

## Unofficial minutes of the Committee Against Torture's 52nd session - Holy See review

These are “unofficial minutes” taken by the World Organization Against Torture (OMCT) and Child Rights International Network (CRIN) during the UN Committee Against Torture's review of the Holy See on 5 and 6 May 2014, as part of the Committee's 52nd session.

Along with other NGOs, OMCT and CRIN submitted evidence to the Committee which meant the issue of child sexual abuse in the Catholic Church was raised during the review. Read [OMCT and CRIN's alternative report](#).

For more, see CRIN's campaign: [End sexual violence in religious institutions](#).

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## Day 1: 5 May 2014

Holy See delegation:

- Mons. Silvano M. Tomasi - Head of the Holy See Mission to the UN
- Rev. Mons. Christophe El-Kassis
- Professor Vincenzo Buonomo
- Rev. Mons. Richard Gyhra

### Presentation of the initial report by the Holy See (M. Tomasi)

*This is the full statement, as posted on the [UNCAT session page](#).*

Mr. Chairperson, Members of the Committee,

Allow me, first of all, to extend cordial greetings to all the members of the Committee on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In the presentation of the Initial Report of the Holy See, I wish to introduce the members of our Delegation present for this interactive dialogue. With me this morning are Monsignor Christophe El-Kassis and Professor Vincenzo Buonomo, of the Secretariat of State of the Holy See, and Monsignor Richard Gyhra, Secretary of the Holy See Mission.

The Holy See acceded to the Convention against Torture (CAT) on June 22, 2002. It did so with the very clear and direct intention that this Convention applied to Vatican City State (VCS). In its capacity as the sovereign of Vatican City State, the Holy See provided an important "Interpretative Declaration" that shows its approach to the CAT.

Such Declaration underlines the motives for accession to the Convention and expresses the moral support given to it, namely the defense of the human person as already indicated in the Universal Declaration of Human Rights.

For the Holy See, the Interpretative Declaration provides a necessary hermeneutic to understand the motives for acceding to the Convention and also for considering the implementation of the Convention by the legal order of Vatican City State which is the very exercise we are engaging in at this moment in the consideration of the Initial Report of the Holy See to the CAT.

In this sense, my Delegation deems it worthwhile to reiterate several of the more salient points of the Interpretative Declaration so as to properly frame the consideration and discussions of the Initial Report of the Holy See.

In the first place, the Interpretative Declaration lauds the Convention as a worthy instrument for the defense against acts of torture when it says: “The Holy See considers the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment a valid and suitable instrument for fighting against acts that constitute a serious offence against the dignity of the human person.” In this sense indeed, the Holy See wished to express the harmony of its own principles and vision of the human person with those ideals and practices set forth in the Convention against Torture.

Second, the Declaration elaborates more precisely the Holy See’s position, in which the teaching of the Catholic Church clearly articulates its opposition to acts of violence and torture.

Third, although the Convention applies to Vatican City State, the Holy See adds a crucial moral voice in its support through its teaching and through the following statement: “In this spirit the Holy See wishes to lend its moral support and collaboration to the international community, so as to contribute to the elimination of recourse to torture, which is inadmissible and inhuman.”

Finally, and not of least importance, the Interpretative Declaration insists that “The Holy See, in becoming a party to the Convention on behalf of the Vatican City State, undertakes to apply it insofar as it is compatible, in practice, with the peculiar nature of that State.” As such, in regard to the application of the Convention and any examination, questions or criticisms, or implementation thereof, the Holy See intends to focus exclusively on Vatican City State, respecting the international sovereignty of this State and the legitimate and specific authority of the Convention and of the Committee competent to examine State reports. Hence, my Delegation judges it useful to present, briefly yet clearly, the essential distinctions between Vatican City State and Holy See, as described in the Initial Report.

The Holy See, as member of the international community, is related but separate and distinct from the territory of Vatican City State, over which it exercises sovereignty. Its international personality has never been confused with the territories over which it has exercised State sovereignty. In its present form, Vatican City State was established in 1929 to more effectively guarantee the spiritual and moral mission of the Holy See. Therefore, colloquial references to the Holy See as the “Vatican” can be misleading. In this sense, the Holy See, as mentioned, globally encourages basic principles and authentic human rights recognised in the CAT, while implementing it within the territory of Vatican City State in harmony with the Interpretative Declaration.

Having presented some of the essential points that should guide and assist our discussion, I now wish to give an overview of the Holy See’s Initial Report.

The Initial Report of the Holy See, submitted to this Committee in December 2012, is divided into four parts: 1) Introduction, 2) General Information, 3) The Convention against Torture, and 4) Affirmation of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment in the teachings and activities of the Holy See. Since much of the content of the

Introduction has been already mentioned, as this provides a necessary guide to understanding the approach and perspective of the Holy See regarding the Convention, I shall proceed to the second part on “General Information”.

Apart from presenting the essential distinctions and relations between the Holy See, Vatican City State and the Catholic Church, I wish to highlight several important elements presented within the section of “General Information”. In particular, the first point of reference is the legal system of Vatican City State, that is autonomous in respect to the legal system of the Catholic Church. In fact, not all canonical norms are relevant for the governance of this territory. In relation to the topic of crime and punishment there are specific laws that criminalise illicit activities and provide for proportionate penalties in Vatican City State. The necessity of a penitentiary system, in this small territory, is minimal, especially considering certain aspects of the Lateran Treaty (Article 22) which afford this territory the option of utilising the judicial assistance of the Italian State if deemed necessary.

