriest of a papal basilica in Rome and he is still a cardinal, an additional insult to Boston's victims of abuse at the hands of the priests Law protected.
- The Church has frequently suggested that the problem was minor, has blamed other unconnected factors, or claimed that it did not know the true extent of the problem. It has also claimed that it was ignorant of the nature of child abusers or of their recidivist tendencies, although it has now become known that the Church in the UK had opened a centre specifically to deal with this problem in the 1970s²⁹. Apologies that are made are for the abuse, not the cover-up, which is known by the Church's own documentation to have been deliberate but which has been excused as 'errors of judgement' or 'mistakes' by individual bishops.
- Every possible step has been taken by the Church to minimise both criminal sanctions and the amount of compensation it paid to victims. "Gagging" clauses are routinely imposed as part of settlements of cases.
- The most prevalent common characteristic of the thousands of cases of child abuse that have come to light is secrecy at every level, whether "bought" as part of a settlement, of one priest

²⁷ <http://www.scotsman.com/news/victim-of-sex-crime-blasts-cardinal-1-1365721>

²⁸ <http://www.guardian.co.uk/world/2003/apr/12/religion.childprotection>

²⁹ See "Sex, Priests and Secret Codes – the Catholic Church's 2000-Year Paper Trail of Sexual Abuse", ISBN 1-56625-265-2, P.72

reporting another, or – as witnessed in Ireland – shameless attempts made by religious institutions, apparently without censure and possibly with support from highest authorities in the Church, to obstruct the publication of reports about wholesale abuse.

The Holy See and the Convention

Against this astonishing backdrop of clerical child abuse and its cover-up, the Catholic Church is a signatory to the Convention, to which the Scottish Government now intends to align its Children and Young People Bill. The Holy See has broken a large number of the Articles of that Convention and continues to break them on a wholesale scale. Indeed, it stands accused by a Member of United Nations Internal Justice Council of 'grave and extensive breaches'.³⁰ The Executive Director of the National Secular Society has followed up these breaches at the UN Human Rights Council on a number of occasions, which has led him to take a close interest in steps taken towards the elimination of clerical child abuse in the UK.

In 1990 the Holy See acceded to the Convention, agreeing to take a number of initiatives to protect children. However, its accession was made subject to several important reservations based on its status as a church which crucially undermined its accountability, even though it was acceding as a state. In 1994 the Holy See submitted its initial report to the UNCRC, about which the UNCRC expressed five areas of concern, which it expressed thus³¹:

10. In the spirit of the final document of the World Conference on Human Rights, the Committee wishes to encourage the State party (ie the Holy See) to consider reviewing its reservations to the Convention with a view to withdrawing them.

11. In view of the moral influence wielded by the Holy See and the national Catholic Churches, the Committee recommends that efforts for the promotion and protection of the rights provided for in the Convention be pursued and strengthened. In that regard, the Committee wishes to underline the importance of wide dissemination of the principles of the Convention and its translation into languages spoken throughout the world, and recommends to the State party to continue to play an active role to that end.

12. The Committee emphasizes the need for professionals and voluntary workers involved in the education and protection of children to receive adequate training and education, taking into account the principles set forth in the Convention. The Committee also recommends that the Convention be included in the curricula of Catholic schools. In this respect, it is the view of the Committee that the teaching methods used in schools should reflect the spirit and philosophy of the Convention and the aims of education laid down in its articles 28 and 29.

13. The Committee recommends that the position of the Holy See with regard to the relationship between articles 5 and 12 of the Convention be clarified. In this respect, it wishes to recall its view that the rights and prerogatives of the parents may not undermine the rights of the child as recognized by the Convention, especially the right of the child to express his or her own views and that his or her views be given due weight.

14. It also recommends that the spirit of the Convention and the principles set forth therein, in particular the principles of non-discrimination, of the best interests of the child and of respect for the views of the child, be fully taken into account in the conduct of all the activities of the Holy See and of the various Church institutions and organizations dealing with the rights of the child."

The CRC requested the Holy See to withdraw all its reservations to the Convention, including the exclusion of the Vatican City (the only geographical territory under the jurisdiction of the Holy See) from its agreement under reservation but it has failed to do so.

