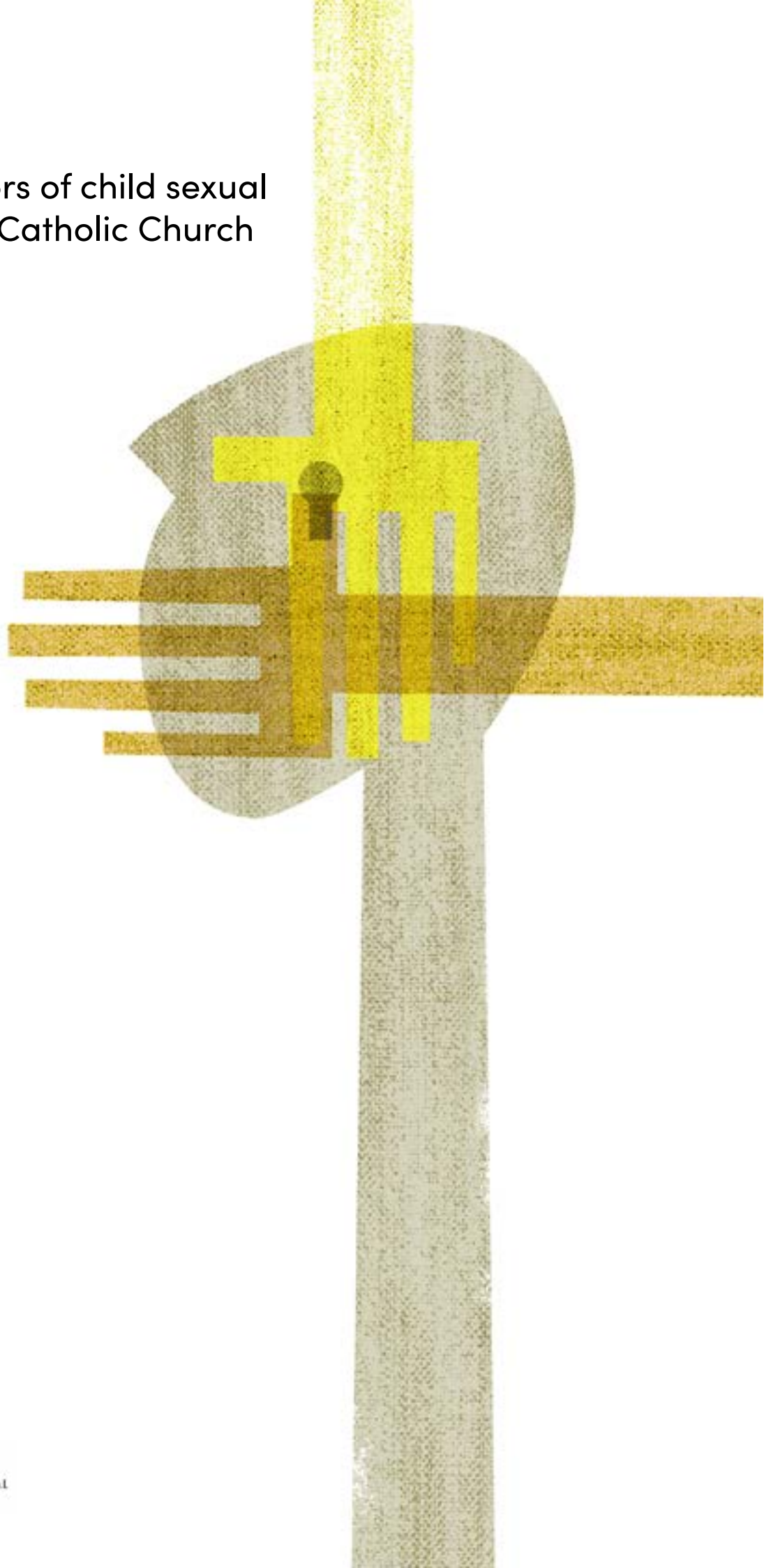


## **The Third Wave:**

Justice for survivors of child sexual  
abuse within the Catholic Church  
in Latin America



# Acknowledgements

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# 1. Introduction

The realisation that children around the world have been sexually abused by Catholic clerics and church employees for many years, and that the Church has systematically sought to protect its own image through cover-ups rather than protect children, has confronted the Catholic Church with a global crisis of legitimacy. Efforts to uncover the systemic child sexual abuse in the Church, secure accountability and prevent future abuse have led to multiple media investigations, civil lawsuits and public inquiries across North America, Europe and Oceania. In other regions, such as Africa and Latin America, the issue is still emerging and largely continues to be shrouded in silence.

Until recent years, the Catholic Church appears to have rested assured that, no matter how tarnished its image has become in Western countries, it continued to be devoutly revered in other parts of the world. This is especially true of Latin America, the region with the highest Catholic population in the world<sup>1</sup> and some of the lowest reporting rates of child sexual abuse against Catholic clergy, church employees and dioceses.<sup>2</sup> But a change in tide is growing with force. Standing out as exceptions in the region are Argentina and Chile, where an ever-increasing number of abuse survivors are emboldened to come forward with their experience and take action against their abusers and the religious institution that shielded them.

This cultural shift is especially evident in Chile where the determination to hold powerful institutions like the Catholic Church accountable for its failures has additionally led survivors to collectively demand that their government set up an independent commission to investigate the truth around historical sexual abuse within the country's Catholic Church.<sup>3</sup> While Chile is the first Latin American country to make this call, it is part of a global wave of demands for accountability of the Church, which includes survivor groups in countries with similarly large Catholic populations, such as Italy,<sup>4</sup>

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1 'The Global Catholic Population', Pew Research Center, 13 February 2013. Available at: <https://www.pew-forum.org/2013/02/13/the-global-catholic-population/>

2 'Los abusos sexuales a niños y la Santa Sede: Necesidad de justicia, rendición de cuentas y reforma', 2014, CRIN: p.13. Available at: [https://archive.crin.org/sites/default/files/holy\\_see\\_report\\_final\\_spanish.pdf](https://archive.crin.org/sites/default/files/holy_see_report_final_spanish.pdf)

3 Red de Sobrevivientes de Abusos Eclesiásticos planteó a La Moneda crear comisión de la verdad, El Mostrador, 3 August 2018. Available at: <https://m.elmostrador.cl/noticias/pais/2018/08/03/red-de-sobrevivientes-de-abusos-eclesiasticos-planteo-a-la-moneda-crear-comision-de-la-verdad/>

4 'L'Onu all'Italia: "Una commissione per indagare sugli abusi dei preti"', 12 February 2019, La Repubblica, available at: [https://www.repubblica.it/cronaca/2019/02/12/news/l\\_onu\\_all\\_italia\\_una\\_commissione\\_per\\_indagare\\_sugli\\_abusi\\_dei\\_preti\\_-218913877/](https://www.repubblica.it/cronaca/2019/02/12/news/l_onu_all_italia_una_commissione_per_indagare_sugli_abusi_dei_preti_-218913877/)

Poland,<sup>5</sup> Spain<sup>6</sup> and the United States.<sup>7</sup> In the face of these developments, activists predict that Latin America will be the site of a 'third wave' of revelations and mass mobilisation by survivors of church abuse as first seen in North America and Ireland and then the rest of Europe and Oceania.

This growing momentum invites a timely push for greater demands for justice, but even to this day the Church is failing to respond to and make amends for its self-made scandal.<sup>8</sup> In many countries, the Church continues to refuse to release internal records to aid civil investigations,<sup>9</sup> including the names of priests suspended over child sexual abuse;<sup>10</sup> it has admitted to destroying or altering records which potentially incriminate the institution;<sup>11</sup> some national factions continue to insist that the problem does not affect their country and even that many abuse allegations are false;<sup>12</sup> and the Church continues to claim that as an institution it is not liable for the actions of individuals working under its authority,<sup>13</sup> even though it is through the institution that access to children is granted, including through the transfer of abusive priests to new parishes, a practice that the Church continues to this day.<sup>14</sup>

In countries that have faced child abuse scandals in religious institutions and beyond, an increasing number of governments have recognised their responsibility to their citizens and have responded principally in two significant ways that address the direct demands of survivors themselves. First, by conducting large-scale independent investigations

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5 'Komisja Prawdy i Zadośćuczynienia' (Truth and Compensation Committee), Nie lękajcie się (Have No Fear foundation). Available at: <http://nielekajciesie.org.pl/2019/08/05/komisja-prawdy-i-zadoszczynienia/>

6 'Las víctimas de abusos en la Iglesia piden una comisión de investigación independiente', 25 June 2019, El País. Available at [https://elpais.com/sociedad/2019/06/24/actualidad/1561398928\\_277491.html](https://elpais.com/sociedad/2019/06/24/actualidad/1561398928_277491.html)

7 'Global survivors of clergy abuse join SNAP & CCR in calling for a US Federal Investigation into abuse and cover up in the Catholic Church', Ending Clergy Abuse-Global Justice Project, 15 August 2018. Available at <https://www.ecaglobal.org/global-survivors-of-clergy-abuse-join-snap-ccr/>

8 'Francisco emite nueva ley de la iglesia sobre el abuso y encubrimiento con poco o ningún cambio en la ley actual', 9 May 2019, Ending Clerical Abuse (ECA) - Global Justice Project. Available at: <https://www.ecaglobal.org/pope-francis-issues-new-church-law-on-abuse-and-cover-up-with-little-if-no-changes-in-current-law/>

9 'Panamá y Honduras | El silencio sobre los abusos se impone en las jerarquías católicas', 20 February 2019, El País. Available at: [https://elpais.com/sociedad/2019/02/19/actualidad/1550591766\\_098563.html](https://elpais.com/sociedad/2019/02/19/actualidad/1550591766_098563.html)

10 'México: 152 sacerdotes suspendidos por abusos', 20 February 2019, El País. Available at: [https://elpais.com/sociedad/2019/02/19/actualidad/1550593780\\_217995.html](https://elpais.com/sociedad/2019/02/19/actualidad/1550593780_217995.html)

11 'La Iglesia destruyó documentos sobre abusos de religiosos', 24 February 2019, Perfil. Available at: <https://www.perfil.com/noticias/internacional/la-iglesia-destruyo-documentos-sobre-abusos-de-religiosos.phtml>

12 'Muchas denuncias de abuso sexual contra sacerdotes "no son verdaderas", dice cardenal asesor del papa', 11 July 2019, ABC Color. Available at: <https://www.abc.com.py/internacionales/2019/07/11/muchas-denuncias-de-abuso-sexual-contra-sacerdotes-no-son-verdaderas-dice-cardenal-asesor-del-papa/>

13 'The Holy See and the United Nations: A briefing', February 2019, CRIN, p.11. Available at: <https://home.crin.org/briefing-paper-the-holy-see-and-the-united-nations>

14 'Víctima de abusos eclesíásticos por traslado de cura chileno denunciado en Argentina: "Es habitual"', 16 August 2019, BioBioChile. Available at: <https://www.biobiochile.cl/noticias/nacional/chile/2019/08/16/victima-de-abusos-eclesiasticos-por-traslado-de-cura-chileno-denunciado-en-argentina-es-habitual.shtml>

to establish the official truth behind the scandals. As the case of the Catholic Church amply illustrates, official acknowledgement of what happened is so important because official denial has been so pervasive. In chapter four of this report we discuss how such inquiries have aided the pursuit of truth and set the groundwork for accountability and reparations for the countless victims.

Acknowledgement of the problem is a necessary starting point, but it must also form the basis for reform within the Church and beyond. An effective response to sexual abuse requires States to improve access to justice for survivors by removing any barriers. In particular, this concerns legal reform to recalibrate the justice system in response to the reality of abuse survivors and that fact that the majority take decades to come to terms with their abuse and report it. As we discuss in chapter three of this report, El Salvador, Mexico, Chile, Nicaragua, Ecuador and Peru are spearheading a trend to abolish limits on the time a person has to report the abuse they suffered as children and bring their complaints before the courts. But these reforms of statutes of limitations have yet to take place across most countries in Latin America and therefore remain a barrier to survivors' access to justice. Around the world, such law reform has been an effective way of empowering survivors of abuse to hold perpetrators to account, force institutions to initiate broader reforms to protect children, and trigger national efforts to address a history of sexual abuse of children and provide redress to survivors.

At CRIN, we hope this report complements the efforts of survivors in Latin America in pursuing truth, accountability and redress. In covering all 18 Spanish-speaking countries in the region, as well as Brazil, it summarises the regional scale of child sexual abuse and cover-ups by the Catholic Church in each country and how survivors and lawmakers have mobilised in response. The report is a useful resource for national organisations and lobbying groups in Latin America wishing to pursue advocacy on reforming national legislation and establishing public inquiries. The report also establishes the responsibility of national lawmakers to act in support of its citizens and, if need be, in defiance of the Catholic Church.







## 2. The scale of child sexual abuse in Latin America

Child sexual abuse within the Catholic Church is a global problem. From Ireland to Australia, Japan to South Africa, Bolivia to Canada and Guam to Poland, reports have emerged, often in their hundreds, of the abuse of children by clergy and other employees of the Church. Wherever the Church is present, the pattern has repeated itself, as priests exploit their position of authority, their unsupervised contact with children and their position of respect within the community, all with the impunity afforded by an institution that continues to shield them from prosecution.

Mapping the true scale of child sexual abuse within the Catholic Church is a formidable challenge. There is no systematic monitoring or official statistics on the issue and government data rarely disaggregates the identity of perpetrators of sexual abuse to identify whether they were clergy. More fundamentally, many people who experience sexual abuse as a child will never report the abuse and those who do come forward often wait years, if not decades, before they feel able to speak about their experience. Underreporting hinders the most thorough attempts to identify the scale of sexual abuse.<sup>15</sup> Any estimation therefore would fall vastly short of the true scale of abuse in the Church.

What is clear, is that reported cases of abuse are on the rise globally, and across the countries of Latin America a growing awareness is beginning to emerge of the reality of widespread abuse in the Catholic Church. In the wake of scandals that have spread across North America, Europe and Oceania, Latin America is now facing the third wave of revelations of sexual abuse within Catholic institutions.

### Definitions

**Sexual violence** refers to all forms of sexual exploitation and sexual abuse.

**Child sexual abuse** includes any behaviour involving engaging in sexual activities with a child, coercing, forcing or threatening a child into sexual activity or causing a child to witness sexual activity or abuse.

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<sup>15</sup> UNICEF, *Hidden in Plain Sight: A statistical analysis of violence against children*, 2014, p. 62-65. Available at: [https://www.unicef.org/publications/index\\_74865.html](https://www.unicef.org/publications/index_74865.html)

**Victims/survivors** are used throughout the report to refer to individuals who have suffered sexual abuse, though we primarily use survivor because this is how most identify. We note that victim can be seen to carry connotations of weakness, while survivor implies overcoming harm. Yet we respect that some people wish to identify as a victim and be recognised as such.

For more details on terminology see the Luxembourg Guidelines.<sup>16</sup>

## Uncovering the scale of the abuse

Sexual abuse within the Catholic Church is as old as the Church itself.<sup>17</sup> In the modern era, allegations made publicly have increased in prevalence since at least the 1950s, but over the past two decades, the global scale of the abuse has truly come to light. Despite reports as early as the 1980s in the United States and Canada, as well as the launch in Ireland of the Ryan Commission to Inquire into Child Abuse in the late 1990s, it is widely held that the revelations emerging from the Boston Globe's 2002 investigation into abuse cover ups by the Archdiocese of Boston produced the first major scandal to capture the world's attention.<sup>18</sup> The public realisation of the scale of the abuse and the active role of the Church in protecting perpetrators triggered a wave of scandals that broke on the Vatican itself. In its wake, national scandals have spread through Europe and Oceania, triggering inquiries into historical abuse within the Church and revealing the number of clergy and church employees implicated in the abuse.<sup>19</sup>

### A growing wave

Despite the developing scandal around the world, Latin America did not experience the same level of revelations during this period. Some of the earliest reports emerged as recently as 2002. In **Costa Rica**, for example, priest Luis Francisco Calvo Bolaños was sentenced that year to four years in prison for forcibly kissing a 16-year-old girl.<sup>20</sup> In **Paraguay** in 2003, Juan Andrés López Sosa

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16 Available at: <http://luxembourgguidelines.org/>

17 'The Roman Catholic Church: A Centuries Old History of Awareness of Clerical Child Sexual Abuse (from the First to the 19th Century)', 2018, Faisal Rashid and Ian Barron, *Journal of Child Sex Abuse*; 27(7): pp.778-792.

18 'Church allowed abuse by priest for years,' 6 January 2002, *The Boston Globe*. Available at: <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTlrAT25qK-GvBuDnM/story.html>

19 See Chapter 4 in this report for further discussion of these inquiries.

20 '29 sacerdotes fueron denunciados por abuso sexual en última década en Costa Rica,' 26 February 2019, *AmeliaRueda.com*. Available at: <https://www.ameliarueda.com/nota/iglesia-catolica-costa-rica-29-sacerdotes-denuncias-abuso-sexual>

was the first priest to be convicted in the country after being sentenced to eight years in prison for sexually abusing an 11-year-old altar boy two years prior.<sup>21</sup> Meanwhile in **Panama**, while a small number of convictions had already been handed down since 2002, the Public Prosecutor's Office reported it had received its first wave of complaints against Catholic clergy in 2009.<sup>22</sup> Most countries in Latin America have seen convictions of abusive priests, but these are few and far between. It was not until more recently that reported cases of clergy sexual abuse began to rise sharply.