As noted in the section on Statistics, the small population of Vatican City State, while receiving roughly 18 million pilgrims and tourists annually, has a relatively tiny number of criminal and penal matters registered. It is also worth mentioning that the message of the various media services of the Holy See, disseminated in the major languages, reaches a truly international audience that makes it arguably one of the most effective moral voices in the world for human rights, including the position against torture and other cruel and inhuman punishments.

Turning now to the third part of the Initial Report, which addresses systematically each of the sixteen substantive articles of the CAT, my Delegation wishes to highlight several significant steps and improvements in Vatican City State to comply with the Convention, even since the consigning of the Initial Report in December 2012. In the first place, there is the modification of Vatican City State legislation with the promulgation of Pope Francis’ Apostolic Letter on July 11, 2013, “On the Jurisdiction of Judicial Authorities of Vatican City State in Criminal Matters”, particularly article 3, of Law N. VIII, which deals specifically with the Crime of Torture. While the implementation of this basic law into the criminal and penal law of Vatican City State in some fashion touches upon different articles of the Convention, it is worth mentioning a few directly. In relation to Article 1 of the Convention, the new Vatican City State legislation integrates, practically verbatim, the definition of torture and cruel and inhuman punishment as supplied therein and, therefore, de facto, fulfills Article 4 of the Convention by its integration into the penal code and the establishment of appropriate penalties for such offences. Paragraph 6 of the same article 3 of the amended Law VIII effectively restates article 15 of the Convention, prohibiting the use of any statement made as a result of torture to be considered as evidence.

Also modified in July 2013, the amendments of Law IX address with greater specificity and clarity the questions of crimes, whether within or outside the territory of the State, of jurisdiction, of extradition, and of terms of sentencing. The procedural and legislative changes seek to implement the principles contained in the Convention against Torture under articles 3, 5, and 8. In particular, one should note the development on the question of extradition and also the denial

thereof on the part of the Holy See if the requesting State practices torture or uses capital punishment.

To summarise, the third part of the Holy See Report must be viewed through the updates offered by the recent modifications to the procedures and legislation of Vatican City State which are a significant improvement from previous legislation and enhance positively the contents of the Initial Report. In fact, my Delegation views this new legislation as a direct result of the Holy See's adherence to the CAT. Therefore, I am sure the Committee will consider these new laws in the ensuing discussion and the eventual Concluding Observations.

The fourth part of the Initial Report, regarding the "Affirmation of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment in the teachings and activities of the Holy See", references the wide-array of documents, proclamations, publications, radio and television programs by which the Holy See actively addresses not only followers of the Catholic Faith, but also the international community and all people of good will.

In this way, the moral voice of the Holy See, while promoting and defending all authentic human rights, reaches the members of the Catholic Church in an attempt to foster an interior conversion of hearts to love God and one's neighbour. This love, in turn, should overflow into good practices at the local level in accordance with the laws of States. It should be stressed, particularly in light of much confusion, that the Holy See has no jurisdiction - as that term is understood also under article 2.1 of the Convention - over every member of the Catholic Church. The Holy See wishes to reiterate that the persons who live in a particular country are under the jurisdiction of the legitimate authorities of that country and are thus subject to the domestic law and the consequences contained therein. State authorities are obligated to protect, and when necessary, prosecute persons under their jurisdiction. The Holy See exercises the same authority upon those who live in Vatican City State in accordance with its laws. Hence, the Holy See, in respecting the principles of autonomy and sovereignty of States, insists that the State authority, which has legitimate competency, act as the responsible agent of justice in regard to crimes and abuses committed by persons under their jurisdiction. My Delegation wishes to emphasise that this includes not only acts of torture and other acts of cruel and inhuman punishments, but also all other acts considered as crimes committed by any individual who, notwithstanding affiliation with a Catholic institution, is subject to a particular State authority. The obligation and responsibility of promoting justice in these cases resides with the competent domestic jurisdiction.

To recapitulate this fourth part of the Report, it might be said that the measures employed by the Holy See to take effective legislative, administrative, judicial or other measures to prevent and to prohibit torture and to address its root causes to avoid future acts in this area are abundant. This manifests the Holy See's desire "to lend its moral support and collaboration to the international community, so as to contribute to the elimination of recourse to torture, which is inadmissible and inhuman."

In line with above considerations, the Holy See assures this Committee of its continued implementation and promotion of the Convention against Torture. An analysis of the Concluding Observations offered in the reviews of other Member States suggests that an evolution in the interpretation of this document may raise some questions on the part of the States Parties. As Party to the CAT, the Holy See wishes, that in the application of the Convention to all appropriate new situations, all should remain within its specific area of concern that the CAT outlines.

My Delegation believes that the Holy See has fulfilled in good faith the obligations assumed under CAT, since it has integrated its values and principles into the legislation of Vatican City State according to the particular and unique nature of this State. In conclusion, allow me to underscore the singular role the Holy See has played, and will continue to play, in advocating on a global level the values and all human rights that safeguard the dignity of every person and which are a necessary component for friendly relations among peoples and peace in the world.

### **Questions from the Committee**

#### Rapporteur GAER:

The CAT review of an initial report is always an important occasion - it is truly historical when we receive an initial report.

This report is more than nine years overdue. We would be grateful to know the reason for the delay.

The Committee's practice when first receiving a report is to address reservations and declarations, and you have addressed this in your submission and in your oral remarks this morning.