Apparent contraventions of UNCRC

We wish to draw your attention to the extent to which the Holy See has failed to honour its obligations under the UNCRC, including its failure to submit quinquennial reports for 13 years.

³⁰ "The Case of the Pope - Vatican Accountability for Human Rights Abuse. (ISBN: 9780241953846)

³¹ <http://www.unhcr.org/refworld/pdfid/3ae6aec910.pdf>

When the National Secular Society raised these issues in the United Nations on 22 September 2009, the distinguished delegate of the Holy See exercised the Right of Reply to our oral intervention to say in summary that in the upcoming report of the Holy See to the Committee on the Rights of the Child (which was then being finalised “as we speak”) a paragraph would be dedicated to the problem of child abuse by Catholic clergy.³² However, in spite of a reminder in our subsequent intervention in March 2010, this has still not been filed.

He did not deny our assertions but noted that, inter alia, offenders can be dismissed under the Church’s own Canon Law. However, he made no mention of the necessity of reporting suspected abuse to secular authorities.

Legal Commentary by Geoffrey Robertson QC

In 2010, Geoffrey Robertson QC, Distinguished Jurist and Member, United Nations Internal Justice Council, 2008-2012, published “The Case of the Pope - Vatican Accountability for Human Rights Abuse. (ISBN: 9780241953846).³³ He notes therein that the following Articles of the Convention are likely to have been breached by the Holy See :

- Article 3(1)3: “The evidence shows that the primary consideration in dealing with children’s allegations has been the good name and reputation of the Catholic Church and the protection of the priesthood from scandal. The best interests of the child requires the church to act immediately to stop the abuse and protect other children by precluding any prospect of reoffending. That meant calling in the police and social welfare services and providing counselling to the child and the family – steps the Vatican resolutely refused to envision when it published its new Canon Law norms in July 2010.”
- Article 64: “Article 6 of the Protocol obliges state parties to assist each other with providing all the evidence at their disposal - an obligation which the Vatican continues to evade.”
- Article 19(1)5: “This placed an international law duty on the Holy See to make arrangements for reporting child sex abuse to law enforcement authorities - a duty that has been blatantly breached from the outset by subjecting all allegations to the ‘pontifical secret’ procedures of the Crimen Sollicitationes document, and then of the 2001 apostolic letter, and most recently of the July 2010 decree, which insists on Canon Law jurisdiction over abusive priests.”
- Article 34: “The Holy See, through its responsible agency the CDF (the Congregation of the Doctrine of the Faith), took no ‘national, bilateral or multinational measures’ other than by issuing the 2001 Cardinal Ratzinger (now Pope Benedict) letter, which served to delay investigations of accused priests and failed to require notification to law enforcement agencies. The Holy See has most scandalously breached its obligations under Article 34, and remains in breach through its 2010 insistence on Canon Law process and ‘pontifical secrecy’.”
- Article 39 7: “It is also relevant to note the Holy See’s unwillingness to afford ‘measures to promote physical and psychological recovery and social reintegration’ to victims, as required by Article 39 ...”,
- Articles 3, 19 and 34 – Re Canon Law 8: “Vatican diplomats may have prepared a devious defence for the Holy See by entering a ‘reservation that it will only apply the Convention’ when it is compatible with Canon Law. The sections of the Convention dealing with child sex abuse are irrevocably incompatible with Canon Law, which favours the priest at the expense of the best interests of the child (a breach of Article 3(1)); which does not provide effective procedures for investigation, reporting, referral or judicial involvement (a breach of article 19(2)), and has secrecy provisions that preclude national, bilateral and multi-national measures (a breach of article 34).”
- Article 44 9: “The Holy See was next due to report on 1 September 1997 and then again on 1 September 2002: it did not do so on either occasion and indeed has never submitted another report, a complete abdication of its duties under the Convention.”