In 2017, news reports emerged in **Argentina** that 66 priests, nuns and other clergy had been accused of sexual abuse since 2001.<sup>23</sup> The following year, the National Prosecutor's Office in **Chile** announced it had 36 open cases of child sexual abuse, had carried out 22 prosecutions that resulted in a conviction and had referred 22 cases to a specialist unit dealing with historic abuse cases.<sup>24</sup> At the same time, **Bolivia's** Public Prosecutor's Office was dealing with the cases of more than 60 people who had been sexually abused as children by Catholic priests in the past ten years.<sup>25</sup>

Reports across countries that had high profile investigations have continued to rise since. By 2019, the Network of Clergy Sexual Abuse Survivors in **Chile** reported that 243 complaints had been made public against clergy and church employees<sup>26</sup> and the National Prosecutor was investigating 166 cases.<sup>27</sup> Investigations and allegations also began to spread in other countries in the region. Reports emerged from **Costa Rica** that 29 priests had been accused of sexual abuse against 27 victims, the majority of whom were children,<sup>28</sup> and

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21 'Sacerdotes argentinos con casos de abuso y crímenes ocultos en Paraguay', 23 May 2016. Available at: <https://www.lanacion.com.py/2016/05/23/sacerdotes-argentinos-con-casos-de-abuso-y-crmenes-ocultos-en-paraguay/>

22 'Investiga Vaticano Denuncias de Pederastia en Panamá', 24 August 2009, Radio Panamá. Available at: <http://www.radiopanama.com.pa/noticias/actualidad/investiga-vaticano-denuncias-de-pederastia-en-panama/20090824/nota/866274.aspx>

23 'Las denuncias de abusos clericales se disparan en Argentina', 26 October 2017, AP News. Available at: <https://www.apnews.com/da307f519df14143a4e603dcb7e9633d>

24 'Informe sobre casos de delitos sexuales relacionados con la Iglesia Católica', Fiscalía Nacional del Ministerio Público de Chile, 23 July 2018. Available at: <http://www.fiscaliadechile.cl/Fiscalia/noticiaPdf?noticiaId=14941>

25 'Los siete casos de pederastia que obligan a investigar a la Iglesia católica en Bolivia', 8 April 2019, *El Deber*. Available at: <https://www.eldeber.com.bo/septimodia/Los-siete-casos-de-pederastia-que-obligan-a-investigar-a-la-Iglesia-catolica-en-Bolivia--20190405-0056.html>

26 'Mapa chileno de los delitos de abuso sexual y de conciencia cometidos en entornos eclesiásticos', Red de Sobrevivientes de Abusos Eclesiásticos en Chile, April 2019. Available at: <https://www.redsobrevivientes.org/post/mapa-abusos>

27 'La Fiscalía chilena anula el acuerdo con la Iglesia para los casos de abusos sexuales', 7 May 2019, Agencia EFE. Available at: <https://www.efe.com/efe/america/sociedad/la-fiscalia-chilena-anula-el-acuerdo-con-iglesia-para-los-casos-de-abusos-sexuales/20000013-3969568>

28 '29 sacerdotes fueron denunciados por abuso sexual en última década en Costa Rica', 26 February 2019, AmelíaRueda.com. Available at: <https://www.ameliarueda.com/nota/iglesia-catolica-costa-rica-29-sacerdotes-denuncias-abuso-sexual>

**Colombia's** Public Prosecutor's Office was actively investigating 57 cases of alleged child sexual abuse within the Catholic Church.<sup>29</sup>

These revelations began to shatter a prevailing taboo across Latin America around sexual abuse, but also with regard to public attitudes towards the Catholic Church. Soon the first survivors groups formed in the region and began campaigning for accountability and redress against a religious institution whose reputation, until then, had remained largely intact. At a national level, the most active groups in Latin America are the Argentinian and Chilean Networks of Clergy Sexual Abuse Survivors,<sup>30</sup> which offer advice and support to those who have suffered abuse in the Church and lobby their respective governments to take concrete action to improve church accountability and victims' access to justice. At a global level Ending Clerical Abuse (ECA) - Global Justice Project<sup>31</sup> is the first international organisation focused on justice and accountability for sexual abuse in the Catholic Church.

## Still lagging

Despite this developing awareness, there remain many countries across Latin America where few or no cases of clerical abuse have been made public. The Church in some countries has revealed some statistics on the number of priests accused of abuse over the years - often the only statistics available - including in **Guatemala**,<sup>32</sup> **Mexico**<sup>33</sup> and **Uruguay**,<sup>34</sup> but it systematically withholds the identity of the accused and does not pass on the cases to civil authorities. In response, judges in some countries have ordered police raids of church offices to retrieve documents that could serve as evidence in lawsuits.<sup>35</sup> Meanwhile relatively little information about clerical abuse has emerged from any sources in **Brazil**, **Cuba**, **Ecuador** and **Honduras** to date. The lesson from countries around the world,

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29 'Fiscalía de Colombia investiga 57 casos de pederastia en la iglesia católica', 14 May 2019, Infobae. Available at: <https://www.infobae.com/america/colombia/2019/05/14/fiscalia-de-colombia-investiga-57-casos-de-pederastia-en-la-iglesia-catolica/>

30 Red de Sobrevivientes de Abuso Sexual Eclesiástico de Chile <https://www.redsobrevivientes.org/>; Red de Sobrevivientes de Abuso Sexual Eclesiástico de Argentina <https://www.facebook.com/SobrevivientesdeAbusoEclesiasticoArgentina/>

31 ECA <https://www.ecaglobal.org/>

32 Iglesia suspende a siete curas por abuso de niños', 12 February 2019, Evangelizadoras de los apóstoles. Available at: <https://evangelizadorasdelosapostoles.wordpress.com/2015/02/12/guatemala-iglesia-suspende-a-siete-curas-por-abuso-de-ninos/>

33 '152 sacerdotes suspendidos por abusos', 20 February 2019, *El País*. Available at: [https://elpais.com/sociedad/2019/02/19/actualidad/1550593780\\_217995.html](https://elpais.com/sociedad/2019/02/19/actualidad/1550593780_217995.html)

34 'Iglesia recibió 44 denuncias de abusos', 16 November 2016, Iglesia Católica Montevideo. Available at: <http://icm.org.uy/iglesia-recibio-44-denuncias-abusos/>

35 'Redadas en las oficinas de cuatro obispados de Chile por casos de abusos sexuales en la Iglesia Católica', 13 September 2018, Europa Press. Available at: <https://www.europapress.es/sociedad/noticia-redadas-oficinas-cuatro-obispados-chile-casos-abusos-sexuales-iglesia-catolica-20180913230019.html>

however, is that a long silence can presage the largest abuse scandals. The wave of revelations in Latin America is still growing and it is hoped that survivor groups in countries such as Argentina and Chile will inspire survivors in other countries in the region to also come forward.

## The incidence of reporting

The organisation BishopAccountability.org points out that the majority of clergy abuse complaints in Latin America involve abuse that occurred in the past 20 years, with victims usually filing complaints with law enforcement within a few years of its occurrence.<sup>36</sup> But this relatively prompt reporting is atypical and suggests that the vast majority of historical abuse cases remain unreported.<sup>37</sup> Cases that come to light are widely considered to be the tip of the iceberg, and figures should always be interpreted as a low incidence of reporting, rather than a low incidence of abuse. BishopAccountability.org explains that factors which have led to significant disclosure in other parts of the world - the lifting of statutes of limitations, widespread litigation by survivors, investigations of church entities by prosecutors, inquiries by government commissions - have so far not occurred in Latin America.<sup>38</sup>

## Country profiles

### Argentina

Since 2015, Argentina has seen a significant increase in the number of complaints alleging sexual abuse against Catholic clergy. In 2017, AP reported that 66 priests, nuns and other clergy had been accused of sexual abuse since 2001,<sup>39</sup> and in June 2019, a year-long nationwide investigation found that over the previous 20 years, at least 63 clerics had been accused of sexual abuse.<sup>40</sup>

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36 'Sacerdotes, hermanos y hermanas que han sido denunciados públicamente en Argentina', April 2019, BishopAccountability.org. Available at: <http://www.bishop-accountability.org/Argentina/Abusos/Banco-de-Datos.htm>; 'Sacerdotes, hermanos, hermanas y diáconos que han sido denunciados públicamente en Chile', BishopAccountability.org. Available at: <http://www.bishop-accountability.org/Chile/Banco-de-Datos/>

37 Ibid.

38 Ibid.

39 'Las denuncias de abusos clericales se disparan en Argentina', 26 October 2017, AP News. Available at: <https://www.apnews.com/da307f519df14143a4e603dcb7e9633d>.

40 'Abusos sexuales en la Iglesia argentina', 2 June 2019, *La Nación*. Available at: <https://www.lanacion.com.ar/sociedad/abusos-iglesia-argentina-nid2252473>

## Bolivia

In 2019, Bolivia's Public Prosecutor's Office, said more than 60 people had been sexually abused as children by Catholic priests in the past ten years.<sup>41</sup> Of the cases that are publicly known, only three have resulted in convictions. Most of the abuse is attributed to three priests, one of whom raped 17 boys at a boarding school for children of migrant parents; another is accused of abusing 30 boys in the town of Tapacarí, one of the poorest in the department of Cochabamba; and the third was accused of sexually abusing 18 residents at a home for underprivileged children.<sup>42</sup>

## Brazil

No major investigation into child sexual abuse within the Catholic Church in Brazil was found and accountability efforts for clergy abuse are scarce. Of the limited statistics available, a Vatican commission reported in 2005 a 70 percent increase in the number of priests involved in cases of sexual abuse, with ten percent of Brazil's priests - some 1,700 clerics - being accused.<sup>43</sup> The cases that have come to light in Brazil show that the vast majority of victims are from poor backgrounds.<sup>44</sup>

## Chile

In May 2019, the national prosecutor reported that 166 complaints were being investigated,<sup>45</sup> while the Chilean Network of Clergy Sexual Abuse Survivors reports that a total of 243 complaints have been made against clergy and employees of the Catholic Church, alleging sexual abuse.<sup>46</sup> The group has called for a national inquiry on the issue.<sup>47</sup>

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41 'Los siete casos de pederastia que obligan a investigar a la Iglesia católica en Bolivia', 8 April 2019, *El Deber*. Available at: <https://www.eldeber.com.bo/septimodia/Los-siete-casos-de-pederastia-que-obligan-a-investigar-a-la-Iglesia-catolica-en-Bolivia--20190405-0056.html>

42 'El rostro indígena de las víctimas de abuso sexual de sacerdotes en Bolivia', 23 February 2019, *El Deber*. Available at: <https://www.eldeber.com.bo/bolivia/El-rostro-indigena-de-las-victimas-de-abuso-sexual-de-sacerdotes-en-Bolivia-20190222-9465.html>

43 'Scandal of sexual abuse by priests shocks Brazil's 125 million Catholics', 26 November 2005, *The Guardian*. Available at: <https://www.theguardian.com/world/2005/nov/26/brazil.religion>

44 Ibid.

45 'La Fiscalía chilena anula el acuerdo con la Iglesia para los casos de abusos sexuales', 7 May 2019, Agencia EFE. Available at: <https://www.efe.com/efe/america/sociedad/la-fiscalia-chilena-anula-el-acuerdo-con-iglesia-para-los-casos-de-abusos-sexuales/20000013-3969568>

46 'Mapa chileno de los delitos de abuso sexual y de conciencia cometidos en entornos eclesiásticos', Red de Sobrevivientes de Abusos Eclesiásticos en Chile, April 2019. Available at: <https://www.redsobrevivientes.org/post/mapa-abusos>

47 «Red de Sobrevivientes de Abusos Eclesiásticos planteó a La Moneda crear comisión de la verdad», *El Mostrador*, 3 de agosto de 2018. Disponible en: <https://m.elmostrador.cl/noticias/pais/2018/08/03/red-de-sobrevivientes-de-abusos-ecclesiasticos-planteo-a-la-moneda-crear-comision-de-la-verdad/>



## Colombia

At the start of 2017, the Public Prosecutor's Office (PPO) had received 14 reports of child sexual abuse.<sup>48</sup> By May 2019, the PPO was investigating 57 cases of alleged child sexual abuse within the Catholic Church.<sup>49</sup> At the same time, at least 80 more complaints were at the initial stages of investigation, involving victims who are now aged between 40 and 50 years old.<sup>50</sup> The Archbishop of Bogotá also reported that he had received 100 reports of sexual abuse.<sup>51</sup>

## Costa Rica

In February 2019, a media investigation found that 29 priests had been accused of sexual abuse against at least 27 victims, the majority children, in the past ten years in Costa Rica.<sup>52</sup> Out of all those priests, 10 had been expelled from the Church, including one who has since returned to his religious duties. There have been at least three convictions against Catholic priests since 2002.<sup>53</sup> In March 2019, a judge ordered a police raid of the San Jose offices of the Bishops' Conference of Costa Rica to gather information which could potentially be used as evidence in a case of clergy sex abuse.<sup>54</sup>

## Cuba

No media reports could be found on child sexual abuse in the Catholic Church in Cuba. There are no statistics available on the number of criminal complaints made alleging sexual abuse by members of the clergy.

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48 '¿La Iglesia Debe Pagar por Casos de Pederastia?', 18 February 2017, *Semana*. Available at: <https://www.semana.com/nacion/articulo/polemica-por-quien-debe-reparar-a-las-victimas-de-pederastia/515854>

49 'Fiscalía de Colombia investiga 57 casos de pederastia en la iglesia católica', 14 May 2019, *Infobae*. Available at: <https://www.infobae.com/america/colombia/2019/05/14/fiscalia-de-colombia-investiga-57-casos-de-pederastia-en-la-iglesia-catolica/>

50 'Pederastia, la vergüenza de la Iglesia que se va develando en Colombia', 14 May 2019, *El Tiempo*. Available at: <https://www.eltiempo.com/vida/religion/casos-de-pederastia-de-la-iglesia-catolica-en-colombia-361196>

51 'Iglesia de Colombia admite más de 100 casos de abusos cometidos por curas', 11 March 2019, *El Universo*. Available at: <https://www.eluniverso.com/noticias/2019/03/11/nota/7228916/iglesia-colombia-admite-mas-100-casos-abusos-cometidos-curas>

52 '29 sacerdotes fueron denunciados por abuso sexual en última década en Costa Rica', 26 February 2019, *AmeliaRueda.com*. Available at: <https://www.ameliarueda.com/nota/iglesia-catolica-costa-rica-29-sacerdotes-denuncias-abuso-sexual>

53 Ibid.

54 'Allanan sedes de Iglesia católica tras denuncias de abuso sexual contra menores', 7 March 2019, *AmeliaRueda.com*. Available at: <https://www.ameliarueda.com/nota/allanan-iglesia-catolica-casos-abusos-menores-sacerdotes>

## Dominican Republic

In 2017, Acento.com.do compiled a list of some of the most prominent cases of clergy abuse in the country until then, involving at least ten priests and employees of the church and at least 15 victims.<sup>55</sup> In June 2018, eight reports of child sexual abuse within the Church were investigated within the justice system. In 2019, a priest who belonged to the Order of Augustinian Recollects was detained for sexually abusing a three-year-old girl, and is suspected of abusing at least two other children.<sup>56</sup>

## Ecuador

In 2018, Telesur referred to alleged “abuse and cover up in the Church over the past two decades”, but did not list cases.<sup>57</sup> In the same year, the Church expelled two priests in the Archdiocese of Guayaquil for sexual abuse, namely Cesar Cordero for child sexual abuse in the 1960s and 1970s, and Luis Fernando Intriago who is accused of sexually abusing and torturing at least ten teenagers.<sup>58</sup> Both cases are currently under investigation, and in 2019 at least two more priests have been accused of child sexual abuse in Ecuador.<sup>59</sup>

## El Salvador

Few cases of clergy abuse cases are publicly known and covered by the media in El Salvador. There have been some convictions in recent years, including in 2019, when a priest was sentenced to 16 years in prison for sexually abusing an 11-year-old boy.<sup>60</sup> In 2019, the country’s Catholic Church created a commission to investigate cases of sexual abuse by priests, but these church-run bodies have been criticised for their lack

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55 ‘Los más graves casos de abuso sexual en la Iglesia Católica dominicana’, 8 August 2017, Acento.com.do. Available at: <https://acento.com.do/2017/actualidad/117584-los-mas-graves-casos-de-abuso-sexual-en-la-iglesia-catolica-dominicana/>

56 ‘Envían a la cárcel a sacerdote que abusó sexualmente de niña de tres años’, 12 October 2019, La República. Available at: <https://larepublica.pe/mundo/2019/10/12/pedofilia-republica-domincana-envian-a-la-carcel-a-sacerdote-colombiano-que-abuso-sexualmente-de-nino-de-tres-anos-aleycer-vivas-ortiz-fotos/>

57 ‘Ecuador: Catholic priest expelled by Vatican over sex abuse’, 5 October 2018, Telesur. Available at: <https://www.telesurenglish.net/news/Ecuador-Catholic-Priest-Expelled-By-Vatican-Over-Sex-Abuse-20181005-0013.html>

58 ‘Un año después del destape del caso más grande de abuso clerical en Ecuador, ¿qué ha pasado?’, 14 May 2019, El Diario. Available at: [https://www.eldiario.es/tribunaabierta/despues-destape-grande-clerical-Ecuador\\_6\\_899120093.html](https://www.eldiario.es/tribunaabierta/despues-destape-grande-clerical-Ecuador_6_899120093.html)

59 See, for example: <https://www.metroecuador.com.ec/ec/noticias/2019/02/04/quito-un-sacerdote-fue-acusado-de-abusar-de-una-nina-de-10-anos-en-guapulo.html> and <https://www.extra.ec/actualidad/ecuador-quito-iglesiaguapulo-abusosexual-clasesdecatecismo-sacerdote-hermanas-LD2612872>

60 ‘Iglesia Católica salvadoreña crea comisión para proteger y atender niños víctimas de abusos’, 9 June 2019, La Prensa Gráfica. Available at: <https://www.laprensagrafica.com/elsalvador/Iglesia-Catolica-salvadorena-crea-comision-para-protger-y-atender-ninos-victimas-de-abusos-20190609-0236.html>

of transparency and independence, often refusing to pass on investigation details to civil authorities.<sup>61</sup>

## Guatemala

There has been no systematic monitoring of child sexual abuse complaints made against Catholic clergy in Guatemala. In July 2017, 12 members of the clergy had been arrested in the previous six years for sexual crimes against minors.<sup>62</sup> No further information is known about these cases. In February 2015, the Church said it had suspended seven priests over alleged sexual abuse, without giving any further details.<sup>63</sup>

## Honduras

No major investigation has been conducted on child sexual abuse in the Honduran Catholic Church. In April 2019, one report suggested that the national media is largely quiet on the matter because the subject is still taboo.<sup>64</sup> In February 2019, *El País* reported that the Catholic Church in Honduras refuses to divulge information on cases of child sex abuse in the church.<sup>65</sup>

## Mexico

In February 2019, SNAP-Mexico (Survivors Network of those Abused by Priests) said it had dealt with around 550 cases of sexual abuse.<sup>66</sup> The same year, the Mexican Catholic Church revealed it had suspended 152 priests from their religious duties in the past nine years over suspected child sexual abuse, but did not reveal any of their names, nor if their cases had been passed on to civil authorities.<sup>67</sup>

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61 'Abusos reavivan la polémica por acceso a la información', 14 July 2019, *Los Andes*. Available at: <https://www.losandes.com.ar/article/view?slug=abusos-reavivan-la-polemica-por-acceso-a-la-informacion>

62 'MP: Van 12 los religiosos detenidos por posible abuso', 20 July 2017, *Prensa Libre*. Available at: <https://www.prensalibre.com/guatemala/justicia/mp-van-12-los-religiosos-detenido-por-posible-abuso/>

63 'Iglesia suspende a siete curas por abuso de niños', 12 February 2019, *Evangelizadoras de los apóstoles*. Available at: <https://evangelizadorasdelosapostoles.wordpress.com/2015/02/12/guatemala-iglesia-suspende-a-siete-curas-por-abuso-de-ninos/>

64 'Iglesia católica de Honduras ha ocultado y refugiado a sacerdotes de América Latina acusados por abusos sexuales', 28 April 2019, *Reporteros de Investigación*. Available at: <https://reporterosdeinvestigacion.com/2019/04/28/iglesia-catolica-de-honduras-ha-ocultado-y-refugiado-a-sacerdotes-de-america-latina-acusados-por-abusos-sexuales/>

65 'Panamá y Honduras | El silencio sobre los abusos se impone en las jerarquías católicas', 20 February 2019, *El País*. Available at: [https://elpais.com/sociedad/2019/02/19/actualidad/1550591766\\_098563.html](https://elpais.com/sociedad/2019/02/19/actualidad/1550591766_098563.html)

66 '152 sacerdotes suspendidos por abusos', 20 February 2019, *El País*. Available at: [https://elpais.com/sociedad/2019/02/19/actualidad/1550593780\\_217995.html](https://elpais.com/sociedad/2019/02/19/actualidad/1550593780_217995.html)

67 Ibid.

## Nicaragua

Before 2017, 13 priests had been accused of sexual abuse, including against children.<sup>68</sup> This was the last known figure cited in the media. Conversely in February 2019, president of the Bishops' Conference of Nicaragua and Archbishop of Managua, Leopoldo Brenes, said that up until then, there had only been two reported cases of sexual abuse against children in the Church, which were 'tried' internally by the Church.<sup>69</sup>

## Panama

In March 2019, the Archbishop of Panama said that under his term (since 2010), he had received "five or six" reports of clergy sexual abuse against children.<sup>70</sup> Back in June 2016, the Church revealed that during the previous ten years it had received eight reports of child sexual abuse committed by priests.<sup>71</sup> The Church said it investigated all the cases and suspended the accused from ministry.<sup>72</sup> In all of the cases, however, the identity of the accused priests was not revealed and the cases were not passed on to the country's justice system.