For example in 2006 we expressed concerns about Qatar's broad and vague reservation to the Convention which at that time was based on national law and later it was amended. I was wondering if you are aware of the Committee's General Comment 2 through which the Committee has called on other parties to publicly acknowledge that the Convention applies to ALL individuals who are subject to its jurisdiction or its control de jure or de facto. Including public servants abroad.

We said that for example to the UK in 2013. We also called on parties to ensure that the Convention is applicable to all persons under the effective control of their authorities whichever type or where they are located. We used this language in our concluding comments with the USA.

We have clarified that this is the case even when state officials are under the command of another State - we did that with regard to Denmark in 2007.

Your declaration to the Convention Against Torture causes some concerns. In it you indicate your intention to become a party to the Convention on behalf of the Vatican City State (VCS), now this declaration along with the contents of the report suggest you consider the CAT to apply only to the four corners of the VCS and only to certain officials therein.

The first area to discuss is the distinction between VCS and the Holy See (HS). Our concern is the factual situation of the VCS, seems to be one of dependence on the HS in its effective organisation.

For example, you say in paragraph 4b of the [State's report](#) that the HS is subject of international law which exercises its sovereignty over the territory of the VCS. In paragraph 6 of your report you make it clear that VCS is under the sovereignty of the Pope, and moreover the Holy See is the permanent observer at the UN, not the VCS, this is why the HS and not the VCS was eligible to accede to the Convention.

It seems that the VCS is a subdivision of the Holy See, just like the Canton of Geneva in Switzerland. To my knowledge this Committee has never before being faced with an attempt by a State party to ratify a Convention only to a part of itself.

More troubling is the intended purpose of the declaration, it seems to reflect an intention for significant portion of the acts of officials of the HS to be excluded from consideration by this Committee, and this troubles us.

Your interpretation of your obligation under CAT is not in conformity with our practice.

If in fact the VCS is actually a subdivision or an organ of the HS operating under the same sovereign authority (the Pope), the Convention should also apply to the HS officials. This of concern because the purpose of CAT is to ensure that parties take measures to prevent, the commission of violations and to impartially investigate the violations and punish them wherever is in their power to do so. State parties also assume obligations to work with other state parties to ensure perpetrators of torture wherever they are have no safe haven. It seems that placing an obligation only in VCS creates gaps, unless the Convention is assumed to apply to all persons under the control of the Pope, which is the sovereign of the VCS and the HS.

Can you please share with us further views on how the Holy See declaration is consistent with the purpose of the convention and whether all those under the effective control of the pope should be held under the obligations and receive the protections of the Convention?

Art. 1 and 4

*Definition of torture:*

You signal that a preliminary draft of a law that contains the definition of torture is in process bringing the definition of torture into law. I have seen the draft and I understand that the law also calls for 5-10 years of imprisonment for torture and higher penalties in some circumstances, it makes clear that there are no justifications for torture and that statements obtained under torture cannot be used as evidence except against a person accused of torture.

This legal change is a very welcome development. However, the Committee always calls all parties to adhere to the strict wording and meaning of the Convention and definition, and in this regard there are a few places where your amendment may be inconsistent.

First there is a question whether it prohibits an attempt to commit torture and any act by any person which constitutes complicity by participating in torture. If not, I wonder if you have any thoughts of amending the law in that aspect.

Second, does the VCS criminal law prescribe any statutes of limitations for torture?

And more significantly, your definition seems to be restrictive in relation to those who can be held accountable under the law. It covers public officials having judicial police or law enforcement functions, or any analogous role, and individuals who act under their instigation or acquiescence. Yet the Convention does not restrict liability to public officials having judicial, judicial police or law enforcement roles - it actually extends to ANY public official acting in official capacity.

Does it apply to the Roman Curia? To diplomatic personnel of the Holy See? Are you contemplating to change the law so it applies to any public official?

We received information that all complaints of sexual abuse should be reported immediately to the Congregation for the Doctrine of Faith (CDF) who receives and investigates the allegations of tribunals located in the VCS. Individuals who commit violations may be subject to penalties that do not include imprisonment but defrocking. Is the Holy See considering modifying substantive norms to which all clergy must comply to prohibit any conduct that constitutes torture or CIDT (cruel, inhumane or degrading treatment) as in the Convention? And if not, are you considering extending the VCS criminal law prohibition against torture to all persons of which you exercise effective control?

The important information to this Committee is not the Church doctrine, but that you have a system in place to prevent torture, when perpetrated or acquiesced by anyone under the control of the HS (Holy See) and the institutions that operate in the VCS.

In relation to safeguards to persons deprived of their liberty: Whether an accused person may consult a lawyer from the moment of apprehension, consult a doctor on request, contact family



etc. I wonder if any member of the gendarmerie core or the swiss pontifical guards have ever been disciplined for failing to provide persons detained these safeguards.

The Committee also recommends measures outside the context of detention. In [General Comment No 2](#) the Committee reminded of the importance of adapting the concept of monitoring to situations where violence is inflicted privately. I wonder if you are familiar with this obligation?

The Committee's jurisprudence has emphasised due diligence to prevent and prosecute anyone who has committed, or acquiesced to acts of torture, whether they are public officials or private actors. Can you elaborate on measures to ensure effective monitoring of the public officials under the effective control of the HS and if they have been removed of their functions and prosecuted, if not by the HS, by civil authorities when there are credible accusations of having committed or acquiesced to violations of the Convention?