³² See <http://www.secularism.org.uk/un-catholic-church-called-to-acc.html>

³³ See Footnote 30

With regard to this breach, the CRC publishes agreements for late submissions for State Parties, but none are recorded for the Holy See, suggesting that no commitments have been made to make amends. On these breaches Geoffrey Robertson concludes:

“It is plain from ... the new Canon Law norms laid down in July 2010 ... that the Vatican will not, under this Pope, yield in its claim that the church is entitled to shelter suspected criminals in its midst from police investigation, public trial and any punishment that they deserve. The Holy See’s grave and extensive breaches of the Convention on the Rights of the Child, and its contempt for its reporting obligations over the past thirteen years, should - if the other parties care – justify its expulsion. The other parties, and the UN itself, should care very much, because this is the one and only human rights convention that has near universal support”.

The Holy See’s dual status

The Holy See is recognised at the UN as a state through its geographical base in the Vatican City. It sends out ambassadors and makes treaties (“concordats”) with foreign powers. At the same time it claims a need to exercise its mission in full freedom, and to be able to deal with any interlocutor, whether a government or an international organization.

Because of this, and the Church’s long history and level of influence, UN institutions have failed to subject such claims to critical examination, so much so that the Holy See has been allowed to escape the same level of scrutiny under the CRC as is applied to other State Parties. This appalling lapse of regulatory enforcement must not be repeated in Scotland, as Scottish children will inevitably be put at risk as a result.

The Holy See has been complicit in widespread attempts to cover up cases of alleged child abuse perpetrated by members of its clergy. We have urged the Holy See to recognise its responsibilities and honour its commitments to the CRC and to instruct all dioceses to report all cases of alleged child abuse to civil authorities, at least where required to do so by law.

As an institution which claims to have “the highest moral authority”, it can do no less.

We have recommended to the UNCRC committee that it formally request the Holy See to:

1. clear the backlog of its reports to the UNCRC and state that these should specifically include full compliance with Article 44(2), without reservation by the Holy See – that is, full disclose of child abuse cases;
2. open up to UNCRC workers and others working in child welfare all its archives in Vatican City State and in States parties concerning any matters relating to known or suspected child abuse;
3. make available for interview officials with any knowledge of these matters;
4. issue instructions overriding all others, including in Canon Law, that all Church officials are required to communicate knowledge or suspicions of child abuse to UNCRC officials, and to civil authorities under local laws, which have become known to the Holy See since it became a signatory of the Convention.

We have also urged the UNCRC to use its powers to investigate, or invite other UN agencies to investigate, the Holy See’s non-compliance with the CRC in respect of child abuse by its personnel, its failure to report such abuse to CRC, the conduct of cases submitted to the Congregation for the Doctrine of the Faith, its reservations on accession to the treaty, the role of internal regulations including Canon Law in impeding child protection, and the role of insurance contracts in possible breaches of the Convention. We have asked that these investigations should be completed and publicly reported within five years.

We ask the Scottish Government to consider these requests very carefully when framing their legislation and the compliance procedures attaching thereto.

Minority and other faith communities

We also draw to your attention to reports of child abuse at Glasgow mosques. The Herald has reported on several occasions on the creation and work of a new charity aiming to confront the “hush-up” culture on abuse among black and ethnic minorities.³⁴

The Scottish registered charity called Roshni, with offices in Glasgow and Dundee (www.roshni.org.uk) campaigns for the UK’s black and ethnic minorities to confront crimes against children which are being ‘swept under the carpet by shame, fear and silence.’ Roshni is a national registered charitable organisation set up in 2002. Roshni works with members of minority ethnic communities to promote the safety and wellbeing of children, young people and vulnerable adults. By raising awareness and challenging behaviours and attitudes Roshni seeks to ensure that minority ethnic communities take a more active role in tackling key issues affecting their lives. We also refer the Scottish Government to the work of Roshni in tackling female genital mutilation (FGM) in Scotland, to which we refer ourselves in the appropriate section of this submission.

Once again, reported cases of abuse by imams and other faith representatives are the tip of the iceberg.

We also wish to point out that the Church of Scotland and the Church of England, while hardly minority communities, are themselves implicated in the cover up of child abuse perpetuated by clergy.