## Paraguay

In 2017, a news magazine published a summary of clergy abuse cases that had made the news, which included 13 priests or employees of the Catholic Church and 22 victims who were under the age of 18 at the time of the abuse.<sup>73</sup> The article noted that there have only been a handful of convictions and that the majority of complaints that reached the courts have been dismissed, usually based on claims of lack of evidence or investigations not proceeding for differing or unspecified reasons.<sup>74</sup>

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68 'Nicaragua: La mujer del Cura, 13 sacerdotes impunes por violación', 6 July 2017, Ameco Press. Available at: <http://www.amecopress.net/spip.php?article16141>

69 'Protección de menores. Nicaragua y México exigen claridad sobre el problema', 21 February 2019, Vatican News. Available at: <https://www.vaticannews.va/es/vaticano/news/2019-02/proteccion-menores-cardenal-brenes-mons-cabrera-lopez-vatiab.html>

70 'Cuestionan manejo de la Iglesia católica a los casos de abuso sexual reportados en Panamá', 11 March 2019, TVN Noticias. Available at: [https://www.tvn-2.com/nacionales/Cuestionan-Iglesia-catolica-reportados-Panama\\_0\\_5256224411.html](https://www.tvn-2.com/nacionales/Cuestionan-Iglesia-catolica-reportados-Panama_0_5256224411.html)

71 'Iglesia Católica ha Investigado 8 Denuncias de Abusos a Menores desde 2006', 7 June 2016, Panamá América. Available at: <https://www.panamaamerica.com.pa/nacion/iglesia-catolica-ha-investigado-8-denuncias-de-abusos-menores-desde-2006-1029450>

72 'Iglesia Dispuesta a Revelar la Identidad de Pederastas', 8 June 2016, El Siglo. Available at: <http://elsiglo.com.pa/panama/iglesia-dispuesta-revelar-identidad-pederastas/23944586>

73 'Moviendo Obispos: 16 Escándalos por Abusos Sexuales Involucran a Miembros de la Iglesia en Paraguay', 20 August 2017, Revista Bravas. Available at: <http://viejo.revistabravas.org/article/59/moviendo-obispos-16-esc%C3%A1ndalos-por-abusos-sexuales-involucran-miembros-de-iglesias-en>

74 Ibid.

## Peru

No reports could be found on the total number of clergy abuse complaints in Peru, but the most high-profile case emerged in 2015, when it emerged that at least 39 people had been victims of clergy sexual abuse between 1975 and 2002 in the country's Sodalitium of Christian Life, a religious society run by laypersons which manages several Catholic schools.<sup>75</sup> At least six adults are accused of sexual abuse or its cover up, including the Sodalitium's founder, Luis Figari, who now resides in Rome. The case of the Sodalitium was included as part of Peru's congressional inquiry into child sex abuse in educational institutions.<sup>76</sup>

## Uruguay

In 2016, the Bishop's Conference of Uruguay reported that it had received 44 complaints of sexual abuse of children against 40 priests. These figures excluded cases that had "already been tried" (whether the cases were tried within or outside of the Church was not clarified) and the Church did not pass on any of the complaints to civil authorities.<sup>77</sup>

## Venezuela

The first case of child sexual abuse by Catholic clergy in Venezuela to reach the national justice system is thought to have been in August 2013, involving a priest accused of sexually abusing four girls and women aged between 14 and 22 years old.<sup>78</sup> In September 2013, ten orphaned children reported being sexually abused at a church-run home for children with HIV by the same priest.<sup>79</sup> No further details could be found on either cases. More recently, a priest was detained in November 2018 for sexually abusing a girl for over three years.<sup>80</sup>

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75 'El Vaticano interviene movimiento peruano Sodalicio, investigado por abuso sexual', 10 January 2018, DW. Available at: <https://www.dw.com/es/el-vaticano-interviene-movimiento-peruano-sodalicio-investiga-do-por-abuso-sexual/a-42100329>

76 Comisión Investigadora de Abusos sexuales contra Menores de Edad en Organizaciones: <https://comisionabusos.com/>

77 'Iglesia recibió 44 denuncias de abusos', 16 November 2016, Iglesia Católica Montevideo. Available at: <http://icm.org.uy/iglesia-recibio-44-denuncias-abusos/>

78 'Los pecados de la Iglesia venezolana', *Últimas Noticias*, 24 July 2016. Available at: <http://www.noticierodigital.com/forum/viewtopic.php?t=38611>

79 'Iglesia católica venezolana esquivó y encubre graves casos de abuso a menores con VIH', 17 May 2014, *El Libertario*. Available at: <http://periodicoellibertario.blogspot.com/2014/05/iglesia-catolica-venezolana-esquiva-y.html>

80 'Detenido un sacerdote español en Venezuela por presuntos abusos a una menor', 29 November 2018, RTVE. Available at: <http://www.rtve.es/noticias/20181129/detenido-sacerdote-espanol-venezuela-presuntos-abusos-menor/1845625.shtml>

## Church tactics to suppress complaints

It goes without saying that the child sex abuse scandal in the Catholic Church has affected the image, reputation and public confidence in the institution. To counter these effects, the Church has, for many years, systematically sought to prevent allegations of sexual abuse from coming to light. And when they have surfaced, the Church has tried to silence victims and their families or dissuade them from pursuing legal action. Below we examine a series of tactics the Church in Latin America has employed to prevent sexual abuse complaints. While these tactics are not unique to the Church in the region, they do illustrate how its behaviour in response to abuse allegations places Latin America within the global context of abuse cover-ups by the Catholic Church.

### Transfer of abusive priests

The sexual abuse of children by Catholic clerics has been facilitated by a particularly insidious cover-up practice known as the 'geographical cure' whereby bishops transferred abusive priests to other parishes or sent them abroad in an attempt to conceal their crimes and escape police investigations and prosecution.<sup>81</sup> Once relocated, the priests would often continue to have access to children and, in multiple cases, abuse again. Media investigations have confirmed not only that this practice existed within Latin America, but, disturbingly, the region was a particular destination for abusive priests from Europe and North America.

In 2018, *El País* published a list of 18 Spanish priests sent to Africa and Latin America,<sup>82</sup> including Bolivia, Chile, Ecuador, Honduras, Peru and Venezuela, where eight had already been accused of child sexual abuse in Spain, and the other 10 went on to abuse local children.<sup>83</sup> In 2015, the GlobalPost published a series of reports called 'Fugitive Fathers'<sup>84</sup> detailing how the Church in the United States and Europe sent abusive priests to countries in South America, where many were allowed to continue with religious duties in daily contact with children. For example, Belgian priest Jan Van Dael, who was under investigation in his home country, was allowed to found an orphanage in Brazil.

Latin America's Catholic Church continues to engage in the transfer of priests to this day. Mr Eneas Espinoza, member of the Chilean Network of Clergy Sexual

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81 'Child sexual abuse and the Holy See: The need for justice, accountability and reform', 2014, CRIN. Available at: [https://archive.crin.org/sites/default/files/CRIN\\_Holy%20See%20Report\\_WEB\\_0.pdf](https://archive.crin.org/sites/default/files/CRIN_Holy%20See%20Report_WEB_0.pdf)

82 'Los sacerdotes acusados de abusos que la Iglesia envió a las misiones', 9 December 2018, *El País*. Available at: [https://elpais.com/sociedad/2018/12/06/actualidad/1544115781\\_466551.html](https://elpais.com/sociedad/2018/12/06/actualidad/1544115781_466551.html)

83 '18 religiosos españoles acusados de abuso de menores que han salido al extranjero', 9 December 2018, *El País*. Available at: [https://elpais.com/sociedad/2018/12/05/actualidad/1544021895\\_564446.html?rel=mas](https://elpais.com/sociedad/2018/12/05/actualidad/1544021895_564446.html?rel=mas)

84 'Fugitive Fathers', 2015, Global Post. Available at: <https://www.pri.org/categories/fugitive-fathers>



Abuse Survivors, said in August 2019 that the practice is “common” and the “Church continues to do it,” explaining that when a priest fulfils punishment imposed by the church for sexual abuse, such as suspension from religious duties or is made to undergo psychological treatment, they are often reassigned and allowed to resume their duties.<sup>85</sup> This has even occurred after priests were convicted and sentenced by civil authorities. There are cases in point from Costa Rica,<sup>86</sup> Mexico,<sup>87</sup> Panama<sup>88</sup> and Argentina and Paraguay,<sup>89</sup> among others.

## Blaming victims and parents

In a particularly unconscionable case in Colombia, in which the priest William Jesús de Mazo was sentenced to 33 years in prison for sexually abusing four children in the local clergy house, the Archdiocese of Cali defended itself against claims for compensation from the victims’ families by arguing that it was the families’ fault the children had been abused. It claimed that the families had failed in their duty to care, safeguard and watch over the children.<sup>90</sup> The archdiocese had also previously argued that the children’s accusations were a fabrication and they had lied because they were “immoral” and had had a bad upbringing.<sup>91</sup>

## Psychological manipulation

In the same case as above, it was revealed that a church-appointed psychologist had interviewed the children and threatened them in the hope that they would not proceed with their complaint, saying it was an attack against the church, that they would go to hell, that they were working with an atheist lawyer, and that they

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85 ‘Víctima de abusos eclesiásticos por traslado de cura chileno denunciado en Argentina: “Es habitual”’, 16 August 2019, BioBioChile. Available at: <https://www.biobiochile.cl/noticias/nacional/chile/2019/08/16/victima-de-abusos-eclesiasticos-por-traslado-de-cura-chileno-denunciado-en-argentina-es-habitual.shtml>

86 ‘29 sacerdotes fueron denunciados por abuso sexual en última década en Costa Rica’, 26 February 2019, AmeliaRueda.com. Available at: <https://www.ameliarueda.com/nota/iglesia-catolica-costa-rica-29-sacerdotes-denuncias-abuso-sexual>

87 ‘152 sacerdotes suspendidos por abusos’, 20 February 2019, *El País*. Available at: [https://elpais.com/sociedad/2019/02/19/actualidad/1550593780\\_217995.html](https://elpais.com/sociedad/2019/02/19/actualidad/1550593780_217995.html)

88 ‘Sacerdote condenado por pederastia oficia misas’, 25 January 2009, La Prensa. Available at: [https://www.prensa.com/politica/Sacerdote-condenado-pederastia-oficia-misas\\_0\\_2483751826.html](https://www.prensa.com/politica/Sacerdote-condenado-pederastia-oficia-misas_0_2483751826.html)

89 ‘Iglesia Oscura’, 2016, La Nación. Available at: <https://www.lanacion.com.py/category/investigacion/iglesia-oscura/>

90 ‘Arquidiócesis de Cali culpa a padres de abuso sexual que sufrieron sus hijos’, 9 February 2017, *El Espectador*. Available at: <https://www.elspectador.com/noticias/judicial/arquidiocesis-de-cali-culpa-padres-de-abuso-sexual-que-sufrieron-sus-hijos-articulo-679138>

91 ‘Fiscalía de Colombia investiga 57 casos de pederastia en la iglesia católica’, 14 May 2019, Infobae. Available at: <https://www.infobae.com/america/colombia/2019/05/14/fiscalia-de-colombia-investiga-57-casos-de-pederastia-en-la-iglesia-catolica/>

would lose the case and end up in prison.<sup>92</sup> Meanwhile in Ecuador, a psychologist assigned by the Archdiocese of Cuenca asked an abuse victim to apologise to the priest César Cordero for accusing him of having raped him as a child.<sup>93</sup>

## Undermining credibility of victims

While the global Catholic Church has largely admitted that child sexual abuse by clerics and church employees and its cover-up have been widespread problems, there remain instances in which the church has dismissed abuse allegations by questioning the credibility of victims. For instance, in July 2019 the Brazilian cardinal Joao Braz de Aviz said that many complaints of sexual abuse against clerics “are not genuine” and that church-run investigations are there to verify complaints.<sup>94</sup> Yet such a claim is difficult to support; our research shows that Brazil has seen no major investigation into clergy sex abuse, it appears to have one of the lowest accountability rates for clergy abuse in Latin America, and the majority of victims are from poor families with scarce resources to challenge the church. What’s more, internal investigations by the church have in fact been criticised for their lack of transparency.<sup>95</sup>

## Secret payments

In several cases, abuse survivors have complained that Catholic bishops and priests have offered them money in exchange for their silence. As far back as 2002, the Catholic Church in Mexico was accused of making such secret payments to abuse victims.<sup>96</sup> In Paraguay, evidence presented by three young men who accused the bishop Jorge Livieres Banks of sexually abusing them as boys included a tape recording of the bishop offering them US\$30,000 each to stay quiet.<sup>97</sup> In Chile, the congregation of the Marist Brothers have offered multiple former students of a school, where they suffered sexual abuse, money if they agreed not to sue the school or the abuser. The family of one victim was given \$50 million Chilean pesos (US\$70,400) to

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92 Ibid.

93 ‘Lo que Marcelo nos dejó’, 16 July 2018, GK. Available at: <https://gk.city/2018/07/16/muere-victima-cu-ra-cordero/>

94 ‘Muchas denuncias de abuso sexual contra sacerdotes “no son verdaderas”, dice cardenal asesor del papa’, 11 July 2019, ABC Color. Available at: <https://www.abc.com.py/internacionales/2019/07/11/muchas-denuncias-de-abuso-sexual-contra-sacerdotes-no-son-verdaderas-dice-cardenal-asesor-del-papa/>

95 See Chapter 4 in this report for more information.

96 ‘Los sacerdotes y la pedofilia: los casos más conocidos en México’, 23 July 2019, La Silla Rota. Available at: <https://lasillarota.com/nacion/los-sacerdotes-y-la-pedofilia-los-casos-mas-conocidos-en-mexico-marcial-maciel-naason-noe-trujillo-parrocos/301817>

97 ‘Falleció hoy monseñor Jorge Livieres Banks’, 17 December 2018, Extra. Available at: <https://www.extra.com.py/actualidad/fallecio-hoy-monsenor-jorge-livieres-banks-n2786036.html>

not bring legal action or disclose the abuse to anyone.<sup>98</sup> This payment was made two years before a sex abuse scandal hit the Alonso de Ercilla School run by the Marist Brothers. The Marist Brothers congregation is now facing at least 26 complaints of sexual abuse.<sup>99</sup>

## Media censorship

In 2016 the Paraguayan newspaper *La Nación* began publishing a series of investigative reports about five Catholic priests from Argentina who, after being accused of child sexual abuse, had moved to neighbouring Paraguay. One of the priests, Carlos Ibáñez, was accused of sexually abusing ten children in Argentina. However, the series, called 'Dark Church',<sup>100</sup> was discontinued after its fourth day of publication. At the time, the journalist heading the project, Aldo Benítez, said his team never received an explanation as to why the series was stopped. But it later emerged that the Vatican's ambassador to the country, Eliseo Ariotti, had contacted the owner of *La Nación*, Sarah Cartes - sister of Paraguay's then-president Horacio Cartes - telling her that "the publication was not convenient".<sup>101</sup> Eventually, after other newspapers published articles denouncing the alleged censorship,<sup>102</sup> *La Nación* resumed publication of Dark Church. In total, it published 15 articles and won a human rights journalism prize.<sup>103</sup>

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98 'Dinero a cambio del silencio de las víctimas de abusos sexuales: la nueva denuncia contra los maristas', 11 December 2018, El Mostrador. Available at: <https://www.elmostrador.cl/noticias/pais/2018/12/11/dinero-a-cambio-del-silencio-de-las-victimas-de-abusos-sexuales-la-nueva-denuncia-contra-los-maristas/>

99 'Mapa chileno de los delitos de abuso sexual y de conciencia cometidos en entornos eclesiales', Red de Sobrevivientes de Abusos Eclesiales en Chile, April 2019. Available at: <https://www.redsobrevivientes.org/post/mapa-abusos>

100 'Iglesia Oscura', 2016, *La Nación*. Available at: <https://www.lanacion.com.py/category/investigacion/iglesia-oscura/>

101 'Paraguay: la Iglesia obligó a censurar investigación sobre curas pedófilos argentinos', 28 April 2016, *La Izquierda Diario*. Available at: <https://www.laizquierdadiario.com/Paraguay-la-Iglesia-obligo-a-censurar-investigacion-sobre-curas-pedofilos-argentinos>

102 See, for example, 'Iglesia oscura, censura clara', 30 April 2016, *Última Hora*. Available at: <https://www.ultimahora.com/iglesia-oscura-censura-clara-n987585.html>

103 'Iglesia Oscura: Premian a equipo de investigación del GNC', 2 December 2016, *La Nación*. Available at: <https://www.lanacion.com.py/2016/12/02/iglesiaoscura-premian-equipo-investigacion-del-gnc/>

In 2018 in Peru, the Archbishop of Piura and Tumbes, Jose Antonio Eguren Anselm, made two criminal complaints alleging aggravated defamation against two investigative journalists, Pedro Salinas and Paola Ugaz, who in 2015 published *Half Monks, Half Soldiers*, a book that exposed sexual and other abuse inside the Sodalitium Christianae Vitae (SCV), a Catholic organisation founded in Peru. The Archbishop, who is the highest ranking cardinal in the SCV, sought three years' imprisonment and \$65,000 in civil compensation over opinions that the journalists had given on various platforms.

