

Submission for the Periodic Review of the Holy See

Sexual Abuse of Children by Catholic Clerics as a Form of Torture or Cruel, Inhuman and Degrading Treatment and Punishment

Joint Submission by
the World Organization Against Torture (OMCT)
and the Child Rights International Network (CRIN)

to the United Nations Committee Against Torture

52nd Session

Executive Summary:

This submission describes the accountability of the Holy See for the worldwide sexual abuse scandal of children by Catholic clerics. The initial report by the Holy See to the Committee Against Torture does not address this pressing issue. In light of the illegality of rape as a form of torture under international human rights law, we hope the Committee Against Torture will include the issue of sexual abuse of children in its review of the responsibilities of Holy See as a state party to the Convention. This should not exclude the responsibility of other states where they may have the possibility to exercise their civilian jurisdiction over sexual abuses of children.

In particular, we hope that the Committee will recommend to the Holy See, in the concluding observations on the initial state party report, to:

- disclose all information on cases of sexual abuse of children held by the Holy See to the public in order to ensure transparency of cases of sexual abuse of children;
- report all abusive clerics to civil law enforcement bodies in order for individual clerics to be held fully accountable for sexual abuse committed by them;
- introduce a compensation and reparation scheme for victims in compliance with article 14 CAT.

I. Introduction

1. The Submitters

The Child Rights International Network (CRIN) is a global children's rights advocacy network. Established in 1995, we press for rights - not charity - and campaign for a genuine shift in how governments and societies view and treat children. We are based in the UK, but link to nearly 3,000 organisations that between them work on children's rights in every country in the world and rely on our publications, research and information sharing. CRIN envisions a world in which every child enjoys all their human rights guaranteed by the United Nations, regional organisations and national governments.

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.

2. The issue

Through this submission, we would like to draw the Committee's attention to the issue of sexual abuse of children committed worldwide by Catholic clergy as a form of torture or cruel, inhuman and degrading treatment or punishment and the Holy See's overarching responsibility for these cases. We believe that sexual abuse of children falls within the Committee's remit as it constitutes a breach of the State party's obligations under Articles 2 and 16 of the Convention Against Torture. The focus of this submission is therefore on the jurisdiction of the State Party over the whole of the Catholic Church, the severe legislative shortcomings of the State party on sexual abuse of children by clergy and the secrecy surrounding the State party's attempts at handling the issue.

We herewith submit additional information on this pressing issue which we hope will be considered during the upcoming review of the Holy See's initial report by the Committee during its 52nd session. We hope that this will enable the Committee to conduct a more complete analysis of the State Party's implementation of the Convention since its ratification in 2002.

We would also like to draw your attention to CRIN's January 2014 report on this issue entitled 'Child sexual abuse and the Holy See: The need for justice, accountability and reform' for the Committee's consideration.¹ The report provides an overview of the factual and legal background of the child sexual abuse scandal, focusing especially on legal challenges brought in various countries for sexual abuse of minors against the Vatican itself, Catholic Church institutions and individual priests. It will be referred to throughout this submission as it gives details of many cases of sexual abuse of children by Catholic clerics as well as the legal basis of the Holy See's accountability. We would

¹ CRIN, *Child sexual abuse and the Holy See: The need for justice, accountability and reform*, February 2014, available at: http://www.crin.org/sites/default/files/CRIN_Holy%20See%20Report_WEB_0.pdf.

appreciate if a copy of this submission could be distributed to all members of the Committee. Our respective teams will be at the Committee's disposal should any further information be required.

II. Sexual abuse by Catholic clergy as a form of torture or cruel, inhuman and degrading treatment or punishment

1. The child sexual abuse scandal in the Catholic Church

Victims all around the world have reported cases of child sexual abuse by Catholic clerics. From Ireland to Kenya, from Colombia to Poland, from the United States to the Philippines - it is hard to find a country which has a significant Catholic population and where there have not been serious allegations of child sexual abuse by Catholic clerics. Nonetheless, the Holy See's initial report to the Committee does not address the issue of sexual abuse of children by Catholic clerics at all.²