In 1990, it was reported that the Rev. Gordon Haggarty, a Church of Scotland minister in Aberdeen, was jailed for sex offences against young girls.³⁵ In 1994, William Robb, aged 54, was jailed for seven years for a series of sex offences against boys as young as 10. Robb, who had been minister of several Scottish parishes and a Sea Cadet chaplain, resigned from a post in Dalry when a police investigation was launched into activities including pornographic pictures, group sex, drink and drugs. A common feature in both cases was that the crimes had been kept quiet for many years, with the victims either unheard or unable to speak out. In an article dated 11 August 1994 headed “Kirk slow to confront last taboo”, the Herald commented:

“The Kirk seems to have particular problems in confronting and discussing these issues openly”³⁶

Following the revelations in the Catholic Church, evidence of the same degree of abuse and cover-up is beginning to emerge in the Church of England. A Church of England report in August 2012³⁷ accused clergy in an ancient diocese of a ‘disastrous’ failure to protect children from abuse by paedophile priests. The investigation carried out for the Archbishop of Canterbury said that many lives had been blighted, and a string of court cases was just the tip of the iceberg of corruption in the Diocese of Chichester. It followed deepening concerns after one vicar was jailed for five years for sexually abusing two boys and another parish priest died without being charged with any offence after abusing at least ten boys. Three retired priests in the diocese are facing charges of sexual offences against children.

It was particularly shocking that this report came more than a year after an initial inquiry by retired Judge Baroness Butler-Schloss had itself taken eight months to produce a report. This investigation by the Baroness had to be reopened when it emerged that she had been deliberately misled by bishops whose evidence she had taken at face value without checking - further proof of the unwarranted level of trust placed automatically in religious leaders.³⁸

Currently the Church of England is not extending its investigations to other dioceses as it claims the problems in Chichester are ‘unique’. Throughout the last 20 years this has been a familiar cry from religious institutions around the world, namely that child abuse problems are limited to specific parishes in specific areas or dioceses, yet as we now know from the evidence, this was false. There are churches in Scotland that are members of the Anglican communion and there is no good reason to assume that, as Baroness Butler-Schloss discovered to her cost, their child protection policies are adequate just because the local bishop says so.

³⁴ See for example <http://www.heraldscotland.com/news/home-news/police-probe-into-child-beatings-at-mosques-1.1085169>

³⁵ <http://www.heraldscotland.com/sport/spl/aberdeen/sordid-secret-of-the-showman-minister-1.573433>

³⁶ <http://www.heraldscotland.com/sport/spl/aberdeen/kirk-slow-to-confront-last-taboo-1.490154>

³⁷ See Response to Interim Report of the Archbishops Chichester Visitation, www.churchofengland.org.uk

³⁸ See <http://www.youtube.com/watch?v=o3fug1GuC0U>, a BBC investigation

Recommendations

We urge the Scottish Government to pay particular attention to the appalling record of sexual, physical and psychological abuse perpetrated on Scottish children by religious organisations, and further ask the Scottish Government that it includes in its Children and Young People Bill provision to:

- a) make it a criminal offence not to report reasonable suspicions of child abuse
 - b) make it a criminal offence for supervisory employees or officers e.g. diocese administrators to act in such a way that is likely to facilitate a criminal act
 - c) enable religious bodies to be sued for civil damages arising from the acts of those acting under their auspices, whether classed as employees or not
 - d) remove any time bar, either criminal or civil, applied to child abuse cases, but leaving the judge the opportunity to re-impose it in the light of the circumstances;
2. ensure that all child protection codes produced mandate the reporting of abuse or concerns about it without exception to the appropriate and accountable secular authorities;
 3. ensure that concerns about abuse in religious contexts are not limited to sexual abuse and rape, but will also focus on physical and psychological abuse;
 4. require by law all schools and institutions with children and vulnerable adults to display notices giving contact details (including Freephone numbers) for the reporting of abuse or concerns about it to independent secular authorities;
 5. to consider as a matter of some urgency the Holy See's reliance on its own Canon Law in dealing with cases of child sex abuse, and how it is to ensure that law passed in Scotland by the Scottish Government takes primacy in all cases;
 6. The same consideration should be given to all other religious institutions which rely on the primacy of their own internal laws in dealing with such cases. In particular, we recommend that contact is made (unless it has already been established) with www.roshni.org.uk/ which appears to be tackling the additional taboo of sexual exploitation in minority ethnic communities.