In response to the case, Amnesty International said that the use of criminal defamation laws to prevent legitimate criticism of public figures, including religious leaders, who are subject to greater scrutiny, violates the right to freedom of expression.<sup>104</sup> In April 2019, the Archbishop retracted the complaints against both journalists, although Salinas was nonetheless convicted and sentenced to a suspended jail term of one year and a hefty fine.<sup>105</sup> Meanwhile Ugaz is now facing trial for alleged false testimony during her defamation case, which Peru's National Association of Journalists have branded as "fiscal and judicial harassment".<sup>106</sup>

### Three other tactics worldwide

In February 2019, Germany's Catholic Church confirmed it had **destroyed, altered or left information out of internal papers** documenting cases of child sexual abuse.<sup>107</sup> Documents across German dioceses were examined to compile a list of sexual abuse complaints from the past 70 years, revealing there had been 3,677 complaints against 1,670 priests.

The Catholic Church has, in many cases, sought to prevent complaints pursued through a country's justice system from going to trial, namely by trying to reach **out-of-court settlements** with survivors. This practice has been especially prevalent in the church in the United States, where at least 5,679 settlements have been reached,<sup>108</sup> and where

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104 'Perú: Preocupación por procesos penales por difamación agravada contra periodistas Paola Ugaz y Pedro Salinas', Amnesty International. Available at: <https://www.amnesty.org/download/Documents/AMR4699242019SPANISH.PDF>

105 'Paola Ugaz se pronuncia tras retiro de querella de arzobispo de Piura', 25 April 2019, *El Comercio*. Available at: <https://elcomercio.pe/peru/paola-ugaz-pronuncia-retiro-querella-arzobispo-piura-noticia-629814-noticia/>

106 'ANP exige cese de hostigamiento fiscal y judicial a periodista Paola Ugaz', 20 June 2019, *Crónica Viva*. Available at: <http://www.cronicaviva.com.pe/anp-exige-cese-de-hostigamiento-fiscal-y-judicial-a-periodista-paola-ugaz/>

107 'La Iglesia destruyó documentos sobre abusos de religiosos', 24 February 2019, *Perfil*. Available at: <https://www.perfil.com/noticias/internacional/la-iglesia-destruyo-documentos-sobre-abusos-de-religiosos.phtml>

108 'Sexual Abuse by U.S. Catholic Clergy': Settlements and Monetary Awards in Civil Suits', BishopAccountability.org. Available at: <http://www.bishop-accountability.org/settlements/>

in a single year the church spent nearly US\$200 million in legal settlements.<sup>109</sup> While settlements can result in large payouts by the church, they may require victims to sign a confidentiality agreement before receiving any compensation, and therefore have allowed dioceses to avoid having to publicly accept liability.<sup>110</sup> Such agreements stipulate that plaintiffs cannot disclose details about the accusation or the terms of the settlement to anyone, including the media, which effectively conceals the identity and crimes of abusers.<sup>111</sup>

To prevent historic sexual abuse complaints from being prosecuted, the Catholic Church in some countries have actively supported efforts to **block proposed law** reform to extend the time limits for bringing complaints of childhood sexual abuse or to abolish them altogether. There are numerous examples of this in the US,<sup>112</sup> including a New York cardinal who spent over US\$2 million on lobbyists to block a statute of limitations reform.<sup>113</sup> In August 2019, more than 400 lawsuits were filed in New York after a one-year pause of the statute of limitations came into force.<sup>114</sup>

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109 'The US Catholic Church spent more than \$300 million on abuse-related costs in 12 months', 4 June 2019. Available at: <https://edition.cnn.com/2019/06/04/us/catholic-church-300-million-abuse-claims/index.html>

110 'Victims' Confidentiality Agreements: Price of Broken Vows', 27 May 2002, *The New York Times*. Available at: [http://www.snapnetwork.org/legal\\_courts/stories/victims\\_confidentiality.html](http://www.snapnetwork.org/legal_courts/stories/victims_confidentiality.html)

111 'The Holy See and the United Nations: A briefing', February 2019, CRIN. Available at: <https://home.crin.org/briefing-paper-the-holy-see-and-the-united-nations>

112 'US Catholic church has spent millions fighting clergy sex abuse accountability', May 2016, *The Guardian*. Available at: <https://www.theguardian.com/us-news/2016/may/12/catholic-church-fights-clergy-child-sex-abuse-measures>

113 'The Catholic Church is fighting to block bills that would extend the statute of limitations for reporting sex abuse', September 2015, Business Insider. Available at: <http://uk.businessinsider.com/r-as-pope-visit-nears-us-sex-victims-say-church-remains-obstacle-to-justice-2015-9?r=US&IR=T>

114 'Victimas de abuso sexual infantil demandan a la Iglesia Católica', 14 August 2019, VOA News. Available at: <https://www.voanoticias.com/a/victimas-abuso-sexual-infantil-demandan-iglesia-catolica/5042407.html>





# 3. **Legislation and law reform**

Reforming legislation to empower survivors of sexual abuse, ensure accountability and secure remedies must take many forms to be effective. All violence against children, including sexual exploitation and abuse, must be unambiguously prohibited, the law must enable survivors to seek compensation and other civil remedies, if they want to, to help repair the damage caused by abuse and procedural rules affecting people in the justice system must reflect the needs and realities faced by survivors. Justice systems must be designed not only with children in mind, but recognising the particular challenges that survivors of sexual abuse experience. Law reform must also keep pace with changes in society and technology, for instance law that may have been highly effective in the pre-internet age cannot be easily applied to cases of online abuse.

This chapter explores law reform across Latin America to prevent sexual violence and identifies areas where there is still substantial scope for improvement to better protect children. It starts by addressing the barriers that prevent survivors in Latin America from using the legal system at all, before discussing the means of accountability the justice system can provide to ultimately prevent sexual exploitation and abuse of children.

## **Accessing the justice system**

Some failings in national legal systems can prevent people from accessing the justice system. With regard to children, procedural rules in particular can prevent them from seeking any form of redress through the legal system. For people who have experienced sexual abuse or exploitation as children, the most significant of these legal barriers is often overly restrictive limitation periods.

### **Limitation periods**

It can take years, even decades, to come to terms with sexual abuse experienced in childhood and for survivors to feel ready to face their abusers and demand justice. It is common for people to disclose abuse for the first time more than 20 years after it took place. Boys, who are disproportionately affected by sexual exploitation and

abuse committed by clergy,<sup>115</sup> are also likely to take longer to report the abuse they have experienced. Around 45 percent of men take more than 20 years to report their experience of sexual abuse, compared to 25 percent of women.<sup>116</sup> Disclosure may also be only the first step for a survivor in deciding whether they want to make a criminal or civil complaint against the abuser. Strict limits on how quickly a complaint must be made after an offence is committed - known as limitation periods - can close off the justice system to abuse survivors entirely and prevent them from pursuing legal action when they are able.

There are sound reasons for limitation periods in some situations. It can be more difficult to find strong reliable evidence years after an event: witnesses' memories fade, documentary evidence may not be available or may no longer exist and the evidence that does exist may be less reliable for its age. For contract disputes or minor criminal offences, these practical matters may justify time limits. However, in cases of sexual exploitation and abuse of children, the nature of the crime and the way that children experience its effects are such that many children face great difficulty in coming to terms with what they have experienced and speaking about it. Strict limitation periods for sexual offences ignore the reality experienced by survivors.

Limitation periods for all criminal offences are common across Latin America. Typically, these time limits vary according to the severity of an offence, meaning that criminal offences that carry long prison sentences have longer limitation periods. In **Bolivia**, for example, offences with maximum prison sentences of six years or more have a limitation period of eight years, offences punishable with imprisonment for two to six years must be prosecuted within five years, and the limitation period is three years for all other offences.<sup>117</sup> Similarly in **Cuba**, limitation periods are defined with reference to the maximum possible detention sentence, varying from three years for the least serious offences up to 25 years for an offence

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115 Disch and Avery, "Sex in the Consulting Room, the Examining Room and the Sacristy: Survivors of Sexual Abuse by Professionals", *American Journal of Orthopsychiatry*, 71(2) 2001, pp. 204-17; John Jay College of Criminal Justice, *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950-2002*, United States Conference of Catholic Bishops (USCCB), 2004; Parkinson, Oates and Jayakody, "Breaking the Long Silence: Reports of Child Sexual Abuse in the Anglican Church of Australia", *Ecclesiology* 6(2) 2010, pp. 183-200.

116 Easton, 'Disclosure of Child Sexual Abuse Among Adult Male Survivors', *Clinical Social Work Journal*, 2013, 41(2), pp. 344-55; O'Leary and Barber, 'Gender Differences in Silencing Following Childhood Sexual Abuse', *Journal of Child Sexual Abuse*, 2008, 17(2), pp. 133-43. For further discussion of gender differences with regards to child survivors of sexual exploitation and abuse, see Cashmore & Shackel, "Gender differences in the Context and Consequences of Child Sexual Abuse", *Current Issues in Criminal Justice* Vol. 26(1) 2014.

117 *Ley N° 1768 Código Penal*, Gaceta Oficial del Estado Plurinacional de Bolivia, March 10, 1997, Article. 29. Available at: [http://tsj.bo/wp-content/uploads/2014/03/3.-Codigo\\_Penal\\_y\\_Procedimiento\\_Penal.pdf](http://tsj.bo/wp-content/uploads/2014/03/3.-Codigo_Penal_y_Procedimiento_Penal.pdf)

carrying a prison sentence of more than 10 years.<sup>118</sup> In practice, this approach means that the most serious sexual offences, particularly rape, usually have quite lengthy limitation periods, while much shorter periods may be in place for other forms of sexual abuse, sexual harassment or for the possession of child sexual abuse material.

A significant number of countries across the region have introduced rules relaxing strict limits in cases of crimes committed against children. In ten Latin American jurisdictions, for example, limitation periods do not generally begin to run until a child reaches 18.<sup>119</sup> These rules recognise that children who have been abused may lack legal and factual capacity to engage with the justice system, but do not take into account the specific nature of sexual offences in preventing children from speaking about what has happened to them, even after reaching adulthood. Taking into account this factor, in three of these States, a person must also report the offence to start the limitation period running.<sup>120</sup>

The complete abolition of limitation periods for sexual offences committed against children is an emerging trend among countries that have experienced high profile sexual abuse scandals.<sup>121</sup> **Nicaragua** was the first country within the region to abolish limitation periods for sexual offences committed against children.<sup>122</sup> In **El Salvador**, similar law reform was achieved through a relatively simple amendment to the Criminal Code, which specifically removed limitation periods for 17 sexual offences where the victim is under the age of 18.<sup>123</sup> In 2018 **Peru**<sup>124</sup> abolished

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118 *Ley No. 62 Código Penal*, Gaceta Oficial de la República de Cuba, 29 December 1987, art. 64.1. Available at: [https://www.gacetaoficial.gob.cu/html/codigo\\_penal.html#11t5](https://www.gacetaoficial.gob.cu/html/codigo_penal.html#11t5)

119 Argentina, Brazil, Chile, Colombia, Costa Rica, Guatemala, Mexico, Panama, Paraguay, Uruguay. Note, in the case of Chile, there are no limitation periods for sexual offences committed after the enactment of Ley No. 21.160 que declara imprescriptibles los delitos sexuales cometidos contra menores de edad. Available at: <https://www.leychile.cl/Navegar?idNorma=1134001>

120 Argentina, Uruguay, Mexico.

121 See CRIN, *How limitation periods harm survivors of childhood sexual abuse*, 2019. Available at: <https://home.crin.org/latest/how-limitation-periods-harm-survivors-of-childhood-sexual-abuse>

122 Código Penal de la República de Nicaragua, Ley n.641, art. 131. Available at: [https://www.poderjudicial.gob.ni/pjupload/noticia\\_reciente/CP\\_641.pdf](https://www.poderjudicial.gob.ni/pjupload/noticia_reciente/CP_641.pdf)

123 Decreto NO. 1030: Código Penal, Diario Oficial No. 105 de la República de El Salvador, 26 April 1997, art. 99. Available at: <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/C0AB56F8-AF37-4F25-AD90-08AE401C0BA7.pdf>

124 *Ley No. 30838 Ley que Modifica el Código Penal y el Código de Ejecución Penal para Fortalecer la Prevención y Sanción de los Delitos contra la Libertad e Indemnidad Sexuales*, Diario Oficial El Peruano, 4 August 2018, art. 88-A. Available at: <https://busquedas.elperuano.pe/download/full/5mfryo2eKIHAGG0LivsFWI>

limitation periods for sexual offences committed against children, and **Ecuador**<sup>125</sup> did the same following a referendum vote in favour of the reform. **Chile**<sup>126</sup> followed suit in July 2019 with its own reform and, at the time of writing, **Argentina** was also considering a bill to institute similar reforms.<sup>127</sup>

The question of whether to apply these amendments retroactively, however, is live. **Chile's** reforms, for example, abolished criminal limitation periods for an extensive list of sexual offences committed against children, but the reform only applies from the date the Act entered into force.<sup>128</sup> This feature of the law means that for offences that were committed before the new law came into force, the previous maximum limitation period of 10 years beyond a child's 18th birthday will continue to apply.

This feature of national reforms may be a result of an over cautious reading of international human rights standards and their parallels enshrined in national constitutions. It is a common feature across international human rights law that no one shall be held guilty of an act or omission that was not a criminal offence under applicable law at the time it was committed.<sup>129</sup> This protection is a basic requirement of the rule of law to ensure that no one is punished for an act that was not illegal at the time it was committed and cannot be punished more severely than it would have been at the time an illegal act was committed. It is far from clear that the extension of limitation periods retroactively, however, would violate this standard.

The **Inter-American Court of Human Rights (IACHR)** has not yet heard a case about the retroactive extension of limitation periods, but the case law of the **European Court of Human Rights (ECHR)** on this issue provides useful parallels for how the standards of the American Convention on Human Rights might be applied in Latin America should a challenge to a retroactive extension of a limitation period be heard by the inter-American human rights system. In

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125 Constitución de la República del Ecuador and Código Orgánico Integral Penal, Registro Oficial, Suplemento, Año I - N° 180, Quito, 14 February 2018. Available at: [http://bivicce.corteconstitucional.gob.ec/local/File/Constitucion Enmiendas Interpretaciones/2018-02-14 Referendum y Consulta Popular.pdf](http://bivicce.corteconstitucional.gob.ec/local/File/Constitucion%20Enmiendas%20Interpretaciones/2018-02-14%20Referendum%20y%20Consulta%20Popular.pdf); It is not clear, however, how the new law would work, as there is disagreement regarding the date from which the reforms would apply and whether they would apply retroactively or not. See, for example: 'La imprescriptibilidad del abuso a niños sigue solo en 'buenas intenciones'', La Hora, 3 July 2018. Available at: <https://www.lahora.com.ec/noticia/1102168244/la-imprescriptibilidad-del-abuso-a-ninos-sigue-solo-en-buenas-intenciones->

126 Ley No. 21.160 que declara imprescriptibles los delitos sexuales cometidos contra menores de edad.

127 Text of the draft bill available at: <https://www.diputados.gov.ar/proyectos/proyecto.jsp?exp=5437-D-2018>

128 Ley No. 21.160 que declara imprescriptibles los delitos sexuales cometidos contra menores de edad, Transitory Article.

129 American Convention on Human Rights, Article 9; International Covenant on Civil and Political Rights, Article 15(1); European Convention on Human Rights, Article 7; Charter of Fundamental Rights of the European Union, Article 49.

case law to date, the ECHR has interpreted limitation periods as procedural as opposed to substantive features of the justice system, which can therefore be applied retroactively without violating the right against retroactive criminalisation.<sup>130</sup> In essence, this distinction is a recognition that extending a limitation period does not criminalise an act that was legal at the time it was committed or make the penalty more severe, it merely extends the time available to the court to consider cases. The ECHR has not, however, considered a case where a limitation period had elapsed but then extended allowing for the prosecution of a case that had been barred by the time limit.<sup>131</sup>

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130 *Coëme and ors v. Belgium* [2000] App Nos. 32492/96, 32547/96, 32548/96, 33209/96, 33210/96, paras. 149-151; *Previti v. Italy* [2013] App. No. 1845/08, paras. 80-85.

131 *See Coëme and ors v. Belgium* [2000] App Nos. 32492/96, 32547/96, 32548/96, 33209/96, 33210/96, paras. 149; *Borcea v. Romania* [2015] App. No. 55959/14, para. 65.