The Holy See has for a long time shown a serious lack of transparency and accountability with regard to the child sexual abuse scandal by its own clergy. Please see CRIN's attached report for details and a vast amount of concrete examples of abuse cases. The report also highlights the Holy See's contradictory responses to child sexual abuse by outlining past events when it addressed the issue, but failed to respond in a manner which would ensure the welfare of the victims and which would have opened up internal processes to review by civil judicial systems. The report documents that where allegations of sexual abuse of children were raised, the priest involved in the allegations were often simply transferred to another parish or sent on missionary missions abroad where they remained in close and unscrutinised contact with children and where their past was not known.³

Today, the abuse crisis is still raging in many countries. Even though the Holy See has started to show increasing recognition of the seriousness and scale of clerical sexual abuse of children, this has not as yet resulted in sufficiently clear action to ensure that allegations of child abuse are reported to the relevant authorities and investigated by the competent civil authorities. In the light of its non-transparent remit, the Commission established in December 2013 by the Holy See cannot serve to reach this aim. Impunity of abusive priests still prevails across the globe. Even now - years into the abuse scandal - the Holy See's reforms of its laws and policies remain vague and do not address clerics worldwide. There are no guidelines dealing directly with ensuring the welfare and reparation of the victim and many serious cases are still dealt with by the Congregation of the Doctrine of the Faith and not reported automatically to civil judicial authorities.

2. Sexual abuse of children as torture or cruel, inhuman and degrading treatment or punishment

We believe that sexual abuse of children, as committed by many Catholic clerics worldwide, falls under the prohibition of torture or under cruel, inhuman or degrading treatment or punishment (CID) and should therefore form

² The Holy See, *Initial reports of States parties due in 2003 to the UN Committee Against Torture*, 8 March 2013, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fVAT%2f1&Lang=en.

³ CRIN, pages 30-40.

part of the Committee’s review of the Holy See. Yet, the initial report by the Holy See to the Committee did not address the child abuse scandal at all.

According to Article 2 CAT, each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture and an order from a superior officer or a public authority may not be invoked as a justification of torture. According to Article 16 CAT, parties to the Convention are obliged to prevent other acts of cruel, inhuman or degrading treatment or punishment, and to investigate any allegation of such treatment within their jurisdiction, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The issue of child sexual abuse can be summarised under both of the pivotal conditions posed by Articles 2 and 16 and therefore applies to the Committee’s remit: it fulfills the elements of torture or CID treatment and it falls within the Holy See’s jurisdiction.

The Committee has stated that it does not consider necessary to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.⁴ We therefore do not draw a clear distinction if the cases of sexual abuse described in this submission fall under torture and CID, but argue that child sexual abuse generally falls under the remit of the Convention.

Rape has been widely accepted as a common form of torture or CID treatment by many international human rights bodies for as long as state responsibility can be established.⁵ While this has been applied especially to times of war, we believe that the same must be applied to child sexual abuse by Catholic clergy due to the widespread and long-term nature of the abuse. In this regard, the former Special Rapporteur on Torture, Manfred Nowak, stated that “it is widely recognized, including by former Special Rapporteurs on torture and by regional jurisprudence, that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials”.⁶ Similarly, the European Court of Human Rights and the International Criminal Tribunal for Rwanda have held that in certain circumstances rape can amount to torture if an element of public involvement is fulfilled.⁷ The following acts have been defined as amounting to rape: rape with foreign bodies, sexual humiliation, forced fellatio, sexual slavery, stripped naked and irritating elements placed in various body orifices, including genitals.⁸

Many cases of sexual abuse of children by clerics that have been reported therefore fulfill the same substantive criteria as have long been established for rape to amount to torture. Even though the Holy See was aware of the abuse crisis in its ranks of clerics for many years, it established a practice of secrecy which all clerics had to abide to. A confidential order under the title of “On the Manner of Proceeding in Cases of the Crime of Solicitation” was

⁴ OMCT, *Interpretation of the Definition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment in the Light of European and International Case Law: the Need to Preserve Legal and Jurisprudential Evolutions and Acquis*, 2004, available at: <http://www.refworld.org/publisher,OMCT,THEMREPORT,,46c190b20,0.html>.

⁵ OHCHR, *Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies*, pages 18-20, available at: http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf.

⁶ Ibid., page 18.

⁷ Ibid., pages 18-19.