In particular, we invite the Scottish government to consider very carefully how much credence it can place on any assurances given by the hierarchy of the Catholic Church in Scotland, or indeed the Anglican communion or minority faith leaders. Although steps have been taken to better safeguard children in the wake of the abuse controversies, the Catholic Church still seeks shamelessly to protect its own interests at the expense of the victims and remains in violation of the Convention in several crucial aspects. While abusers among the priesthood and religious orders have faced justice, those in the hierarchies who deliberately covered up the abuse have not only escaped investigation, and indeed prosecution, but remain in post. We are concerned for example that the Scottish Government's excellent Time to be Heard initiative specifically excluded those abused in Catholic run institutions, which was a clear disappointment to the victims.³⁹ This is in spite of the appalling abuse that took place at the St Ninian's and Nazareth House care homes, and the scale of abuse by Catholic religious orders around the globe.

The scale of the Catholic Church's institutions in Scotland and its centralised control away from Scotland, combined with the stubbornly and continuing intransigence of the Holy See outlined above, and the examples of the Nazareth and St Ninian's care homes, must mean that special care has to be taken by the Scottish Government to protect Scottish children in Catholic-run institutions for the foreseeable future. We contend that the Scottish Government cannot take any chances and assume that somehow all will now be well, for if it does so it will be failing in its duty of care to Scottish children. The

³⁹ See <http://www.holyrood.com/articles/2010/06/25/denied-a-voice/>

exclusion of those abused in Catholic care homes in Scotland from the Scottish Government's Time to be Heard initiative does not fill us with confidence that the Scottish Government is inclined to be rigorous in holding the Catholic Church to account for its actions.

Religious Observance (Ro) in Scottish Non-Denominational Schools

Section 8 of the Education (Scotland) Act 1980 outlines the situation concerning religious observance.

It notes that it has been the custom in the public schools of Scotland for religious observance to be practised and for instruction in religion to be given to pupils whose parents did not object to such observance or instruction, but with liberty to parents, without forfeiting any of the other advantages of the schools, to elect that their children should not take part in such observance or receive such instruction.

The Act permits education authorities and the boards of management of self-governing schools to continue this, subject to the provisions of section 9 of the Act. Section 9 is a conscience clause, allowing parents to withdraw their child from any instruction in religious subjects and from any religious observance in any school and requiring that no pupil shall be placed at any disadvantage with respect to the secular instruction given therein by reason of the denomination to which such pupil or his parents belong, or by reason of his being withdrawn from any instruction in religious subjects.

The Act prohibits an education authority or board of management from discontinuing religious observance or the provision of instruction in religion unless and until a resolution in favour of such discontinuance duly passed by the authority has been submitted to a poll of the local government electors for the education area taken for the purpose, and has been approved by a majority of electors voting.

While these clauses combine religious instruction and religious observance, it can be deduced that a decision about observance could be taken without affecting religious instruction (the latter has since become the wider subject of 'religious education', now covered by the Curriculum for Excellence).

Since the above Act was passed by the Westminster parliament, it has not been revisited by the Scottish Parliament and we are not aware of any plans by the Scottish Government to do so.

In 2011 the Scottish Government's Learning Directorate issued Guidelines (the Guidelines) for the operation of religious observance in non-denominational schools ('Curriculum for excellence – provision of religious observance in schools'). The Guidelines suggests that, instead of the phrase 'religious observance', it might be more appropriate to label such activities as 'Time for Reflection', as used in the Parliament. The Guidelines also note that, since many school communities contain pupils and staff from faiths other than Christianity or with no faith commitment, this must be taken fully into account in supporting spiritual development. The February 2011 communication makes unsubstantiated and unsupported claims, such as:

“Religious observance has an important part to play in the development of the learner’s four capacities: a successful learner, confident individual, responsible citizen and effective contributor.”