## Maximum limitation period for a sexual offence against a child





## Mandatory reporting

Mandatory reporting of child sexual exploitation and abuse can be a highly effective way of ensuring that it is identified, further abuse is prevented and appropriate action is taken within the justice system. These measures usually require members of specific professions working with children to report suspicions of sexual abuse of children to appropriate social authorities or the police. There is growing pressure to extend this obligation to religious institutions too. A common feature of relevant recommendations emerging from public inquiries into child sexual abuse that have addressed abuse within Catholic institutions has been that mandatory reporting should also apply to people in religious ministry, even if knowledge gained or suspicions are formed during confessions.<sup>132</sup>

A minority of Latin American countries have adopted mandatory reporting to date. In **Brazil**, for example, cases of suspected or confirmed physical punishment or abuse of children must be reported to the Guardianship Council.<sup>133</sup> Doctors, teachers and those responsible for health or education establishments have a specific obligation to communicate any cases of suspected or confirmed abuse of a child to competent authorities.<sup>134</sup> Similarly, in **Peru**, directors of educational establishments must report cases of physical and psychological mistreatment, harassment, abuse or sexual violence against their students.<sup>135</sup>

Other jurisdictions have framed reporting obligations more broadly, extending the duty on professionals working with children beyond physical and sexual abuse. In **Argentina**, members of public or private educational and health establishments, as well as public agents and officials who have knowledge of the violation of the rights of children, must report it to the administrative authority responsible for the protection of rights at the local level.<sup>136</sup>

By contrast, a small number of Latin American jurisdictions place restrictive limits on who can report a sexual offence committed against a child, making it more difficult to trigger an investigation and prosecution of a perpetrator. **Cuba** has the most restrictive rules in this regard, requiring that a report of

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132 E.g. Australian Royal Commission into Institutional Responses to Child Sexual Abuse (2017), Recommendation 7.4. Available at: [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_recommendations.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf)

133 Child and Adolescent Statute, Law no. 8.069/90, Article 13.

134 Child and Adolescent Statute, Law no. 8.069/90, Article 245.

135 Law No. 27337 approving the New Code of Children and Adolescents, Article 18.

136 Ley 26.061 de protección integral de los derechos de las niñas, niños y adolescentes, Article 30.

specifically named sexual offences can only be brought by the victim, spouse, parents, siblings, person who is caring or has custody of a person or a legal representative.<sup>137</sup>

Regardless of the formulation of mandatory reporting schemes, however, it is important that where these measures are established, they do not undermine children's right to confidential advice and counselling from doctors and other relevant professionals working directly with children.

## **Justice in the justice system**

Once barriers to accessing the justice system have been hurdled, survivors across Latin America face a variety of justice systems, more or less tailored to meet their needs. While some countries have relatively up to date criminal law on sexual offences, others within the region have not amended legislation in decades. Justice systems also provide for a range of approaches in terms of the other remedies that may be awarded to survivors of sexual abuse.

### **Criminalising sexual violence against children**

Prohibiting all forms of sexual violence against children is a vital component of effective reform to ensure access to justice for survivors, it fulfils a number of functions to prevent the sexual exploitation and abuse of children and is necessary to meet the commitments that all Latin American States have accepted by ratifying the United Nations (UN) Convention on the Rights of the Child.<sup>138</sup> Criminalisation is the strongest means society has of demonstrating the unacceptability of this abuse and holding perpetrators to account for the harm they cause. In the absence of criminalisation, impunity prevails and perpetrators are able to abuse children without consequence.

Sexual offences across Latin American countries are generally extensive, covering most forms of sexual exploitation and abuse of children.<sup>139</sup> Progress across the region has not been universal, however, and there are some notable and common gaps in the protection that some national legal systems provide children.

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137 *Ley No. 62 Código Penal*, Gaceta Oficial de la República de Cuba, 29 December 1987, art. 309(1). Available at: [https://www.gacetaoficial.gob.cu/html/codigo\\_penal.html#l1t5](https://www.gacetaoficial.gob.cu/html/codigo_penal.html#l1t5)

138 Convention on the Rights of the Child, Article 19(1).

139 For an overview of progress in 40 jurisdictions in developing a legal framework to address child sexual abuse and exploitation see Economist Intelligence Unit, *Out of the Shadows: Shining a light on the response to child sexual abuse and exploitation*, pp. 15-18.

## Problems of definition

A substantial flaw common to sexual offences across a number of Latin American jurisdictions is the use of age limits resulting in inadequate protections for older children. In **Venezuela**, for example, the offence of rape requires evidence of violence or threats in cases where the victim was over the age of 13, but not for younger children.<sup>140</sup> **Bolivia** generally defines rape similarly, requiring evidence of physical violence, intimidation or that the victim was incapacitated and therefore unable to resist,<sup>141</sup> but there is an exception to these requirements for children under the age of 14, for whom there is no requirement for evidence of force or intimidation.

This definition is fundamentally flawed in two respects. First, the offence of rape is generally defined in terms of physical force and compulsion rather than the lack of consent. The UN Committee on the Elimination of Discrimination Against Women has unambiguously called for States to define sexual crimes, including rape, based on a lack of freely given consent that takes into account coercive circumstances.<sup>142</sup> Second, the creation of exceptions to this rule only for younger children fails to protect all children equally and effectively from sexual violence

## Marriage as a defence to sexual offences

Exemptions to sexual offence where a perpetrator marries a person they have abused are rare across Latin America, but have not been entirely abolished. These offences not only prevent the prosecution of adults who commit the most serious forms of sexual violence against children, but can result in children being forced into lasting relationships with their abuser, compounding the initial violence they faced.

In **Venezuela**, it is not possible to prosecute a person for several sexual offences, including rape, sexual abuse and the corruption of minors where the child is between the ages of 12 and 16 if the offender marries their victim. This rule still applies, even if the offender took advantage of a position of authority of the child.<sup>143</sup> In the state of Baja California, **Mexico**, it is not possible to prosecute a person for statutory rape against a girl between the ages of 14 and 18 if the

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140 *Código Penal*, Gaceta Oficial N° 5.768 Extraordinaria de la República Bolivariana de Venezuela, April 13, 2005, Article 374. Available at: [https://www.oas.org/juridico/spanish/mesicic2\\_ven\\_anexo\\_3\\_sp.pdf](https://www.oas.org/juridico/spanish/mesicic2_ven_anexo_3_sp.pdf)

141 Criminal Code, Article 308.

142 Committee on the Elimination of Discrimination against Women, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, CEDAW/C/GC/35, 26 July 2017, para. 29(e).

143 *Código Penal*, Gaceta Oficial N° 5.768 Extraordinaria de la República Bolivariana de Venezuela, April 13, 2005, art. 393. Available at: [https://www.oas.org/juridico/spanish/mesicic2\\_ven\\_anexo\\_3\\_sp.pdf](https://www.oas.org/juridico/spanish/mesicic2_ven_anexo_3_sp.pdf)

offender marries the victim<sup>144</sup> and similar provisions also apply in the Mexican state of Campeche.<sup>145</sup>

## Abuse of power

Some jurisdictions recognise the abuse of a position of power as a specific element of the offence or an exacerbating factor leading to an increased sentence. This feature of the criminal law has an obvious application in cases of sexual abuse within religious institutions, where abusers are commonly in a position of power over children, whether as teachers, carers, counsellors, local priests or an otherwise respected member of the community.

**Argentina**, for example, sets standard penalties of four to six years imprisonment for the offence of sexual abuse,<sup>146</sup> but the range of possible sentences is increased to between eight and 20 years imprisonment where the harm to the victim is particularly severe or where the perpetrator was a relative, religious minister or responsible for the education or guardianship of a child.<sup>147</sup> Similarly, in **Mexico** several sexual offences committed against children are aggravated if the abuser was in a position of power or authority over a child or took advantage of a position of trust or emotional bonds with the child.<sup>148</sup> Having a religious relationship with a child is also a consideration within the offence of sexual harassment within Mexican criminal law.<sup>149</sup> These increased sentences particularly recognise the element of abuse of power over a child when it is committed by a person in a position of trust.

## Online abuse

Many Latin American jurisdictions have been slow to respond to emerging forms of sexual exploitation and abuse that have been enabled by new technology. In

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144 *Código Penal para el Estado de Baja California*, Periódico Oficial del Estado de Baja California No. 23, Aug 20, 1989 (last reform Nov 07, 2016), art. 183. Available at: [http://www.congresobc.gob.mx/Parlamentarias/TomosPDF/Leyes/TOMO\\_V/Codpenal\\_07NOV2016.pdf](http://www.congresobc.gob.mx/Parlamentarias/TomosPDF/Leyes/TOMO_V/Codpenal_07NOV2016.pdf)

145 *Código Penal para el Estado de Campeche*, Periódico Oficial del Estado de Campeche, July 20, 2012 (last reform December 12, 2017), art. 231. Available at: [http://legislacion.congresocam.gob.mx/images/legislacion/codigos/Codigo\\_Penal\\_del\\_Estado\\_de\\_Campeche.pdf](http://legislacion.congresocam.gob.mx/images/legislacion/codigos/Codigo_Penal_del_Estado_de_Campeche.pdf)

146 *Ley 27.352 Modificación del Artículo 119 del Libro segundo, Título III del Código Penal de la Nación* [Reform to article 119 of the Criminal Code], Boletín Oficial de la República Argentina, May 17, 2017, Article 119. Available at: <http://www.saij.gob.ar/27352-nacional-modificacion-articulo-119-libro-segundo-titulo-iii-codigo-penal-nacion-lns0006305-2017-04-26/123456789-0abc-defg-g50-36000scanyel?#MA001>

147 Ibid. Article 119(b).

148 *Código Penal para el Estado Libre y Soberano de Jalisco* [Criminal Code for the State of Jalisco], Periódico Oficial del Estado de Jalisco, 02 September 1982 (last reform 14 July 2018), Article 142-Ñ. Available at: <http://legislacion.scjn.gob.mx/Buscador/Paginas/wfOrdenamientoDetalle.aspx?IdOrd=5757&TPub=2+>

149 Ibid. Article 176 Bis.

particular, many States have failed to effectively criminalise the online grooming of children for sexual exploitation or abuse. In several countries, notably **Bolivia**, **Cuba** and **Venezuela**, online grooming is not addressed within the criminal law at all.

Other jurisdictions have implemented a partial criminalisation of the practice, protecting only younger children. **Brazil**, for example, criminalises the enticing, harassing, instigating or constraining of a child by any means of communication in order to perform lewd acts. It also punishes those who facilitate or induce the child to access material containing scenes of explicit sexual activity in order for the child to perform lewd acts. The same law also criminalises enticing, harassing, instigating a child to produce sexually explicit material of themselves online. However, these offences can only be committed against a child under the age of 12, excluding older children from protection.<sup>150</sup> **Chile** provides similar protections for children under the age of 14, criminalising making a child under the age of 14 years to send images or recordings in which the child performs sexual acts, expressly stating that this offence can be committed through electronic means without the physical presence of the perpetrator.<sup>151</sup>

There are strong examples from the region, however, that have kept pace with the development of technological development and provide protection from grooming to all children online. In 2016, **El Salvador** criminalised maintaining, promoting or facilitating “the corruption of a child for erotic, pornographic or obscene purposes”, including through electronic means and regardless of consent.<sup>152</sup> The same article also criminalised making implicit or explicit proposals to meet a child for sexual purposes. Similarly, **Peru** has criminalised contacting a child under the age of 18, through any type of technology, with the intent of soliciting or obtaining pornographic material or to engage with any form of sexual activity with the child.<sup>153</sup> In **Mexico**, it is an offence to use any means of data transmission in order to contact a child under the age of 18 and ask that child for images, audio or video of explicit sexual activities, acts with sexual connotation, or request a sexual encounter with the child.<sup>154</sup>

## Civil liability and remedies

Prohibition of sexual violence against children must also be met with civil liability for those who abuse and exploit children. Financial compensation can never place a child in the position they were in before they were abused, but it can make

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150 Child and Adolescent Statute, Law no. 8.069/90, Article 241-D.

151 Criminal Code of Chile, Article 366.

152 Special Law Against Computer and Related Crimes, Article 31.

153 Law 30096 on Cybercrime, Article 5.

154 Federal Criminal Code, Article 199 Septies.

the perpetrator of abuse financially responsible for paying for the support and recovery of the person they abused.

Latin American jurisdictions commonly allow compensation claims to be made directly in relation to criminal proceedings, which can make it simpler for a survivor of sexual abuse to make a claim for compensation when the perpetrator has been convicted of an offence.

In **Brazil**, for example, a victim of a sexual offence can make an application for civil or moral damages. In this case, the victim has three years from the point at which a criminal case is finalised and no longer subject to appeal.<sup>155</sup> In practice, the judge presiding over a criminal trial sets the minimum value of reparation for a criminal offence<sup>156</sup> which can then be enforced by the victim in a civil court.<sup>157</sup> The amount of any compensation is not limited to the minimum figure set by the judge in a criminal case, and may cover any material or moral damages as well as economic loss.<sup>158</sup>

Among countries that allow this form of compensation, the limitation periods differ. At one end of the spectrum, in **Guatemala** a civil complaint related to a crime must be brought within one year of conviction,<sup>159</sup> while in **Honduras** a victim has 10 years to file a civil complaint.<sup>160</sup> Limitation periods in civil cases are commonly much shorter than in criminal cases, in Latin America as well as globally.

## The chemical castration controversy

Chemical castration as a treatment for people who commit sexual offences, particularly against children, has become a significant - yet controversial - feature of proposed law reforms across the region. In **Argentina**, the province of Mendoza was the first jurisdiction in Latin America to introduce the practice in 2010, creating a voluntary scheme of treatment to reduce sexual functioning for people convicted of a sexual offence which would permit the possibility of lighter sentences or parole,<sup>161</sup> though it is not clear that the practice has ever been

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155 Civil Code of Brazil, Article 206(3)(v).

156 Code of Criminal Procedure, Article 387(IV).

157 Code of Criminal Procedure, Article 63.

158 Civil Code, Article 927.

159 Civil Code of Guatemala, Article 1513.

160 Penal Code, Articles 102 and 105.

161 'Mendoza reglamenta la castración química para los violadores', 15 March 2010, *La Nación*. Available at: <https://www.lanacion.com.ar/sociedad/mendoza-reglamenta-la-castracion-quimica-para-los-violadores-nid1243725>



used in the jurisdiction.<sup>162</sup> In recent years, more countries across the region have considered implementing the practice.

The majority of proposals, such as that introduced in Chile's Chamber of Deputies in August 2018, would allow the optional and consensual treatment of people convicted of sexual offences against children under the age of 14 with antiandrogens to lower testosterone levels.<sup>163</sup> The motion is at the beginning of the legislative process and would have to be analysed by the Constitution, Legislation, Justice and Regulation Commission before it could progress.<sup>164</sup>

Other proposals would require the mandatory chemical castration of perpetrators of serious sexual offences against children. In October 2018, the House of Representatives in Colombia approved a bill at the first reading requiring the compulsory chemical castration of people convicted of rape of children, including where the perpetrator was under the age of 18 at the time of the offence.<sup>165</sup>

From a legal perspective, both international and local organisations have warned that mandatory chemical castration breaches sex offenders' human rights. Several UN human rights mechanisms<sup>166</sup> and Amnesty International<sup>167</sup> maintain that forced castration violates the prohibition on torture and other cruel, inhuman or degrading treatment or punishment.<sup>168</sup> The National Committee on

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162 'En Mendoza rige la castración química para violadores pero no se aplica', 27 August 2015, Aire de Santa Fe. Available at: <https://www.airedesantafe.com.ar/noticias-nacionales-argentina/en-mendoza-rige-la-castracion-quimica-para-violadores-pero-no-se-aplica/>

163 Bill available at: [https://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin\\_ini=12023-07](https://www.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=12023-07)

164 'Moción propone establecer como pena accesoria la castración química de violadores de menores de catorce años', 30 August 2018, Diario Constitucional. Available at: <https://www.diarioconstitucional.cl/noticias/actualidad-legislativa/2018/08/30/mocion-propone-establecer-como-pena-accesoria-la-castracion-quimica-de-violadores-de-menores-de-catorce-anos/>

165 Available at: <http://leyes.senado.gov.co/proyectos/images/documentos/Textos%20Radicados/proyectos%20de%20ley/2018%20-%202019/PL%20187-18%20Castracion%20Quimica.docx>

166 'White Paper: Chemical Castration and Life Imprisonment as Measures to Punish Sexual Crimes against Children'. Available at: <http://www.un.org.tr/humanrights/images/pdf/White-Paper-on-Chemical-Castration-and-Life-Imprisonment.pdf>

167 'Indonesia: Halt chemical castration and expansion of the scope of death penalty', 13 October 2016, Amnesty International. Available at: <https://www.amnestyusa.org/press-releases/indonesia-halt-chemical-castration-and-expansion-of-the-scope-of-death-penalty/>

168 International Covenant on Civil and Political Rights, Article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1; Universal Declaration of Human Rights, Article 5; American Convention on Human Rights, Article 5(2); European Convention on Human Rights, Article 3; Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Article 17.

Human Rights in Peru<sup>169</sup> argues that it also violates the fundamental right of dignity of the person.<sup>170</sup>

It has been stressed that, if it is legalised, chemical castration should not be used as a sanction, but as a part of the treatment of the offender, only with prior free and informed consent.<sup>171</sup> It should also be accompanied by other measures such as therapy and psychological counselling.<sup>172</sup> The European Court of Human Rights has held that the offender's right to liberty and security of person is infringed if release or a more lenient sentence is premised on an obligation to agree to chemical castration.<sup>173</sup>

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169 'La castración química es inconstitucional y vulnera derechos fundamentales', 21 May 2018, Coordinadora Nacional de Derechos Humanos. Available at: <http://derechoshumanos.pe/2018/05/la-castracion-quimica-es-inconstitucional-y-vulnera-derechos-fundamentales/>; <https://elperuano.pe/suplementosflipping/juridica/691/web/pagina03.html>

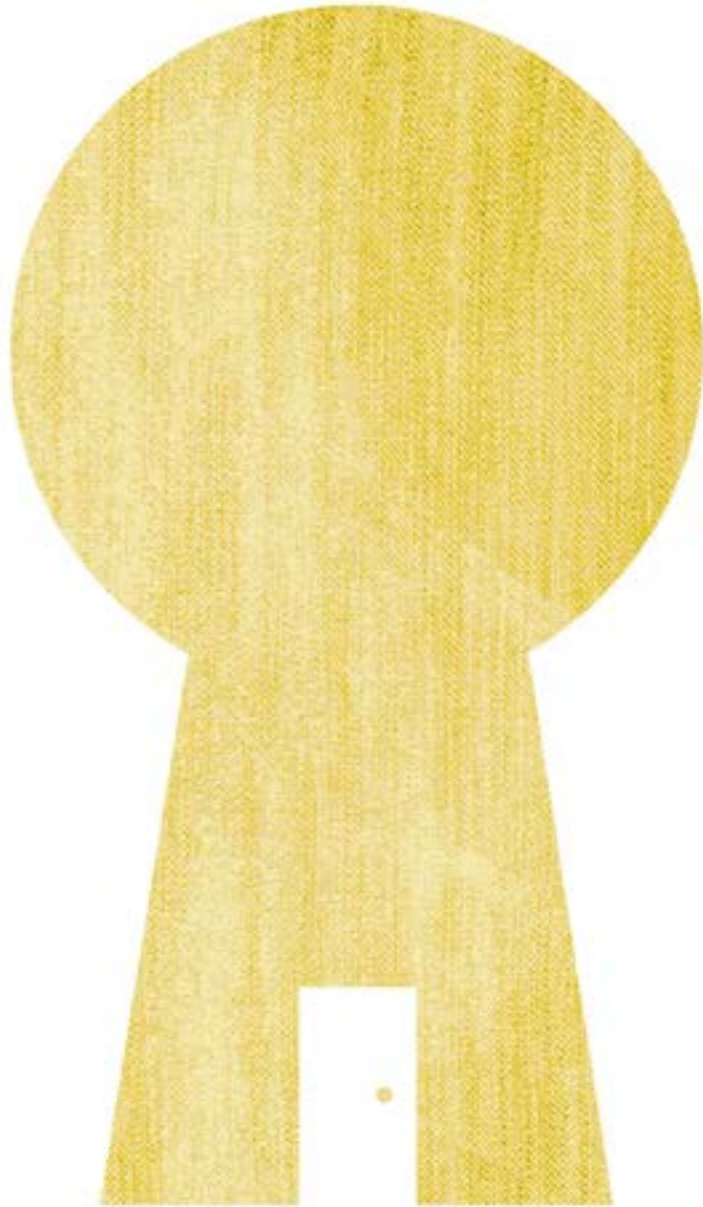
170 Article 5(1) of the American Convention on Human Rights (the right to have one's physical, mental, and moral integrity respected).