⁸ Ibid., page 20.

issued by the Holy Office in 1962, bearing the seal of Pope John XXIII.⁹ The letter, addressed to senior clerics worldwide, codified procedures to be followed in cases where clerics have been accused of sexual abuse. The document contains instructions to conceal cases of sexual abuse and threatens those who would speak out about the inquiries with excommunication. Section 11 stipulates a “code of silence”: “more than usual care and concern must be shown that they be treated with the utmost confidentiality, and that, once decided and the decision executed, they be covered by permanent silence.” The code discouraged the disclosure of information to the civil authorities. It was published in Latin only and was to be kept absolutely confidential. According to the above criteria for torture, this shows that the Holy See has knowingly at the least acquiesced to the rape of many of children, therefore fulfilling the element of necessary public involvement.

3. The Holy See’s jurisdiction over the Catholic Church

The Convention Against Torture requires states to take effective measures to prevent torture within their jurisdiction. It has been established by UN human rights bodies that the Holy See does effectively exercise jurisdiction over the entire Catholic Church and clergy worldwide. The State party must therefore accept liability for torture or CID treatment or punishment by all Catholic clergy attributed to the Church. It is thus liable for cases of sexual abuse of children committed by clerics.

In its concluding observations on the second periodic report of the Holy See in February 2014, the CRC emphasised:

“The Committee is aware of the dual nature of the Holy See’s ratification of the Convention on the Rights of the Child as the Government of the Vatican City State and also as a sovereign subject of international law having an original, non-derived legal personality independent of any territorial authority or jurisdiction. While fully aware that bishops and major superiors of religious institutes do not act as representatives or delegates of the Roman Pontiff, the Committee notes that subordinates in Catholic religious orders are bound by obedience to the Pope, in accordance with Canons 331 and 590 of the Code of canon Law. The Committee therefore reminds the Holy See that in ratifying the Convention, it made a commitment to implement it not only within the territory of Vatican City State, but also, as the supreme power of the Catholic Church, worldwide through individuals and institutions under its authority.”¹⁰

Furthermore, the Holy See is accountable under CAT for the acts of any independent entities under the supervision of the Church, such as school teachers. The Committee highlighted the due diligence necessity of State party liability in paragraph 15 of its 2nd General Comment.¹¹ Here, the Committee made clear what is meant by the scope of State obligations and responsibility: where State authorities or others acting in official capacity or under colour of

⁹ The Holy See, *On the Manner of Proceeding with in Cases of Solicitation*, 1962, available at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/28_09_06_Crimen_english.pdf.

¹⁰ Committee on the Rights of the Child, *Concluding Observations on the second periodic report of the Holy See*, 25 February 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fVAT%2fCO%2f2&Lang=en.

¹¹ Committee Against Torture, *General Comment No. 2: Implementation of Article 2 by State parties*, 24 January 2008, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskvE%2bTuw1mw%2fKU18dCyrYrZhDDP8yaSRi%2fv43pYTgmQ5n7dAGFdDalFzYTJnWNYOXxeLRAIVgbwCsm2ZXH%2bcD%2b%2f6IT0pc7BkgqlATQUZPVhi>.

law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with this Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. The Holy See is therefore responsible not only for acts committed by its own clergy, but also by independent entities under their supervision.

The Holy See is not synonymous with the Vatican City State. While the Holy See will have the greatest obligations with regards to the territory over which it maintains sovereignty, it has obligations with regards to its actions wherever they occur. The Convention applies to State parties, not specifically to the territory of states. The Holy See as an entity within the international community has agreed to abide by and implement the Convention wherever it acts. It can thus have obligations that extend to actions beyond the borders of the Vatican territories. As the Holy See acknowledged in its response to the Committee for the Rights of the Child's (CRC) list of issues in December 2013, "the Holy See is a sovereign subject of international law having an original, non-derived legal personality independent of any territorial authority or jurisdiction."

The Holy See, through Canon Law, sets standards for members of the Church and can establish a code of conduct. It would be within the powers of the State party to require its members to report abuse and so it is within the scope of the Committee's review. With regards to allegations that priests responsible for the sexual abuse of children have been moved between parishes across borders, this could only come within the ambit of the Holy See as it is a matter of the internal organisational activities of the Catholic Church.