We have received material from NGOs that say that there have been numerous commissions and investigations concerning sexual violence by Catholic clergy, confirming that Catholic bishops either expressed opposition to the notion of reporting claims against priests to civil authorities, or more often that they actively even concealed the fact that priests have been credibly accused of sexual abuse.

You recognised the extent of these concerns and mentioned that the Church has invested massive resources in abuse prevention and response. Could you elaborate on these measures? Statistics? Laws? Compensation?

Can you provide information on the steps taken to monitor the post accusation placements of the clergy who are under investigations of the CDF and to remove offender priests from the ministry in order to prevent them from committing further sexual abuse?

We are concerned about allegations of persons transferred to other dioceses or institutions, or who are able to continue the abusive actions because they remain in contact with minors that are vulnerable and at risk. Can you indicate if you are taking steps to ensure that it is a rule that individuals who are subject to an allegation of abuse, brought to the CDF are suspended from their duties so that they are not in a position to continue to commit abuses or to intimidate witnesses pending the examination of the complaint?

In this regard I will refer to three cases submitted to the Committee by NGOs which I would appreciate your responses:

- Fr. Joseph Jayapal (citizen of India)
- Peter Kramer (citizen of Germany)
- And 37 priests referred to in 2011 by a Philadelphia US Grand Jury who had been previously credibly accused of abuse and allegedly kept in assignments that exposed them to children.

At the review by the Committee on the Rights of the Child in January, when asked whether there were priests accused of abuse were still in ministry, you stated that most of them had been dismissed from priesthood. So my question to you is: Can you provide us with a precise number of such convictions, the measures taken when someone is found guilty and what measures have being taken against those who are not dismissed? Can you elaborate on the efforts CDF has taken to ensure that HS officials refrain from transferring priests who have been credibly accused from sexual abuse out of the jurisdiction in which they were previously operating, making it difficult for suitable authorities to investigate possible criminal actions? In this regard, I refer to the information submitted by NGOs regarding the case of Rev. Enrique Vasquez who moved to Mexico and Honduras while the statute of limitations apparently elapsed. Please comment on that case.

Could you describe efforts to facilitate the investigation by civil authorities of allegations raised with church officials concerning physical and sexual abuse perpetrated by them. We've heard for example from NGOs that in Italy there is a new policy that says that there is no obligation to report the sexual abuse of children to legal authorities outside the Catholic Church, reflecting directives from the CDF. HS officials have objected to efforts of some conferences of bishops to put in place their own guidelines on abuse that would call for mandatory reporting of claims of sexual abuse by priests to the civil authorities.

We were informed that Bishop Gumbleton of Ohio, who publicly supported extending the statute of limitations and enabling victims of past crimes to seek justice, was notified by the Vatican that he had violated canon law and was forced to resign from his post. Could you comment on these allegations?

Can you provide us with information on the number of cases in which church officials voluntarily reported abuse allegations to civil authorities disaggregated by year and location, and how you are encouraging such reporting? Can you tell us how the investigations by the CDF into allegations of abuse will be shared with civil authorities and in this regard I refer to the case of your colleague and his investigation into the alleged sexual misconduct of cardinal Keith O'Brien.

Can you comment on steps made for victims to be able to report without fearing punishment by church officials? There is an information suggesting that a 2001 reform may have dispensed with the oath of silence which had been required for all those involved in sexual abuse investigations. Can you confirm?

Can you provide us with information on the obligation to prevent torture and ill-treatment with regard to training officials on the scope of the Convention?

The Committee has found that laws that criminalise termination of pregnancy in all circumstances can violate the Convention. We found that blank criminalisation of abortion can lead to trauma in certain cases, such as were adolescents are raped, and we have called on

States not to have a total prohibition in places like Bolivia, Peru and Nicaragua and Paraguay. I am wondering if you are aware of the Committee's jurisprudence on this issue, whether there have been efforts to inform HS officials about this aspect of the Committee's work and have you reviewed the information received by the Committee from NGOs about therapeutic abortions to save the lives of the mother? They presented cases of a 9 year-old Brazilian victim of sexual abuse, a 9 year-old Nicaraguan named Rosa, an El Salvadorian named Beatriz. They cite the European Court jurisprudence on the issue. I wonder, how do you respond to these concerns and the concerns of NGOs that a ban in all circumstances puts women's lives and health at risk and can cause women severe pain and suffering?

Art. 3 of CAT

How many asylum requests has the HS received and how many has it granted annually? You have a great policy on migration. Can you give us data on the number of people who have been extradited to Italy or deported, and where they have been deported to?

Art. 4, 5, 6, 7, 8 of CAT

In regard to ensuring punishment:

1- How many cases since 2002 has the HS or VCS punished someone for a violation of the Convention?

2- Are you presently investigating anyone or have you prosecuted anyone under the new crime of torture?

3- Have you investigated or prosecute anyone under the offences of the VCS criminal code that existed before the amendment, such as abuse of power, assault...those kinds of crimes.

4- Can you provide information on the case of Joseph Wesolowski. I understand that you received credible allegation that he had sexually abused teenage boys in the Dominican Republic in 2013 and that he was recalled. I understand that he is being investigated by two separate Vatican tribunals: One for alleged canonical crimes, and one for violations the VCS criminal code. Can you clarify to the Committee whether the amended VCS criminal law provision on torture can apply? If not what are the criminal law provisions are available for this purpose? Does the law on torture apply here? Are you aware of the Committee's jurisprudence and findings that sexual violence can constitute torture or ill-treatment?