171 'White Paper: Chemical Castration and Life Imprisonment as Measures to Punish Sexual Crimes against Children'. Available at: <http://www.un.org.tr/humanrights/images/pdf/White-Paper-on-Chemical-Castration-and-Life-Imprisonment.pdf>

172 'La castración química es inconstitucional y vulnera derechos fundamentales', 21 May 2018, Coordinadora Nacional de Derechos Humanos. Available at: <http://derechoshumanos.pe/2018/05/la-castracion-quimica-es-inconstitucional-y-vulnera-derechos-fundamentales/>

173 *Tim Henrik Bruun Hansen v. Denmark* [2019] App. No. 51072/15.





## 4 ● Public inquiries into institutional abuse

In 2018 the Chilean Network of Clergy Sexual Abuse Survivors made its first call on the country's president to set up a commission to investigate sexual abuse within the Catholic Church in Chile.<sup>174</sup> The organisation says the commission would establish the truth about historical clergy abuse in the country and lead to justice and reparations for the countless victims.<sup>175</sup>

So far, Chile is the only country in Latin America where a national survivors network has called for a public inquiry on this issue, but it is part of an international wave of accountability for the sexual abuse of children and its cover up across the Catholic Church. Similar calls have been made recently in Poland,<sup>176</sup> Spain<sup>177</sup> and the United States<sup>178</sup> - countries with some of the largest Catholic populations in the world.<sup>179</sup> A network of clergy sexual abuse survivors in Italy,<sup>180</sup> which has the highest number of Catholics in Europe,<sup>181</sup> also expressed its satisfaction after the United Nations' Committee on the Rights of the Child urged the Italian government to establish an

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174 'Red de Sobrevivientes de Abusos Eclesiásticos planteó a La Moneda crear comisión de la verdad', El Mostrador, 3 August 2018. Available at: <https://m.elmostrador.cl/noticias/pais/2018/08/03/red-de-sobrevivientes-de-abusos-eclesiasticos-planteo-a-la-moneda-crear-comision-de-la-verdad/>

175 'Vocero Red Sobrevivientes Abusos Eclesiásticos sobre crisis Iglesia Católica: "El Estado chileno ha sido negligente"', El Desconcierto, 31 March 2019. Available at: <https://www.eldesconcierto.cl/2019/03/31/voce-ro-red-sobrevivientes-abusos-eclesiasticos-sobre-crisis-iglesia-catolica-el-estado-chileno-ha-sido-negligente/>

176 'Komisja Prawdy i Zadośćuczynienia' (Truth and Compensation Committee), Nie lękajcie się (Have No Fear foundation). Available at: <http://nielekajciesie.org.pl/2019/08/05/komisja-prawdy-i-zadoscuczynienia/>

177 'Las víctimas de abusos en la Iglesia piden una comisión de investigación independiente', 25 June 2019, *El País*. Available at [https://elpais.com/sociedad/2019/06/24/actualidad/1561398928\\_277491.html](https://elpais.com/sociedad/2019/06/24/actualidad/1561398928_277491.html)

178 'Global survivors of clergy abuse join SNAP & CCR in calling for a US Federal Investigation into abuse and cover up in the Catholic Church', Ending Clergy Abuse-Global Justice Project, 15 August 2018. Available at <https://www.ecaglobal.org/global-survivors-of-clergy-abuse-join-snap-ccr/>

179 'The Global Catholic Population', Pew Research Center, 13 February 2013. Available at: <https://www.pew-forum.org/2013/02/13/the-global-catholic-population/>

180 'L'Onu all'Italia: "Una commissione per indagare sugli abusi dei preti"', 12 February 2019, *La Repubblica*, available at: [https://www.repubblica.it/cronaca/2019/02/12/news/l\\_onu\\_all\\_italia\\_una\\_commissione\\_per\\_indagare\\_sugli\\_abusi\\_dei\\_preti\\_-218913877/](https://www.repubblica.it/cronaca/2019/02/12/news/l_onu_all_italia_una_commissione_per_indagare_sugli_abusi_dei_preti_-218913877/)

181 'The Global Catholic Population', Pew Research Center, 13 February 2013. Available at: <https://www.pew-forum.org/2013/02/13/the-global-catholic-population/>

“independent and impartial commission of inquiry to examine all cases of sexual abuse of children by religious personnel of the Catholic Church”.<sup>182</sup>

Many other countries have faced similar child abuse scandals in religious institutions and beyond, with a growing number having already conducted a public inquiry in response. These include Australia, Belgium, Canada, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Scotland and Switzerland.<sup>183</sup> Most have focused on child abuse in residential care settings, such as orphanages and children’s homes, and cover all forms of abuse.<sup>184</sup> Some countries have also conducted inquiries that focus on sexual abuse of children, including most recently Australia, England and Wales, and Germany;<sup>185</sup> while Ireland and the Netherlands have held inquiries on child abuse specifically in the Catholic Church.<sup>186</sup> All were established to fulfil two main objectives: 1) establish the factual truth and 2) set out steps for government and institutions to improve child protection law, policy and practice. More recent inquiries have also led to the creation of redress schemes which offer compensation and counselling to survivors of abuse.

In Latin America no country has yet conducted a national inquiry into child sexual abuse in residential settings or the Catholic Church, but such large-scale investigations are not a new phenomenon in the region. Since the 1980s, more than a dozen countries in Latin America have established national truth and reconciliation commissions to investigate past human rights violations during periods of conflict or authoritarian rule in the 1970s, ‘80s and ‘90s. These inquiry commissions arose in very different contexts to those on child abuse, but in both cases they have been used as a tool to respond to largescale, systematic human rights abuses and their objectives are very much the same: truth, accountability and reparations.

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182 ‘Observaciones finales sobre los informes periódicos quinto y sexto combinados de Italia,’ Comité de los Derechos del Niño, 28 February 2019, CRC/C/ITA/CO/5-6, p.7, paras. 21.b-c, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fITA%2fCO%2f5-6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fITA%2fCO%2f5-6&Lang=en)

183 Summaries of child abuse inquiries in several countries have been developed in the online database ‘The Age of Inquiry: A global mapping of institutional abuse inquiries,’ Wright, K., Swain, S., and Sköld, J., 2017, Melbourne: La Trobe University. Available at: <http://www.lib.latrobe.edu.au/research/ageofinquiry/biogs/E000090b.htm>

184 Representing an even broader application of a public inquiry is Canada’s 2019 National Inquiry into Missing and Murdered Indigenous Women and Girls which examines violence, murder and impunity. Final report available at: <https://www.mmiwg-ffada.ca/final-report/>

185 The Australian Royal Commission <https://www.childabuseroyalcommission.gov.au/>; England and Wales’ Independent Inquiry <https://www.iicsa.org.uk/>; Germany’s Independent Inquiry <https://www.aufarbeitungs-kommission.de/english-information/>

186 The Dutch Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church (2010-2011) <http://www.onderzoekrkr.nl/>; Ireland’s Ferns Report (2003–2005) <http://www.bishop-accountability.org/ferns/>, Murphy Report (2006–2009) <http://www.justice.ie/en/JELR/Pages/PB09000504>, and Cloyne Report (2009–2011) <http://www.justice.ie/en/JELR/Pages/Cloyne-Rpt>



Despite this history of public inquiries to address large scale human rights abuses in Latin America, no country in the region has yet launched such an inquiry to address child abuse. The call on behalf of the Chilean survivors network for an inquiry expresses the mood in the country, as more survivors feel emboldened to denounce sexual abuse and challenge the failure of institutions such as the Catholic Church, whose legitimacy, standing and membership continue to suffer in part owing to its sexual abuse scandal.<sup>187</sup> In this context of social change, an independent public inquiry into institutional child sexual abuse has the potential to produce a domino effect as already witnessed across countries in North America, Europe and Oceania, which sees one country's inquiry inspire neighbouring countries facing similar abuse scandals to follow suit.<sup>188</sup>

The desire for truth is undoubtedly universal,<sup>189</sup> but examining the historic abuse of children is ultimately a choice for each country to make on its own. This includes deciding the scope of a potential inquiry and whether it would focus on child sexual abuse in the Catholic Church, child sexual abuse in all settings and institutions, or all forms of child abuse in all settings and institutions. In considering this, there is much that can be learned from the countries that have already taken this step. With this in mind, this chapter explores the main features of past and present independent public inquiries, in particular those focusing on institutional child abuse, including sexual abuse, in order to make clear their purpose, function and impact on - and potential for - securing justice, accountability and redress for survivors of child sexual abuse.

## What are public inquiries?

While public inquiries vary by name,<sup>190</sup> they are broadly understood as large scale investigations of an issue of public interest, often institutional abuse or corruption. The issue usually affects a large number of people, is focused on past events which often span decades, and there is enough evidence and reason to suspect that the problem represents the failure of institutions. Governments typically approve the

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187 See, for example: 'German churches could lose half of members over coming decades: Study', 2 May 2019, The Local. Available at: <https://www.thelocal.de/20190502/german-churches-could-lose-half-of-members-over-coming-decades-study>

188 'Apology politics: Transnational features', 2015, Johanna Sköld in *Apologies and the legacy of abuse of children in 'care': International perspective*, p.17, cited in 'Remaking collective knowledge: An analysis of the complex and multiple effects of inquiries into historical institutional child abuse', Katie Wright, *Child Abuse & Neglect*, Volume 74, December 2017, pp. 10-22. Available at: <https://www.sciencedirect.com/science/article/pii/S0145213417303198>

189 *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2010, Priscilla Hayner, Routledge; 2nd edition, p.7.

190 The form public inquiries take varies depending on a country's jurisdiction, and is most tangibly illustrated in its name: Truth and Reconciliation Commission, Royal Commission of Inquiry, Parliamentary Inquiry, Judicial Inquiry, and Investigative Committee, among others, each with different purposes and powers.

creation of a public inquiry in the wake of a scandal or heightened public concern when an issue has become too large, complex or controversial to be resolved through existing mechanisms.<sup>191</sup> They are different from inquiries by national human rights institutions, such as the office of an ombudsperson, as they exist only for a set number of years and are tasked exclusively with investigating a single issue, for example political violence during an election, human rights abuses during military rule or child abuse in state-run residential care.

While independent public inquiries into child abuse are usually funded by government, or in scarce cases by the church,<sup>192</sup> they must function independently of the source of financing as well as of the institutions they investigate. A public inquiry runs until it completes its mandate, and they are transparent from start to finish in their organisation, operation and findings. Not only are their objectives, terms of reference and senior staff list made public, but once their work is completed they publish a detailed report documenting their work and findings, which is freely accessible and open to scrutiny. In the words of one academic, independent public inquiries are “emblematic of an open and transparent society”.<sup>193</sup>

Heading an inquiry are widely respected members of society, such as retired judges or lawmakers who serve as commissioners. People from other professions, such as psychologists or experts on violence against children, can also be appointed as commissioners.

## What do public inquiries do?

From a historical perspective, public inquiries examine an issue to a degree that has not been done before and leave behind a body of knowledge that

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191 ‘Remaking collective knowledge: An analysis of the complex and multiple effects of inquiries into historical institutional child abuse’, Katie Wright, *Child Abuse & Neglect*, Volume 74, December 2017, pp. 10-22. Available at: <https://www.sciencedirect.com/science/article/pii/S0145213417303198>

192 Examples include Canada’s Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy (1989-90) and Belgium’s Church Commission for Dealing with Complaints of Sexual Abuse in the Context of Pastoral Relations (2010). Both were established by the church but are widely considered to have functioned independently of it. A common concern with church-run or church-initiated investigations is that they are less transparent than fully independent public inquiries. A case in point is a statistical report compiled by the Polish Bishops’ Conference in 2019 which found that hundreds of Catholic priests had sexually abused children for years, but it failed to disclose the names of the perpetrators. See, for example, ‘La Iglesia católica polaca admite que más de 380 sacerdotes abusaron de menores durante casi 30 años’, 15 March 2019, RT. Available at: <https://actualidad.rt.com/actualidad/308642-iglesia-catolica-polaca-revelar-sacerdotes-abusar>

193 ‘Remaking collective knowledge: An analysis of the complex and multiple effects of inquiries into historical institutional child abuse’, Katie Wright, *Child Abuse & Neglect*, Volume 74, December 2017, pp. 10-22. Available at: <https://www.sciencedirect.com/science/article/pii/S0145213417303198>

becomes a public record. Their final reports contain a collection of written and oral submissions, testimonies, archival research and investigations of complaints that, combined, contribute to establishing a truthful account of a part of a country's history, as well as an institution's past.<sup>194</sup>

From a practical perspective, public inquiries are first and foremost charged with establishing facts, which is often tangibly illustrated in the name of, for example, truth commissions.<sup>195</sup> This is especially crucial with regard to issues that have multiple accounts, where the facts are disputed or when information is not readily available and even intentionally kept hidden. More specifically, public inquiries identify harms and wrongdoing and establish where and why institutional failure occurred and with whom accountability lies. Once their mandate is complete, the legacy of a public inquiry is for government and institutions to learn lessons from past failures in order to avoid repeating them.<sup>196</sup>

### Example:

In the **Netherlands**, two public inquiries exposed the scale of child sexual abuse in both church- and state-run institutions committed between 1945 and 2010, with both concluding that the problem was rampant in the institutional 'care' system generally. The Deetman Inquiry revealed that an estimated 10,000 and 20,000 children living in church-run boarding schools had been sexually abused and were twice as likely to be abused compared to the national average. The Samson Committee, which focused on children who had been placed in state-run residential care or foster homes, found that children in residential care were at a threefold risk of being sexually abused than those in foster care, with girls and children with intellectual disabilities more likely to become victims. Both inquiries concluded that the child protection system in the Netherlands had failed in its duty of care to children and prompted an overhaul.<sup>197</sup>

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194 'Inquiries and their impact' in *Rethinking Residential Child Care: Positive Perspectives*, Mark Smith, 2009, pp. 35-52. Policy Press, University of Bristol.

195 *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2010, Priscilla Hayner, Routledge; 2nd edition, p.20.

196 'Remaking collective knowledge: An analysis of the complex and multiple effects of inquiries into historical institutional child abuse', Katie Wright, *Child Abuse & Neglect*, Volume 74, December 2017, pp. 10-22. Available at: <https://www.sciencedirect.com/science/article/pii/S0145213417303198>

197 'Child Protection Victims and the "Evil Institutions"', Carolus Van Nijnatten et al, *Soc. Sci.* 2014, 3(4), 726-741. Available at: <https://www.mdpi.com/2076-0760/3/4/726/html>

To this end, inquiry commissioners issue a series of recommendations during the course of an inquiry that serve as the impetus for bringing about legal and institutional reform, which, in relation to child sexual abuse, would aim to better protect children from sexual violence in the future. Recommendations are usually issued once the inquiry is completed, but in some cases they have been made during the course of its operation through interim reports. The Australian Royal Commission, for example, issued a total of 409 comprehensive recommendations by the end of its work, 189 of which were in its final report, which allowed commissioners to address certain issues, including changes in policy, as early as possible.<sup>198</sup> Typically, child abuse inquiry recommendations fall under two categories:

**1. measures aimed at relieving the impact of past abuse:** including reparations through redress schemes (discussed later in this chapter), official apologies, monuments to commemorate historical trauma and suffering, law reform to ease or abolish time limitations on taking legal action, provision of support services such as counselling, and hotlines for more victims to come forward; and

**2. measures to prevent the problem from happening again in the future:** including law reform to make reporting of abuse mandatory, pre-employment screening, staff training, mechanisms for children to report abuse, public awareness campaigns, prevention education for schoolchildren, oversight agencies, and ratification of relevant human rights law.

### **Common recommendations from public inquiries into child abuse**

**Official acknowledgement:** Formally recognise the abuse that occurred, the institutional failure that allowed it to thrive, and the suffering of victims by issuing an official apology and preserving this recognition in a permanent place, namely a memorial.<sup>199</sup>

**Redress scheme:** Establish a national reparations fund for victims of institutional abuse which should be funded by the institutions which failed to protect children. The process for applying for redress should be victim-friendly and applications should be determined based on 'reasonable

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198 'The Australian Royal Commission into Institutional Responses to Child Sexual Abuse', Katie Wright et al., *Child Abuse & Neglect*, Volume 74, December 2017, pp. 1-9. Available at: <https://www.sciencedirect.com/science/article/pii/S0145213417303678>

199 Ireland's Commission to Inquire into Child Abuse (2009), Recommendations 7.02 - 7.03.

likelihood' as the standard of proof.<sup>200</sup> The scheme should include counselling and psychological care and should have no fixed closing date until applications for redress fall to a minimal number.<sup>201</sup>

**Integrated approach:** Develop a full range of joined up services necessary to address abuse, including prevention, identification, registration, investigation, prosecution, accessible legal proceedings and support to survivors.<sup>202</sup>

**Child protection policies:** Implement effective child protection systems for any organisation that brings employees or volunteers into contact with children, and place an obligation on employers to ensure that they do not bring employees with a propensity to abuse children into contact with children.<sup>203</sup> Ensure that a person facing a credible accusation of abuse is removed from contact with children while the complaint is investigated.<sup>204</sup>

**Mandatory reporting:** Require child protection authorities and professionals working with children to report suspected abuse, including when disclosed to a religious leader during confession.<sup>205</sup>

**Removal from religious ministry:** Ensure that where a complaint against a religious minister is substantiated or a perpetrator is convicted, that they are permanently removed from their ministry.<sup>206</sup>

**Recruitment and screening:** Evaluate, reform and continually improve the processes for screening and training of candidates for the clergy and religious life.<sup>207</sup>

**Information sharing:** Ensure that safeguarding policies enable the sharing of information held on alleged abusers with statutory authorities.<sup>208</sup>

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200 Australia's Inquiry into Children in Institutional Care (2004), Chapter 8 recommendation 6.