This assertion is made without any explanation as to how RO makes individuals confident or indeed effective contributors, far less successful learners or responsible citizens.

The communication further states:

“In recognition of Scotland’s Christian heritage, non-denominational schools are also encouraged to draw upon the rich resources of this tradition when planning religious observance. However, many school communities contain pupils and staff from faiths other than Christianity or with no faith commitment, and this must be taken fully into account in supporting spiritual development (their emphasis). It is of central importance that all pupils and staff can participate with integrity in forms of religious observance without compromise to their personal faith.”

However, mainstream religions appear to see their faiths being compromised nonetheless. In a wider context, we know for example that both the Anglican and Catholic churches in Britain are on public

record on the BBC as stating they do not want 'Anglican or Catholic' children to be educated in Muslim schools.⁴⁰ One imagines neither of these Christian denominations would be happy for 'their' children to be required to undergo regular RO of an Islamic nature, so one could question why they are surprised there are parents who would not want their children to undergo RO of any description.

The February 2011 communication also permits the involvement of religious representatives in RO in non-denominational schools:

"The precise form of religious observance will be determined by each school's policy within the local authority's framework, but these might include opportunities for class, year, stage or whole school observance as well as involvement by pupils and others, including school chaplains and other faith leaders, in planning and presentation."

This presents an open door for all manner of religious groups, and a wide spectrum of views from the fundamental to the liberal, to regularly have direct access to Scottish schoolchildren to run assemblies and otherwise promote their mutually exclusive versions of 'the truth.'

Somewhat optimistically, it declares that

'It is of central importance that all pupils and staff can participate with integrity in forms of religious observance without compromise to their personal faith'.

It is not clear how those of other faiths or of no faith can participate in enforced participation in one faith's religious rituals with integrity or without compromise as to their own beliefs or lack of them. The Guidelines offer no suggestion as to how this can be objectively verified or accomplished.

The Guidelines further require that there should be a clear distinction between assemblies devised for the purpose of religious observance and assemblies for other purposes, such as celebrating success.

Noting that parents have the right to withdraw their children from religious observance, the guidance emphasises (1) that this right should always be made known to parents and their wishes respected and (2) that parents should be provided with sufficient information on which to base a decision. The guidance continues to declare that, where a child is withdrawn from religious observance, schools should make suitable arrangements for the child to participate in a worthwhile alternative activity and that, in no circumstances, should a child be disadvantaged as a result of withdrawing from religious observance.

Local Church of Scotland ministers and representatives of other faith groups, often evangelical groups with extremely conservative views (eg favouring the direct promotion of biblical creationism by denying the facts of evolution) regularly conduct religious services as if the children were attending Sunday school. In effect, because it is only possible for parents to remove their children from religious observance at a considerable disadvantage to the children and to themselves, this observance becomes compulsory. The NSS has evidence from parents around Scotland that they are not being advised as to their rights to withdraw their children, and face accusations of belligerence from school heads when trying to exercise those rights. This is supported by research conducted by YouGov for the Humanist Society of Scotland. The survey of 1000 parents of school age children, in March 2012, found that only 4% of respondents saying that schools should maintain the confessional approach and only 20% had been informed by the school of their right to withdraw.⁴¹

Many parents reported in the survey of the obstructionist approach adopted by schools to their requests for their child to opt out and no suitable activity being offered. We are told that children are left to sit in a corridor reading a book, and, in one case, asked to sharpen all the pencils and tidy the classroom. School staff who are sympathetic to the requests of these parents explain that they simply do not have the resources to provide a teacher or an alternative suitable curriculum.