Now that the law has been amended, do you anticipate considering prosecuting other church officials perpetrating or acquiescing to similar violations of the Convention?

Can you share measures that you are taking to comply with art. 8 of the Convention? Archbishop Wesolowski is being investigated also by Dominican and Polish authorities. I don't see that a formal extradition request has been made. I understand that the prosecutor from Poland was told by Vatican officials that Wesolowski is a citizen of VCS and the Vatican doesn't extradite its own citizens or the HS ambassador who enjoys full diplomatic immunity. Can you comment on this case? Or on the same issue?

*(Wesolowski is a citizen of the VCS, present in the territory of the VCS, and currently being investigated for sexual abuse in the Dominican Republic and Poland; the Holy See is [refusing to extradite](#) him to his native Poland to face charges.)*

Rapporteur TUGUSHI

I will try to concentrate on arts. 10 to 16 of the Convention.

*(Reads parts of General Comment 2.)*

Are there any steps taken by the HS that all priests, religious personnel and individuals working under the authority of the HS are made aware of their reporting obligations?

Which are the efforts made to teach children the necessary skills to protect themselves?

Does the training courses for medical personnel and gendarmerie mentioned in your report focus also on the Convention, and will public officials receive full information on the requirements and standards enshrined in the Convention?

In relation to Art. 12 of CAT

We have being informed that the Vatican Commission advising the Pope on sexual abuse cases will develop clear and effective protocols to protect children from pedophile priests, including procedures to hold church official accountable if they neglect to act in cases of abuse. Recommendations will also include educational measures on how to prevent child abuse.

While this could do a lot of good, it would not be a substitute for an entity that carries our investigation under canon law or VCS criminal law. The commission may help to begin to change the climate of impunity but cannot substitute an effective investigative system.

We would appreciate being provided more information about the commission.

- How do you ensure that the CDF investigations are carried out impartially? How many complaints since 2002 have been received and how many resulted in investigations? And how many resulted in wrong-doing?

- Statistics on the number of cases of people accused of conducts that could violate CAT under VCS criminal code?
- Are there any mechanisms to ensure that victims and witnesses are protected when presenting cases to the CDF?
- Have you discipline any official who allegedly intimidated witnesses or whistleblowers?

Are there any steps taken to ensure an effective and independent monitoring mechanisms?

In relation to Mr. Paulo Gabriel (one detainee in the VCS): According to the information provided, he was arrested in a small cell, with little light. You mentioned that an investigation has been opened, can you update us?

Concerning the cells in the VCS: Can you provide statistics on the number of people held in those two cells in the course of 2013? What is the size of those cells, do the cells have access to natural light and ventilation? What is the maximum length of detention on those cells in general?

You should also be aware of [General Comment No. 3](#). It explains art.14 and talks about the Committee's understanding of redress.

Have there been any measures taken to ensure that victims have access to rehabilitation services and to ensure that victims obtain full redress? The Committee considers that compensation should not be unduly delayed, and that civil liability should be available independently of criminal liability.

Despite the large data received on compensation to victims, we received numerous allegations of intimidation of victims to prevent them from reaching court, or inadequate compensations and shifting finances between dioceses to claim bankruptcy.

Obtaining redress has been a problem for several victims where investigations have been problematic. Are there any steps taken to ensure adequate redress to all victims in line with art. 14 of the Convention and General Comment No. 3?

In relation to abortion: What can be done to prevent such horrendous maternal mortality in different places of the world?

[Committee member Mr. DOMAH](#)

Considering the special nature of the HS in international law. It is unlike any other nation state and considering the fact that there are undesirable occurrences which continue to be a subject matter of controversy between the HS in the past, at the present, and likely to occur unless measures are taken : Is the HS seriously considering establishing a permanent structure to receive complaints, with clear terms of reference, with regard to the future, especially I am talking about allegations of rape and child sexual abuse, which have not stopped...with regard to the future into the chemistry that creates the conditions for the continuous occurrence of such undesirable occurrences, in a body that upholds the physical, material and spiritual integrity of the human person, the manner in which such recurrence may be prevented. A permanent structure. With regard to the past, whether serious measures being taken by the HS to address all the issues resulting from the undesirable occurrences, and if they have been taken, whether they have been adequate and effective. And with regard to the the present, has a system of reconciliation, rehabilitation being set up, so the HS redeems its image vis-a-vis itself, the World at large and the victims of the abuses? With regard to the sanctions, whether the HS was given considerations regarding the sanctions envisaged should be proportional to the gravity of violations.

Committee member Mr. GAYE

How many nationals of the VCS have been involved in civil or criminal matters? Could you give us concrete examples of people who have been prosecuted?

Could you tell us if the victims of a crime can press charges directly to the examining magistrate without going through the prosecutor? If so, have they ever received complaints for torture and ill-treatment?

You mentioned criminal sanctions only for torture and not for ill-treatment. Is it your intention to make this (ill-treatment) also a criminal offense and punish it?

Madame Vice-Chairperson BELMIR

Sexual abuse is considered a “delict against the moral” in the HS. That is not the same qualification as the qualification of torture. So the treatment of these offences has lead to disciplinary measures, as a result in which many cases have not been described as torture, and the accused have not being punished according with the Convention.

The Sisters of Mary Magdalene where women were treated as slaves: The Committee on the Rights of the Child told the HS how to rectify the situation. I don't know how much you have done to find a solution to these really dramatic cases that occurred in Ireland.