201 Australian Royal Commission into Institutional Responses to Child Sexual Abuse, Recommendations (2017), recommendation 48.

202 Dutch Commission of Inquiry into Sexual Abuse of Minors to the Roman Catholic Church (2011), Recommendation (letter) I.

203 Ireland's Inquiry into Clerical Child Sexual Abuse in the Diocese of Ferns (2005), Recommendation F.7, p. 259.

204 Australian Royal Commission into Institutional Responses to Child Sexual Abuse (2017), Recommendation 30.

205 Ibid., Recommendations 7.3 - 7.6.

206 Ibid., Recommendation 30.

207 Ibid., Recommendation 16.20.

208 Ireland's Commission of Inquiry into the handling of child sexual abuse in the Catholic Diocese of Cloyne (2011), Recommendation 2.

**Prevention education:** Implement mandatory education programmes to increase children's knowledge of and resilience against sexual abuse. This should form part of relationships and sexuality education curricula.<sup>209</sup>

**Legal reform:** Remove limitation periods and immunities that apply to child sexual abuse offences.<sup>210</sup>

## Who do public inquiries benefit?

Once an issue reaches a point of crisis or becomes a scandal, there emerges the public need and demand to know the truth. For governments, establishing an independent commission of inquiry is thought to restore public confidence in the wake of a scandal, as well as its authority over the investigated institutions (if and when these are not run by the government itself).<sup>211</sup>

For survivors of institutional sexual abuse, it is of much greater significance. The testimony of survivors are central to public inquiries. Many will have wanted to share their experiences for years but may not have had the opportunity to speak up and be heard. Public inquiries bear witness to the suffering of survivors, leading to a sense of validation and vindication,<sup>212</sup> and offer them a safe forum in which to recount and be listened to and assured that their testimonies will inform the inquiry's conclusions reached and recommendations made. The legitimising function of public inquiries for survivors of institutional sexual abuse is especially felt when an inquiry deals with an issue that was previously neglected, considered unimportant or intentionally ignored or trivialised by those in power.<sup>213</sup>

Participation in an inquiry, however, should be sensitive to the needs and experiences of survivors.<sup>214</sup> For example, it should not lead to public exposure of survivors and

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209 Australian Royal Commission into Institutional Responses to Child Sexual Abuse (2017), Recommendation 6.2.b.

210 Ibid., Recommendation 20.

211 'Remaking collective knowledge: An analysis of the complex and multiple effects of inquiries into historical institutional child abuse', Katie Wright, *Child Abuse & Neglect*, Volume 74, December 2017, pp. 10-22. Available at: <https://www.sciencedirect.com/science/article/pii/S0145213417303198>

212 *Redressing Institutional Abuse of Children*, 2014, Kathleen Daly, Palgrave Macmillan, pp.164.

213 'Public inquiries' in *Supporting Adult Care-Leavers: International Good Practice*, 2015, Policy Press, pp. 37-64.

214 An example of an inquiry which was not survivor-focused is Canada's 'Winter' Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy (1990), at which some victims were not permitted to testify, others felt forced to, others were called to testify on repeated occasions, some were cut off by the judge during hearings, and the inquiry was televised which made survivors feel they were 'put on display'. For further information, see: *Redressing Institutional Abuse of Children*, 2014, Kathleen Daly, Palgrave Macmillan, pp.163-167.



giving testimony should take place in an informal and non-adversarial setting.<sup>215</sup> In modern inquiries, the collection of victim testimony is carried out with flexibility and hearings can be conducted privately and written submissions held in confidence or published anonymously should a survivor prefer this.<sup>216</sup> Counselling and psychological support is usually provided as a part of the inquiry to minimise re-traumatisation.

### Example:

So far in **Germany's** Independent Inquiry into Child Sex Abuse some 1,690 people have testified, including 900 in confidential hearings and 300 in writing.<sup>217</sup> In Australia's Royal Commission into Institutional Responses to Child Sexual Abuse more than 8,000 people took part in a private session, while thousands of others gave their testimony at confidential committees, public hearings or through witness statements.<sup>218</sup> In Ireland's Commission to Inquire into Child Abuse, 1,090 people who had been resident as children in schools and state care facilities gave oral evidence in a Confidential Committee, while religious organisations and government departments presented their case and responded to abuse allegations in public hearings.<sup>219</sup>

## What powers do public inquiries have?

The powers given to a public inquiry will help to determine its strength and reach. Usually established either through national legislation or presidential decree, they can have quasi-judicial powers that confers them investigative powers, including the authority to access information, such as the seizing of documents and other evidence, including materials considered classified. They can also have the power to compel institutions and individuals to cooperate with the inquiry, including by summoning witnesses under oath,

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215 Australia's Inquiry into Children in Institutional Care (2004), Chapter 8 recommendation 6, p.229. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Completed\\_inquiries/2004-07/inst\\_care/report/index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/inst_care/report/index)

216 'Public inquiries' in *Supporting Adult Care-Leavers: International Good Practice*, 2015, Policy Press, pp. 37-64.

217 'Child sex abuse inquiry in Germany says victims need more support', 15 May 2019, DW. Available at: <https://www.dw.com/en/child-sex-abuse-inquiry-in-germany-says-victims-need-more-support/a-48192845>

218 Royal Commission into Institutional Responses to Child Sexual Abuse. Fast Facts: <https://www.childabuseroyalcommission.gov.au/>

219 'Ireland's Commission to Inquire into Child Abuse' *The Age of Inquiry: a global mapping of institutional abuse inquiries*, Wright, K., Swain, S., and Sköld, J., 2017, Melbourne: La Trobe University. Available at: <http://www.lib.latrobe.edu.au/research/ageofinquiry/biogs/E000084b.htm>

as well as impose penalties, such as fines or imprisonment, for violating a subpoena, for example.

As an exception, Ireland's Inquiry into the allegations of clerical sexual abuse in the Diocese of Ferns (2003-2005) was a non-statutory inquiry and so had no governing legislation, but its terms of reference gave the potential for it to become a statutory inquiry in the event that church authorities did not cooperate, needing only approval from the Minister for Health and Children.<sup>220</sup> Investigated institutions, nonetheless, usually cooperate because inquiries are so much in the public eye that refusing to do so risks further damaging an already tarnished reputation.<sup>221</sup>

The final recommendations of an inquiry, meanwhile, are not legally binding and commissioners have no power to implement them. But this does not mean the recommendations are not brought about; they rely on a combination of other factors, most notably the political will of the governing party. In some cases, it has been a change in government that has led to recommendations being implemented.<sup>222</sup> The symbolic power of a public inquiry can be influential too, with academics suggesting that the size, authority, credibility and prominence of a public inquiry can influence the extent to which recommendations are enacted.<sup>223</sup>

### Example:

**Ireland's** various public inquiries into institutional child abuse, including sexual abuse in the Catholic Church, gave rise to important legislative changes. For instance, the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 now makes it mandatory for everyone, including the clergy, to report sexual offences committed against children to the police, whether the alleged victim is still a child or not.

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220 'The Ferns Inquiry', *The Age of Inquiry: A global mapping of institutional abuse inquiries*, Wright, K., Swain, S., and Sköld, J., 2017, Melbourne: La Trobe University. Available at: <http://www.lib.latrobe.edu.au/research/ageofinquiry/biogs/E000090b.htm>

221 Irish State inquiries have, nonetheless, still experienced denial of access to church documents. See, for example, 'Vatican has never co-operated with Irish inquiries into clerical child sex abuse', 7 August 2018, *Irish Times*. Available at: <https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/vatican-has-never-co-operated-with-irish-inquiries-into-clerical-child-sex-abuse-1.3588073>

222 'New Zealand: 'Never Again' - The public investigation into historical abuse in state care', 15 August 2018, CRIN. Available at: <https://archive.crin.org/en/library/publications/new-zealand-never-again-public-investigation-historical-abuse-state-care.html>

223 'Public inquiries' in *Supporting Adult Care-Leavers: International Good Practice*, 2015, Policy Press, pp. 37-64; and 'Remaking collective knowledge: An analysis of the complex and multiple effects of inquiries into historical institutional child abuse', Katie Wright, *Child Abuse & Neglect*, Volume 74, December 2017, pp. 10-22. Available at: <https://www.sciencedirect.com/science/article/pii/S0145213417303198>

## Are public inquiries the only option?

Public inquiries exist alongside a range of mechanisms to investigate, expose and secure redress for institutional child sexual abuse. It is worth noting how alternative and complementary mechanisms can interact with public inquiries.

Attempts to hold perpetrators to account for sexual abuse of children and national reform often begin with **individual legal action**, whether criminal prosecutions or civil cases.<sup>224</sup> Inquiries are not necessarily an alternative to this type of legal action nor must they prevent individuals bringing civil cases against their abusers or religious institutions. Inquiries and legal action may in fact be mutually supportive, in that an increased volume of legal cases can demonstrate the existence of systemic abuse and a public inquiry can lead to legal reform to make it easier for survivors to access justice.<sup>225</sup>

**Ombudspersons and other independent human rights bodies** are also often able to address complaints from the public against government bodies or individuals and may be able to bring legal action themselves. These bodies rarely have the resources, budget and expertise to conduct a large scale investigation on the scale of a national inquiry, which can take several years to complete. This strain on resources and the single-issue focus characteristic of a public inquiry is one reason why national inquiries are established as separate bodies with a very specific mandate. Existing national human rights mechanisms simply do not match national inquiries in terms of size, budget and expertise. Collaboration between institutions, however, is possible. In Bolivia, for example, the office of the national ombudsperson has agreed to assist the country's ongoing Truth Commission, which is investigating human rights violations during its military dictatorships between the 1960s-80s, by helping to collect victim testimonies and publicising the work of the commission.<sup>226</sup>

A country's legislative branch may set up a **cross-party committee**, consisting of existing lawmakers selected by their peers, to investigate a particular issue to better understand it and make recommendations for improvement, usually to government departments. The name of these committees varies from parliamentary inquiry, select or special committee, to congressional committee or simply investigative commission. These are not independent public inquiries as described in this chapter, but there are some similarities: they usually have powers

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224 See, for example, Chile: 'La iglesia chilena deberá indemnizar a las víctimas de los abusos sexuales del ex sacerdote Fernando Karadima', 28 March 2019, *Infobae*, available at: <https://www.infobae.com/america/america-latina/2019/03/28/la-iglesia-chilena-debera-indemnizar-a-las-victimas-de-los-abusos-sexuales-del-ex-sacerdote-fernando-karadima/>; and Argentina: 'La Justicia condena a la Iglesia a indemnizar a una víctima de abuso sexual', 29 April 2013, *La Gaceta*, available at: <https://www.lagaceta.com.ar/nota/542831/policiales/justicia-condena-iglesia-indemnizar-victima-abuso-sexual.html>

225 See chapter 3 for more information on legal reform to secure accountability.

226 'Convenios', Comisión de la Verdad de Bolivia. Available at: <https://www.comisiondelaverdad.bo/cvbol/categoria/convenios/>

to summon witnesses, oral evidence sessions can be held in public, study visits are typically conducted to gather first-hand knowledge, they sometimes seek to establish accountability and a final report is sometimes published on the government website, but not always. In Latin America, Ecuador and Peru have recently conducted two cross-party committee inquiries on child sex abuse in educational institutions.<sup>227</sup>

Though not a means of securing redress, the role that **investigative journalism** can provide in revealing abuse and triggering reform should not be understated. Most notably, the 2002 Boston Globe investigation into the Archdiocese of Boston uncovered large scale sexual abuse, changed public attitudes to clerical abuse and shaped the national debate on the issue in the United States.<sup>228</sup> In the absence of a public inquiry, media investigations also play a crucial role in placing important and taboo issues, such as sexual abuse, in the public consciousness.<sup>229</sup>

National Bishops' Conferences in a rising number of countries have announced their own **church-run commissions** to receive and investigate allegations of sexual abuse and cover ups committed within the church, including most recently in Bolivia,<sup>230</sup> Colombia<sup>231</sup> and El Salvador.<sup>232</sup> But survivor groups around the world have raised doubts as to the autonomy with which such church-run bodies can function and take action without institutional bias or pressure, especially given the church's history of cover ups.<sup>233</sup> Additionally, transparency in these investigations is questionable, as the identity of the accused is not revealed, cases are not passed on to civil authorities, and in a small number of

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227 Ecuador's Comisión Ocasiona Especializada "AAMPETRA" de la Asamblea del Ecuador (2018): <https://www.asambleanacional.gob.ec/es/blogs/comision-especializada-ocasional-aampetra>; Peru's Comisión Investigadora de Abusos Sexuales contra menores de edad en Organizaciones Educativas Públicas y Privadas (2019): <https://comisionabusos.com/>

228 'Church allowed abuse by priest for years,' 6 January 2002, *The Boston Globe*. Available at: <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTTrAT25qK-GvBuDNM/story.html>

229 'Remaking collective knowledge: An analysis of the complex and multiple effects of inquiries into historical institutional child abuse', Katie Wright, *Child Abuse & Neglect*, Volume 74, December 2017, pp. 10-22. Available at: <https://www.sciencedirect.com/science/article/pii/S0145213417303198>

230 'Iglesia Católica creará comisión para tratar casos de abuso sexual,' 26 March 2019, *Correo del Sur*. Available at: [https://correodelsur.com/politica/20190327\\_iglesia-catolica-creara-comision-para-tratar--casos-de-abuso-sexual.html](https://correodelsur.com/politica/20190327_iglesia-catolica-creara-comision-para-tratar--casos-de-abuso-sexual.html)

231 'Iglesia Católica en Colombia crea comisiones para atención de casos de abuso sexual,' 6 July 2019, *Blu Radio*. Available at: <https://www.bluradio.com/nacion/iglesia-catolica-en-colombia-crea-comisiones-para-atencion-de-casos-de-abuso-sexual-219533-ie430>

232 'Iglesia católica salvadoreña crea comisión para evitar abusos contra niños,' 10 June 2019, *Agencia EFE*. Available at: <https://www.efe.com/efe/america/sociedad/iglesia-catolica-salvadorena-crea-comision-para-evitar-abusos-contra-ninos/20000013-3996591#>

233 'Las víctimas de abusos en la Iglesia piden una comisión de investigación independiente,' 25 June 2019, *El País*. Available at: [https://elpais.com/sociedad/2019/06/24/actualidad/1561398928\\_277491.html](https://elpais.com/sociedad/2019/06/24/actualidad/1561398928_277491.html)

cases in Argentina, survivors have even been forced to resort to legal action against the church to access information after it refused to disclose details about the internal investigations into the survivors' sexual abuse cases.<sup>234</sup>

A reliance on canon law within church investigations can also obstruct civil or criminal law processes and fail to offer adequate punishment, compensation and transparency.<sup>235</sup> For instance, the most severe punishment for violations of canon law is being defrocked and excommunicated.<sup>236</sup> Meanwhile some dioceses have set up compensation programmes that offer payouts to victims, but on the condition that they agree not to sue the church.<sup>237</sup> This - as well as out-of-court settlements - allows dioceses to avoid going to trial where it may be ordered to disclose potentially incriminating records. The organisation SNAP (Survivors Network of Those Abused by Priests) has urged clergy abuse survivors considering this option to exercise caution, saying that it removes "a survivor's right to sue".<sup>238</sup>

Pros and cons of a public inquiry	
Pros	Cons
<ul style="list-style-type: none"> <li>• Independent, detailed investigation which can lead to the disclosure of widespread and systematic abuse in institutions.</li> <li>• Creates an official historical narrative of events.</li> <li>• Holds legal powers to investigate and require cooperation from individuals and institutions under scrutiny.</li> </ul>	<ul style="list-style-type: none"> <li>• It can take many years to create the political will to establish a public inquiry.</li> <li>• Inquiry recommendations are non binding so there is no guarantee that they will all be implemented.</li> <li>• No legal power to impose sanctions on individuals or institutions for wrongdoing.</li> </ul>

234 'Abusos reavivan la polémica por acceso a la información', 14 July 2019, *Los Andes*. Available at: <https://www.losandes.com.ar/article/view?slug=abusos-reavivan-la-polemica-por-acceso-a-la-informacion>

235 'Los abusos sexuales a niños y la Santa Sede: Necesidad de justicia, rendición de cuentas y reforma', 2014, CRIN: p.7. Available at: [https://archive.crin.org/sites/default/files/holy\\_see\\_report\\_final\\_spanish.pdf](https://archive.crin.org/sites/default/files/holy_see_report_final_spanish.pdf)

236 Ibid.

237 'Catholic Church Offers Cash to Settle Abuse Claims—With a Catch', 11 June 2019, *The Wall Street Journal*. Available at: <https://www.wsj.com/articles/catholic-church-offers-cash-to-settle-abuse-claimswith-a-catch-11562854848>

238 'SNAP Responds to California Bishops' Compensation Fund', 14 May 2019, SNAP. Available at: [http://www.snapnetwork.org/snap\\_responds\\_to\\_california\\_bishops\\_compensation\\_fund](http://www.snapnetwork.org/snap_responds_to_california_bishops_compensation_fund)

- Survivors can give their testimony in a variety of ways which minimise re-traumatisation, including private hearings or through written submissions. If given privately, information is held in confidence or published anonymously.
- Formation of collective identity and national trauma for survivors of institutional abuse.
- Inquiry recommendations can lead to different initiatives: from changes in current policy and practice related to child protection, reporting mechanisms, and access to justice, to the provision of broad support to survivors of abuse. This can include official acknowledgement of harm caused and an apology to victims; legal reform that constitutes a rebalancing of the justice system in favour of victims; provision of specialist counselling services; and financial compensation schemes for survivors for the harm they suffered and its enduring impacts, including on their mental and physical health, educational outcomes, and social and interpersonal functioning.
- Not all rights abuses can be investigated owing to time and capacity constraints, with case studies often serving to illustrate an institution's general systemic failures.