Children make great efforts to fit in with their peer-group; it is an important part of a child's normal, social and emotional development. Children who are excluded from their peer-group feel anxious and left out,

⁴⁰ See http://www.bbc.co.uk/pressoffice/pressreleases/stories/2005/09_september/27/faith.shtml, God and the Politicians

⁴¹ See http://www.humanism-scotland.org.uk/news/in_the_news/scottish_schools_fail_to_meet_guidelines_on_religious_teaching_and_observance/?tag=religious_observance

and become the object of curiosity and derision from other children. For this reason, no child wants to be excluded and no parent wants their child excluded even if they hold no religious views and object to their child being involved in religious observance with what they regard as its superstitious stories and rituals. Another downside to exclusion is that it is associated with misbehaviour. Thus we have a situation where non-religious parents or even those of a different religion can only protect their children from an unwanted influence by disadvantaging their child and risking damaging their emotional and social development. This is not tolerable and is probably in breach of the Convention, for example Article 2(2) to protect children against all forms of discrimination and punishment; and Article 3, where it can be argued that effectively forcing children to worship (in what is allegedly a non-denominational school) at the risk of social exclusion is a breach of the requirement to have the best interests of the child as a primary consideration.

The facts that all children are automatically enrolled in religious observance and that parents who wish to remove their children from this have to inform the school about their decision, means that parents are forced to make public their position on religion. This is an outrageous situation, comparable to having to declare one's political affiliation, and all the more intolerable for having to be done in what is called a non-denominational school. Religion is a topic that is very divisive. The fact that parish ministers and faith groups are welcomed into our schools, often without any checks on their probity or on the exact nature of the faith positions they espouse, means that the schools are perceived as endorsing religion. This, coupled with the practicalities of splitting children up between those who take part and those who do not, means that children are encouraged to view each other as 'us and them'. This can have undesirable consequences, even on the wider community. Further, apart from the damage and confusion it causes, public funds are being used to promote religious beliefs.

Young children are intellectually immature and have open, uncritical minds and are thus ready and socially primed to accept as fact whatever an adult in authority tells them. It is impossible for them to go from one lesson where they learn that five plus three makes eight and then go to another lesson where they hear an adult proclaim that God made the world in seven days, and not believe in the content of both lessons.

We particularly object to parish ministers or other religious representatives coming to schools or children being taken to a church service. It is not the function of the educational system to try to convert children to any religion or to inculcate them into its rites. At the appropriate age, they should be taught about various religions, but not inducted into any of them, or forced into any form of worship. We strongly suspect that no Christian parents would want their children to be required to take part in regular acts of observance of an Islamic nature. We therefore ask why parents who are not religious are compelled to have to opt out their children from any form of religious observance, as legislation in Scotland currently requires.

The rights and duties of parents to provide "direction" as to their child's exercise of freedom of religion and belief (the Convention Article 14(2)) is in protection of the child's beliefs, not the religion of the parents, which are subject to the same restrictions (health and fundamental freedoms of others) as the right to religious expression generally. There is no right to parental "direction" exceeding those restrictions and states may legitimately ban such excesses, and indeed Sweden has done so⁴². Denying parents the opportunity for religious observance by their children in non-denominational schools does not constitute any limitation of the parents' right to manifest their religion. The child has rights too, not least to religious freedom. Nor does it prevent parents who are religious from exercising their rights under Article 5 of the Convention, which requires signatories to respect the rights, responsibilities and duties of parents to provide appropriate direction and guidance in the exercise by the child of his or her rights. Parents are able to have their children participate in religious observance as frequently as they wish in the home or in their place of worship.

We ask that the Scottish Government abandons the automatic enrolment of children in religious observance and the practice of non-participation by exclusion, since it is in conflict with the Convention. It is estimated that only about half of all people in Scotland are now religious, and church attendance figures continue to decline. Consequently it is inappropriate that so-called 'non-denominational' schools, which many parents mistakenly think are non-religious schools, should continue to hold religious

⁴² See *X Y & Z v Sweden* (1982) 5 EHRR 147 (Swedish ban on corporal punishment of children upheld – complaint by parents that they had a religious right to use corporal punishment which was violated by the ban was not accepted).

services on their premises. It is not the function of the State to provide the vehicle for this, whether within the educational system or outside it, or be the means by which any religion recruits its members.

Recommendations

We recommend that in framing the Children & Young People legislation, the Scottish Government abolishes religious observance in non-denominational schools in order to place the rights of children before the rights of parents and faith groups in these publicly-funded settings.

We also recommend that non-denominational schools be required to publish for all parents a list of faith organisations invited by head teachers to visit schools and address assemblies, and to provide details of the content of such assemblies at parent's request.