The HS says it doesn't have jurisdiction, but it has a criminal code and a code of criminal procedure. But we do not know to what extend a person who has committed a crime, to what

extend that person can be prosecuted before the authorities of the VCS or before the State of Italy. Could you clarify who does what in criminal matters? Who has jurisdiction in the end of the day?

As for the children who are born as a result of rape and sexual abuse - children who do not have an identity. How are they cared for, how do they cope?

Committee member ZHANG

My concern is par. 7d of the [State's report](#) that mentions international law as a source of law. It is been understood that canon law remains a primary source of law.

Could you elaborate on this paragraph. What happens if there is a conflict between international law and national law? Which prevails?

Chairperson Grossman

This is an historic moment not only because it is the initial report by the State, but because human rights wouldn't exist without Christianity.

My question concerns training and different ways to fulfill the obligation of art.10. I wonder if you would also include the issue of death penalty and extradition in the training?

Extra-time for more questions from Rapporteur GAER

*Arts. 8 and 9 of CAT about cooperation and immunity*

How do you ensure that the criminal prohibition covers everyone for whom the Holy See has jurisdiction?

We received information regarding the effect of the concordat between the HS and Austria dated 5 July 1933 that is still in effect. The Committee received reports that when Austrian police receive claims of abuse by members of the Catholic clergy, they (the police) interprets the concordat to prohibit them from questioning or indicting the alleged perpetrator unless he is first defrocked. The dioceses must first conduct its own investigation to the matter. We were told this doesn't happen and that the lack of investigations and defrocking eventually prevents prosecution.

Obviously this would be an object of serious concern in any circumstance, but given the information we received about the Seminary of Saint Paulent, I am wondering if you could clarify whether what I have just describe is your interpretation of the Austrian Concordat.

Are you considering amending this and other concordats to make it clear that priests don't have immunity from prosecution as a result of their status with the Catholic church?

Have there been criminal investigations in Austria by Holy See authorities? Have these investigations been carried out pursuant to the VCS criminal law, by the CDF or both?

Similarly I understand that through a bilateral agreement between Italy and the HS, stipulates that church officials do not have to provide any information to state judges or authorities. I wonder if this is correct, because if so this could impede compliance with the Convention. If so, are you considering modifying the terms of the agreement?

I mentioned that I wanted to talk about art. 9.

Are there any other authorities of the HS that have provided assistance to foreign institutions related to torture? For example in July 2005 Carla del Ponte, prosecutor of the ICTY, travelled to Rome to request that Vatican officials provide her with information regarding her suspicion that an alleged war criminal was hiding in a Franciscan monastery in Croatia under Vatican protection. The VCS answered that had no obligation to help the UN hunt criminals. What is the position of the Holy See on this and other cases?

If the CDF is informed of every allegation of sexual abuse against minors, and if the CDF is responsible for carrying out investigations, aren't there any cases where other bodies have supplied evidence to states?

Madame Belmir brought up the cases of the Magdalen Laundries. This Committee has been concerned whether there has been a proper investigation. What has come up is the issue of cooperation with national authorities seeking information. I understand that during the State's review with the Committee on the Rights of the Child there was a discussion on reparation. Does the HS has any information about these orders and the roles? Does it have capacity to provide reparation?

### **Holy See final remarks**

Need to reach an agreement on jurisdiction.

Stabilisation and decline of cases of pedophilia- the measures taken by the Church are bringing positive results.

Pedophilia is a world problem- millions of cases every year, mostly in families. Our concern is to prevent and to protect the children. The Church has to do its own "cleaning of the house", and it has been doing so for the past 10 years.



## Day 2 - 6 May 2014

### Holy See replies to Committee questions from yesterday (see notes above)

Cases referred to Congregation for the Doctrine of the Faith (CDF) of sexual abuse of minors 2004-2013:

713 in 2004  
184 in 2005  
218 in 2006  
216 in 2007  
191 in 2008  
196 in 2009  
464 in 2010  
402 in 2011  
418 in 2012  
401 in 2013

**Total: 3420 cases** – most of these cases are from 1950s-1980s

Number of clerics dismissed from ministry directly by Holy See 2004-2013:

89 in 2004  
84 in 2005  
114 in 2006  
84 in 2007  
68 in 2008  
69 in 2009  
84 in 2010  
143 in 2011  
70 in 2012  
43 in 2013

**Total: 848 individuals**

Other disciplinary measures imposed on clerics 2004-2013:

641 in 2004  
100 in 2005  
104 in 2006  
132 in 2007  
123 in 2008  
127 in 2009  
380 in 2010  
259 in 2011  
348 in 2012  
358 in 2013

**Total: 2572 individuals**

## Questions from the Committee

### Rapporteur GAER

You show us that as a party to the Convention, you have a system in place to prohibit torture and ill treatment as defined by the Convention, when it is perpetrated or acquiesced to by anyone under the effective control of the officials of the Holy See and the institutions that operate in the Vatican City State.

Sexual abuse is an issue that must be addressed fully.

How far down does effective control extend? Every case has its own set of facts whether something amounts to torture or CIDT (cruel, inhuman or degrading treatment). The officials of the Holy See do exercise control over a significant range of conduct that takes place outside of the VCS. It is within the Holy See's power to require all credible allegations of abuse to be brought to the attention of officials, require the transfer or prevent the transfer of perpetrators, require those who have committed abuse outside the VCS, if they are citizens of the VCS, to be investigated and criminally prosecuted for torture or extradited. The VCS and Holy See officials have due diligence obligations under the Convention.