## Elements necessary for a public inquiry

For a public inquiry to be established, there are a series of factors that need to be present. Most crucial of these are a collective call for an inquiry by survivor groups, media coverage and the political will of the government.

### Survivors' testimonies

Institutions and politicians for whom a public inquiry could be damaging to their reputation often allege that there is no need for an inquiry because cases of abuse



are isolated incidents and do not represent institutional failure. Abuse survivors' firsthand accounts of sexual abuse, in particular, help to combat such misleading allegations by establishing that a problem existed. Importantly, there is strength in numbers; the more survivors to come forward, the more visible the experience of institutional abuse becomes and the more widespread the problem is recognised to be.

No matter how they are recorded and publicised, survivors' testimonies are the first step in 'breaking the silence' around institutional child sexual abuse and bringing the problem to public attention. Testimonies also form the basis of subsequent initiatives to publicise child abuse scandals and further raise public awareness, such as investigative journalism.

### Example

The child abuse scandal in **Canada's** Mount Cashel Orphanage, run by the congregation of the Christian Brothers of Ireland, broke headlines in 1989 when former resident Shane Earle was interviewed by *The Sunday Express*. He was the first to go public with his story. The news "went off like a bomb" prompting other former residents - as well as clergy abuse survivors elsewhere in Canada and even as far as Australia<sup>239</sup> - to come forward. The interview coincided with a reopening of a failed investigation into physical and sexual abuse at the orphanage, at which Earle had also given his statement, and immediately led to calls for an independent investigation.<sup>240</sup> Within weeks, the Canadian government set up a Royal Commission of Inquiry into the handling of abuse complaints by authorities, which found that government, police and the church had repeatedly covered up allegations of abuse, while references to sexual abuse, specifically, were omitted from police reports.<sup>241</sup> In the following decades, hundreds of Mount Cashel survivors brought lawsuits.

### Activism by survivors

Campaigns led by sexual abuse survivors are the impetus for establishing a public inquiry. As the main interest group, if the call does not come from survivors themselves, then there is no visible demand for such a large scale investigation.

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239 *Redressing Institutional Abuse of Children*, 2014, Kathleen Daly, Palgrave Macmillan: p.97.

240 "Conceptualising Responses to Institutional Abuse of Children", 2014, Kathleen Daly, *Current Issues in Criminal Justice*, Vol 10, 2014: pp. 5-31. Available at: <https://bit.ly/2H1zoLd>

241 'Mount Cashel Orphanage Abuse Scandal', 2012, Jenny Higgins, Newfoundland and Labrador Heritage Website. Available at: <https://www.heritage.nf.ca/articles/politics/wells-government-mt-cashel.php>

The website of Germany's Independent Inquiry into Child Sexual Abuse, for instance, notes that "the establishment of a commission had for years been a key demand of victims and survivors."<sup>242</sup> It is also not uncommon for survivors to lobby their government to hold an inquiry based on the fact that other countries, especially neighbouring ones or those which have faced similar abuse scandals, have already conducted one.

## Failure to investigate abuse

It goes without saying that if there are calls for a public inquiry it is because there have not already been timely investigations nor efforts to provide victims with redress. Creating the conditions for widespread public demand are usually systemic neglect, failure of institutions and authorities to properly investigate reports of abuse and, where relevant, their efforts to actively hide, minimise or manipulate the truth.

## Litigation

Bringing a court case against an institution is an end in itself, as it can hold responsible those who have committed wrongdoing and provide compensation to victims. But it can also act as a catalyst for other survivors to bring legal action and for the media to cover the cases. The latter, in turn, publicises the issue further. In some cases, large numbers of survivors of clergy abuse have sought redress by bringing civil litigation in quick succession, which has driven dioceses to bankruptcy.<sup>243</sup>

## Media coverage

Reporting on child sexual abuse scandals places the stories of childhood abuse survivors in media that is widely accessible, such as television and newspapers. This plays an essential role in building momentum, raising the profile of the issue and placing it in the general public's consciousness. This collectively serves to 'break the silence' on the issue and pressure the government into responding to the scandal.<sup>244</sup> In multiple cases, documentary films in particular have been a clear catalyst for a public inquiry.

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242 'Inquiry in Germany - Independent Inquiry into Child Sex Abuse', *The Independent Commissioner for Child Sexual Abuse Issues*: <https://beaufragter-missbrauch.de/en/inquiry>

243 For example, see 'La diócesis de Guam, en bancarrota ante las demandas de abusos sexuales', 8 November 2018, Periodista Digital. Available at: <https://www.periodistadigital.com/cultura/religion/rel-mundo/20181108/diocesis-guam-bancarrota-demandas-abusos-sexuales-noticia-689401892858/>

244 *Child sexual abuse and the Catholic church: Gender, power, and organizational culture*, Marie Keenan, 2013, Oxford University Press, p. 20

## Example

A pivotal moment came in **Poland** in May 2019 with the release of the YouTube documentary 'Tell No One' about child sexual abuse in the Polish Catholic Church.<sup>245</sup> The film contains firsthand accounts of abuse by survivors and details how abusive priests were moved from one parish to another where they continued to have access to children, how victims and their families were blocked by bishops from pursuing their claims, and includes hidden camera footage of victims confronting their abusers. The documentary was financed through a crowdfunding campaign after the government declined to support the project. Four months after its launch, the documentary had been viewed more than 22 million times.

Within weeks of its launch, and in response to the ensuing scandal, Poland's Parliament approved raising the jail term for convicted child abusers, removing time limitations on prosecuting the most serious of sex abuse, raising the age of consent to 16, and also announced the creation of a government-led commission to investigate child sex abuse in various settings, including in the church.<sup>246</sup> Perhaps strategically, the documentary was launched in the run-up to European Parliament elections and months ahead of the Polish general election, which could have influenced the government's quick series of reforms.<sup>247</sup> Notwithstanding the progress, Poland's leading clergy abuse survivors' organisation, Have No Fear, has gone one step further than the government by drafting a citizens' bill to enable victims to file historical claims against priests and allow for the establishment of an independent truth and compensation commission.<sup>248</sup>

## Heightened public awareness

The majority of citizens will be unaware of the problem of institutional child sexual abuse - whether in the Catholic Church, residential care or other settings - but

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245 'Nuevo documental expone ola de abusos sexuales en la Iglesia Católica de Polonia', 22 May 2019, La Red 21. Available at: <http://www.lr21.com.uy/mundo/1400976-no-le-digas-a-nadie-documental-youtube-abusos-sexuales-iglesia-catolica-polonia>

246 Critics, however, reject that the commissioners will be appointed by politicians rather than experts, suggesting possible bias in their selection given that Poland's ruling Law and Justice conservative party has close ties with the Catholic Church. See, for example, 'Polish abuse scandal: Victims take on the Catholic Church', 22 July 2019, BBC, available at: <https://www.bbc.co.uk/news/world-europe-49025423>

247 See, for example: 'Ofensiva del PIS polaco para contrarrestar un vídeo de abusos de la iglesia católica', 22 May 2019, EURACTIV. Available at: [http://euroefe.euractiv.es/1311\\_actuactualidad/6146864\\_ofensiva-del-pis-polaco-para-contrarrestar-un-video-de-abusos-de-la-iglesia-catolica.html](http://euroefe.euractiv.es/1311_actuactualidad/6146864_ofensiva-del-pis-polaco-para-contrarrestar-un-video-de-abusos-de-la-iglesia-catolica.html)

248 'Komisja Prawdy i Zadośćuczynienia' (Truth and Compensation Committee), Nie lękajcie się (Have No Fear foundation). Available at: <http://nielekajciesie.org.pl/2019/08/05/komisja-prawdy-i-zadoszczynienia/>

combining the factors discussed above leads to heightened public awareness of the issue. This not only concerns the general public, but also politicians, who will be more informed on the issue and may then be more inclined to hear the demands of abuse survivors and act upon them. This is important for amassing support from all sectors.

## Political will

It is usually the government which must approve establishing a public inquiry. But support from the government is not guaranteed. It goes without saying that keeping the status quo and not creating an inquiry would be cheaper, less time-consuming and less straining on church-state relations, particularly in Latin America, which is home to more than 40 percent of the world's Catholic population.<sup>249</sup> Moreover, investigations that could potentially expose an administration's failures or deficiencies can damage its reputation and the public's trust in the governing party. A strong case therefore needs to be made in favour of establishing a public inquiry to produce widespread support. All the factors discussed above must therefore be present simultaneously to push a government into action.

### Example

For decades the **New Zealand** the government rejected calls to conduct an independent national inquiry into historical abuse of children in state care spanning decades, seemingly because of the fact that most institutions had been run by the State itself.<sup>250</sup> Despite widespread support across most political parties, thanks to years of lobbying by survivor groups, the ruling National party still refused, claiming that the country did not need an inquiry because the government had found no evidence of systemic failure and most children had not suffered abuse.

It was ultimately thanks to a change in government in September 2017 - after the political parties Labour and New Zealand First formed a coalition that ousted the National party - that finally led to the announcement of the Royal Commission of Inquiry into Historical Abuse in State Care and

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249 'Los abusos sexuales a niños y la Santa Sede: Necesidad de justicia, rendición de cuentas y reforma', 2014, CRIN: p.24. Available at: [https://archive.crin.org/sites/default/files/holy\\_see\\_report\\_final\\_spanish.pdf](https://archive.crin.org/sites/default/files/holy_see_report_final_spanish.pdf)

250 'New Zealand: 'Never Again' - The public investigation into historical abuse in state care', 15 August 2018, CRIN. Available at: <https://archive.crin.org/en/library/publications/new-zealand-never-again-public-investigation-historical-abuse-state-care.html>

in the Care of Faith-Based Institutions. A year later, the Royal Commission began its work.<sup>251</sup>

## Legislation

Like truth commissions, public inquiries are generally established either through national legislation or presidential decree, which makes provision for holding inquiries and may also provide a framework for them. The legal system and political culture of each country determines which option is used. For example, while a number of Latin America's truth commissions - informally referred to as 'presidential commissions' - were created through presidential or 'executive' decree, such as those in Argentina, Chile, Ecuador and Peru, others were established through the legislature, including in Panama, Paraguay<sup>252</sup> and Bolivia.<sup>253</sup> In some cases, civil society organisations have instigated the drafting of legislation to establish a public inquiry, such as that of Bolivia's ongoing Truth Commission<sup>254</sup> and Poland's citizen bill to establish an independent truth and compensation commission on child sexual abuse in the Catholic Church.<sup>255</sup>

## Beyond a public inquiry: redress

Public inquiries are only the first major step towards securing justice and accountability for survivors of abuse, leading to the implementation of an inquiry's recommendations.<sup>256</sup> Inquiry recommendations can prompt a major shift in child protection policy and address a variety of measures to prevent the problem from happening again in the future. Relieving the impact of past abuse by remedying and rectifying the harm must follow.

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251 Originally named the Royal Commission of Inquiry into Historical Abuse in State Care, it was later expanded to include religious institutions, and its name accordingly amended. See, for example, 'Religious institutions to be included in state abuse inquiry', 12 November 2018, RNZ. Available at: <https://www.rnz.co.nz/news/political/375731/religious-institutions-to-be-included-in-state-abuse-inquiry>

252 *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2010, Priscilla Hayner, Routledge; 2 edition.

253 'CIDH saluda la instalación de la Comisión de la Verdad en Bolivia', 14 September 2017, Inter-American Commission on Human Rights. Available at: <https://www.oas.org/es/cidh/prensa/comunicados/2017/142.asp>

254 'Nila Heredia: Dictaduras: Bolivia es la única sin Comisión de la Verdad', 13 Septiembre 2015, La Razón. Available at: [http://la-razon.com/index.php?url=/suplementos/animal\\_politico/Heredia-Dictaduras-Bolivia-Comision-Verdad\\_0\\_2343365656.html](http://la-razon.com/index.php?url=/suplementos/animal_politico/Heredia-Dictaduras-Bolivia-Comision-Verdad_0_2343365656.html)

255 'Komisja Prawdy i Zadośćuczynienia' (Truth and Compensation Committee), Nie lękajcie się (Have No Fear foundation). Available at: <http://nielekajciesie.org.pl/2019/08/05/komisja-prawdy-i-zadoscuczynienia/>

256 According to the Dutch Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church (2011), "Help alone is not enough to give victims redress. Financial compensation is an essential element of the reparation that must be made to the victims." (Recommendation G). Available at: <http://www.onderzoekrck.nl/>

## Rising use of redress schemes

While public inquiries identify the types and scope of abuse experienced, the State must also assess the extent of the harm and its lasting impacts and establish fair compensation for survivors. This is done through initiatives such as redress schemes, which are usually inquiries' key recommendation. The first government redress scheme for institutional abuse of children began in 1993 in Canada, and since then, at least 36 government redress schemes have been concluded, are underway, or have been proposed across fourteen jurisdictions.<sup>257</sup> In many countries where public inquiries into childhood abuse have been conducted, large-scale compensation programmes are now replacing traditional avenues of reparations, such as civil or criminal litigation.

## Alternative to litigation

Unlike litigation, redress schemes do not resolve a legal dispute,<sup>258</sup> but the comparative benefits of redress schemes linked to public inquiries are noteworthy. Importantly, litigation is often time-barred, whereas redress schemes remove this legal barrier, as they accept applications for redress even in abuse cases that occurred decades earlier. While litigation is also known to retraumatise abuse survivors, especially through questioning and giving evidence, redress schemes have victim-friendly procedures that are "non-adversarial and informal".<sup>259</sup> Additionally, they require lower standards of evidence from survivors; according to the Australian Royal Commission into Institutional Responses to Child Sexual Abuse, "reasonable likelihood" should be the standard of proof for determining applications for redress. Civil litigation payouts are sometimes higher than that of redress schemes, however many survivors prefer to choose a lump sum award through a redress scheme to avoid a costly and lengthy legal process without a guaranteed outcome, as can be the case with litigation. Where the government is responsible for the abuse, applying to a redress scheme typically means that a claimant will not be allowed to bring a court case against the government later.

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257 'Inequalities of Redress: Australia's National Redress Scheme for Institutional Abuse of Children,' 2018, Kathleen Daly, *Journal of Australian Studies*: 42:2, p.204. Available at: <https://doi.org/10.1080/14443058.2018.1459783>

258 Ibid. p.207.

259 Australia's Inquiry into Children in Institutional Care (2004), Chapter 8 recommendation 6. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Completed\\_inquiries/2004-07/inst\\_care/report/index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/inst_care/report/index)



## Example

Early recommendations on financial redress by Ireland's Commission to Inquire into Child Abuse (2009) were adopted in 2002 into the Residential Institutions Redress Act, which established the Residential Institutions Redress Board to oversee applications for redress.<sup>260</sup> The programme was tasked with making "fair and reasonable awards" to survivors of institutional abuse. Claims were assessed according to the severity of abuse - sexual, physical and/or emotional abuse and wrongful neglect - and the severity of the harm resulting from the abuse. By 2014 the redress scheme paid out a total of €1.5 billion to 15,579 people, each receiving on average €62,250.<sup>261</sup> It offered interim payments for elderly applicants, whereas children, spouses and partners of deceased survivors were able to apply for compensation or continue to pursue the claim.

## Holistic redress

Despite the focus on financial compensation, redress schemes can also take different forms, and increasingly take a more holistic approach to redress. Nowadays they often involve practical measures. For example in Ireland, abuse survivors who received compensation from the Residential Institutions Redress Board or other settlements could apply for additional support from a special fund, called Caranua, for access to healthcare, housing and educational support, including dental treatment, home care, counselling and psychiatric services.<sup>262</sup> Throughout the application process, survivors must be provided with legal advice as well as psychological support to minimise re-traumatisation. Other reasonable expenses, such as travel to attend interviews, should also be covered by the State.

## Effective running

To be effective, however, redress schemes must work according to the needs of survivors and be well organised. Usually the particular form of compensation and the mechanism of distribution is determined by an independent body with input from survivors on the design and implementation of the redress scheme. It is important that news about a redress scheme is widely advertised across various media because it takes time for survivors to find out about it. It is also important

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260 Australian Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, Recommendation 57. Available at: [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_recommendations.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf)

261 'Redressing historic abuse in New Zealand: a comparative critique' 2018, Stephen Winter, Political Science: 70:1, pp. 1-25. Available at: <https://www.tandfonline.com/eprint/U4FRyd65i6hKKS2E49ef/full>

262 *Supporting adult care-leavers, International Good Practice*, 2015, Suellen Murray, Bristol Policy Press, p. 105.

to make sure there is enough time to apply - ideally a redress scheme should have no closing date, and if there is an intention to close it, ample warning must also be widely publicised.<sup>263</sup>

## Example

When it comes to financing, a redress scheme should be funded as much as possible by the institution/s in which the abuse is alleged to have taken place in order to avoid the rising bill of pay outs.<sup>264</sup> It is government's role to negotiate contributions with accused institutions that lead to the success of a redress scheme.

For example in **Australia**, the National Redress Scheme for survivors of childhood sexual abuse was launched in 2018 and promised to make payouts between three to 12 months from the date of application. Alleged understaffing and institutional problems, however, have led to a huge backlog in applications, with less than 10 percent of applications processed so far.<sup>265</sup> While the scheme is being funded by the institutions responsible, including federal and state governments, the federal government is taking the approach of naming and shaming guilty institutions into joining the redress scheme. In Ireland, on the other hand, funding for redress for institutional child abuse came from the Department of Education and was not capped. This has proven essential for making payouts as, while the Catholic Church agreed to pay a sum of €128 million<sup>266</sup> - mostly in properties - to the compensation fund, it took 17 years for a total of €105 million to be transferred to the fund and negotiations still continue.<sup>267</sup>

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263 Australian Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, Recommendation 48. Available at: [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_recommendations.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf)

264 Ibid., Recommendations 35-36.

265 'National redress scheme payment delays for survivors of child sexual abuse', 9 August 2019, *The Canberra Times*. Available at: <https://www.canberratimes.com.au/story/6317198/some-abuse-survivors-waiting-more-than-a-year-for-redress-payments/>

266 'Abuse compensation deal a get-out-of-jail-free card for church', 11 March 2017, *The Irish Times*. Available at: <https://www.irishtimes.com/news/politics/abuse-compensation-deal-a-get-out-of-jail-free-card-for-church-1.3005781>

267 'State reaches 'milestones' in securing Church assets to cover abuse redress', 4 June 2019, *The Irish Times*. Available at: <https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/state-reaches-milestones-in-securing-church-assets-to-cover-abuse-redress-1.3913683>





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