*(The Rapporteur reminded the Holy See of its extraterritorial obligations.)*

Of the 848 individuals, how many cases did the Holy See, VCS or local authorities refer information about these cases to civil authorities, either voluntarily or on request? How many cases did you NOT provide information to civil authorities?

Could the 2572 cases of priests (who received other disciplinary measures) continue working as priests? And how many of those were referred to civil authorities?

What is the role of officials of the Holy See or VCS in monitoring priests once transferred?

Regarding whether sexual abuse of minors or adults constitutes torture: The Committee's long-standing jurisprudence on this is consistent with international and regional courts - rape and sexual violence constitutes torture. Gaer referred to jurisprudence of the Inter-American Commission, IACHR, ECtHR, ICTY and ICTR.

Even if torture or ill-treatment is committed outside of the VCS, and outside of the effective control of the Holy See, CAT imposes obligations to prosecute and extradite any perpetrator where they are nationals of the State party and become present on their territory - Does the Holy See recognise its liability for extraterritorial offences in the *Wesolowski* case? (*Wesolowski is a citizen of the VCS, present in the territory of the VCS, and currently being investigated for sexual abuse in the Dominican Republic and Poland; the Holy See is [refusing to extradite](#) him to his native Poland to face charges.*)

The other disciplinary measures: What was responsible for the big jump from 127 to 380 cases (from 2009 to 2010)? Are there any geographical differences?

Regarding judicial cooperation: Australian case where a request for documents by the New South Wales (state of Australia) Commission on child abuse was denied by the Holy See.

Not only have we heard that there are priests not cooperating with specific requests for cooperation, Holy See officials are also claiming diplomatic immunity in these cases - e.g. Murphy inquiry in Ireland, NSW inquiry in Australia. Please provide details of cases where the Holy See is cooperating and is NOT cooperating with civil authorities, and the reasons for the different treatment.

Regarding due diligence, the Holy See has provided some information on how local authorities have provided compensation. How does the Holy See fulfill its own due diligence requirements in this regard?

Gaer also raised the Peter Kramer case, the Philadelphia case, and compensation in the Magdalene's case. Will the Holy See do anything to encourage orders to cooperate with authorities?

Gaer referred to the Megan Petersen case and monitoring post-transfer of the cleric. How often does this happen? What kind of monitoring takes place? What is the follow up once individuals have been given disciplinary or other penalties?

Of the 3420 cases referred to the CDF, were they known to domestic authorities in these cases? How many were known?

#### Rapporteur TUGUSHI

The Committee asked questions yesterday (day 1) about the new commission on sexual abuse, methodology and functions.

Will the commission address issue of cases from the past (before the commission was established) or will it work to prevent possible future cases? Will it work to provide redress?

Ineffectiveness of investigation at local level and Church's refusal to cooperate with authorities:

- Didn't disclose information, priest transfers not referred to authorities, and issues with reporting;
- Will new protocols make sure reporting is compulsory address issues to combat climate of impunity?

Many people didn't receive redress, especially in countries where investigation was problematic. Are there any plans to rectify these problems and make sure this process starts moving? Will the Commission have guidelines, protocols, directives for others to make sure compensation is paid and redress under article 14 of the Convention obtainable by victims?

Regarding particular cases, the Holy See publicly humiliated victims of sexual violence (and their families) who sought abortions following the sexual abuse perpetrated by priests in Brazil and Nicaragua - such humiliation is a form of ill-treatment. Do such actions represent typical behaviour of the Holy See? What measures are taken to prevent such humiliation?

Can there be problems when cases are referred back to local dioceses, i.e. where the complaint originated?

Rapporteur MODVIG

While compensation paid by the Church in total is substantial, how much compensation and treatment has been provided to each victim of sexual abuse on average? Has any assessment been made as to whether resources were sufficient to provide redress to victims?

Rapporteur ZHANG

There is a potential conflict between international and domestic law. It appears canon law remains primary source of law. Please elaborate on this.

Madame BELMIR

If the events take place in another country, would you accept that the definition of sexual abuse is based on what this Committee says, i.e. that these acts constitute a crime and not an “offence against public morals”?

Chair GROSSMAN

What are the consequences when someone has committed a crime against humanity? The Convention does cover sexual abuse, rape and domestic violence. See various State reviews as examples.

### **Holy See’s response**

All agents of the Holy See are required to abide by a law which amended the Penal Code of the Holy See last year - same even if committed outside the territory.

“Crime [sic] of sexual abuse of children can be considered torture”, as found in the Committee Against Torture’s General Comment No. 2.

Regarding Vatican officials having power outside VCS, one thing is to have jurisdiction, to be able to exercise jurisdiction, and one thing is to provide for instructions or to encourage a certain type of activity. If officials of one state like the Vatican were to be able to exercise jurisdiction in the sense the Committee refers to in another state, we would create some confusion and the State where jurisdiction is exercised would not accept such a type of activity. So returning to legal

capacity to impose decisions or to create consequences, and to leave up to the free initiative of somebody to carry out recommendation or instruction:

- Re Wesolowski: Case will be prosecuted in Vatican itself because as a citizen of VCS, he falls directly and immediately under provisions of law, including law regarding torture.
- Re no. of clerics expelled from the active ministry: The number is 848. They no longer have a formal relationship with the bishop of the diocese where they were active or their former religious superior. They are lay people with their own convictions and responsibilities. These men are sometimes also punished by civil authorities. We have a “double line of punishment” - one is canonical internal church procedures - expulsion from ministry or some other form of discipline or measures. I don't know how many of these priests were directly referred to civil authorities, but I understand that many most of them have also received civil penalties from the court system of, in this case, the United States.
- Re the priests who were not directly expelled from the ministry but who have been penalised in some other form by being asked to live a private life etc. The condition is there is no more contact with children - this is a clear provision that is imposed on such persons.
- Re transfers of abusing priests: “We must not be fossilised in the past” - practice of decades ago - related to culture of the time. Such practice offered the occasion for abuses of minors or repetition of the same crimes. There will certainly be no policy implemented by diocese where a priest is simply shifted around to avoid prosecution or to hide the misdemeanor or the crime he has committed. “We have to appreciate the evolution of the culture” and the enormous amount of work done in the last 10 years by the Catholic Church and hopefully other institutions will follow.
- Re article 22 of Lateran Treaty for those committed who have crimes outside of VCS: We apply the law that was enacted last year regarding agents working in the VCS.
- Re the number of cases referred by ecclesiastical authorities to civil authorities: I don't have data available at this moment. But I know the policy is that when there is a credible accusation against a cleric or misdemeanour or crime against a minor, it should be reported to the civil authorities as well, so that the procedure that follows will be both canonical and legal within the State where this person is a citizen.
- Re place of detention in Vatican: Three rooms set aside - rarely used - since the treaty of 1929, it was used for the first time in 2012.
- Re cases of abortion: Not Holy See officials; local bishops. These are two exceptional cases and in general we need to take into account that the church tries to be sensitive to the problems of women and to respect and support women both in their physical needs, especially in pregnancy. Nicaragua and Brazil cases are exceptional and should be judged as such.

- Re if new Commission is going to deal with past cases, not just future cases: The by-laws and regulations of the Commission are in the making and they are not completed yet. From what has been said, they'll look at all cases. The purpose of the establishment of this Commission is to do anything possible as far as the Church is concerned to prevent the repetition of abuses, especially sexual abuse of minors.
- Re compensation: I don't know the average compensation payment received by victims - I don't have the data. The settlements are done in court or outside court between lawyers. There is a serious effort to compensate victims in such a way that these persons are able to lead a normal life. There is also a serious effort to be of service in terms of psychological assistance or to try to help to find a decent job, or some other actions of this type.
- Re international law vs domestic law: Canon 3 of Code of Canon Law preferences international law over domestic law.
- Re whether sexual abuse will be treated as a crime or an "offence against public morals": It will be the courts in the place where the case is adjudicated that will determine if it is a crime or an "offence". As far as Holy See is concerned, it will not interfere with whatever the court decides. We accept whatever punishment the court decides.

There is an "evolution of culture" and an evolution of the way of responding to these cases.

- Re impunity in the Church regarding sexual abuse and allegations that investigations were not adequate and upheld climate of impunity: A look around the world at what the Catholic Church is doing "shows that there is no climate of impunity but there is a total commitment to clean the house, to change and to above all work and enact measures that prevent the repetition of abuse".

## Further questions from the Committee

### Rapporteur GAER

Enquired again about judicial cooperation, numbers of cases, cited Australian and Ireland cases, and asked where there was cooperation. The Lateran Treaty would not prevent such cooperation.

Asked again for information on the jump in numbers of other disciplinary measures in 2009-2010.

Asked again about the Kramer case, Philadelphia case, Magdalene's case - what was the Church's role in encouraging compensation?

Asked about monitoring of priests: While the CDF is examining a complaint and it's pending, what kind of measures are taken, and what role does the Holy See have in monitoring those cases?

Asked about compensation: How much was coming from local sources and how much was the Holy See itself providing or considering providing, or able to provide, in compensation in such cases.

### **Holy See - further response**

Regarding the Australian case: The reason why the nuncio didn't respond is because the request was not presented in the right way - question of procedure. It's not a refusal to provide any information, it was the way that it was done which was not according to procedure.

Regarding jump in numbers of clerics punished but not defrocked: This is a judicial decision taken by either the local bishop in court or by the CDF. This does not mean that the person gets away from the crime they committed - he is punished, and if old, he is put in a place that he does not have contact with any victims or children. This applies to all these people who have been punished because of misbehaviour - they are all taken out of the context where they can reach children.

Regarding Magdalene's: We have answered the Committee on the Rights of the Child already; the religious orders of nuns have contributed \$240 million to the Irish government to take care of the victims. The government mishandled the money and asked for more, and the orders refused to provide more money because it was not being used properly.

Regarding monitoring of priests: If a serious allegation of sexual misbehaviour/abuse and the case is going to the CDF, or to the tribunal of the diocese, the priest is immediately suspended so that there is no possibility in case the priest is guilty to do more damage. Many cases show that the priest is not guilty.

"The issue of sexual abuse of children, which is a worldwide plague and scourge, has been addressed in the last 10 years by the church in a systematic, constructive, effective way..." This engagement by the Holy See - concerning the VCS on one side, and the spiritual link with local churches on the other - and by local churches in their work locally, is worth looking at as a good practice that other institutions and States can copy.

- ENDS -

**About CRIN** ([www.crin.org](http://www.crin.org))

**Our goal:** A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

**Our organisation:** CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

**Our work is based on five core values:**

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

**The World Organisation Against Torture (OMCT)**, created in 1985 and based in Geneva, is today the main coalition of NGOs fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 311 affiliated organisations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.