It is true that the Holy See cannot be held responsible for the laws of other states or for prosecuting criminal offences in those States, but with regards to how clerics of the Church behave, it is in a position to discipline members of the Church and to co-operate with national law enforcement mechanisms. It is in our view a central recommendation that the Holy See shall transmit any case of abuse by clerics of which it has knowledge ex officio just like any other state authority to the competent national authorities to conduct independent investigations.

4. Recommendations to the Holy See by human rights treaty bodies

The review of the Holy See by the UN Committee on the Rights of Child on 16 January 2013 was almost entirely concerned with the child sexual abuse scandal.¹² The Holy See expressed its sympathy for the many victims of sexual abuse, but did not acknowledge any liability for the hundreds of abuse cases which have been reported. The CRC then released a strong list of recommendations to the Holy See in its concluding observations on 25 February 2014.¹³

One of the main areas of concern for the CRC was legislative reform. Under section IV.A. of the concluding observations, the CRC welcomed the Holy See's approach to ensuring that the legislation of the Vatican City State complies with the Convention, but expressed regret at the fact that the same approach has not been followed in

¹² For press coverage of the session, see inter alia BBC News Europe, *UN panel confronts Vatican on child sexual abuse by clergy*, 16 January 2014, available at: <http://www.bbc.co.uk/news/world-europe-25748952>.

¹³ Committee on the Rights of the Child, *Concluding Observations on the second periodic report of the Holy See*, 25 February 2014, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fVAT%2fCO%2f2&Lang=en.

relation to its own internal laws, including Canon Law. The Committee was concerned that some of the provisions of the Canon Law are not in conformity with the provisions of the CRC, in particular those relating to children's rights to be protected against discrimination, violence and all forms of sexual exploitation and sexual abuse. Therefore, the Committee recommended that the Holy See undertake a comprehensive review of its normative framework, in particular Canon Law, with a view to ensuring its full compliance with the Convention.¹⁴

On the issue of sexual exploitation and abuse, under section IV.D. of the concluding observations, the CRC expressed deep concern about child sexual abuse committed by members of the Catholic Church operating under the authority of the Holy See, whereby clerics have been involved in the sexual abuse of tens of thousands of children worldwide.¹⁵ The Committee expressed grave concern that the Holy See has not acknowledged the extent of the crimes committed, nor taken the necessary measures to address cases of child sexual abuse and to protect children, and has adopted policies and practices which have enabled the continuation of sexual abuse by clerics and impunity for the perpetrators. The Committee was particularly concerned that:

- Well-known child sexual abusers have been transferred from parish to parish or to other countries in an attempt by the Church to cover-up such crimes. This practice has been documented by numerous national commissions of inquiry. The practice of offenders' mobility has allowed many priests to remain in contact with children and to continue to abuse them, and places children in many countries at high risk of sexual abuse by clerics. Dozens of child sexual offenders are reported to be still in contact with children;
- Although the Holy See established its full jurisdiction over child sexual abuse cases by clerics in 1962, and placed them under the exclusive competence of the Congregation for the Doctrine of the Faith in 2001, it has declined to provide the Committee with data on all cases of child sexual abuse brought to its attention over the reporting period, and the outcome of the internal procedure in these cases;
- In cases where child sexual abuse has been addressed by the Holy See, it has been treated as a grave delict against the moral through confidential proceedings providing for disciplinary measures which have allowed the vast majority of abusers and almost all those who have concealed child sexual abuse to escape judicial proceedings in States where the abuses were committed;
- Due to a code of silence imposed on all members of the clergy under penalty of excommunication, cases of child sexual abuse have hardly ever been reported to the law enforcement authorities in the countries where the crimes were committed. On the contrary, cases of nuns and priests who were ostracized, demoted and defrocked for not respecting the obligation of silence have been reported to the Committee, as well as cases of priests who were congratulated for refusing to denounce child abusers;
- Reporting to national law enforcement authorities has never been made compulsory and was explicitly rejected in an official letter addressed to members of the Irish Episcopal Conference by Bishop Manuel Moreno and Archbishop Luciano Storero in 1997. In many cases, Church authorities, including at the highest levels of the Holy See, have shown reluctance and in some instances, refused to cooperate with judicial authorities and national commissions of inquiry.
- Limited efforts have been made to empower children enrolled in Catholic schools and institutions to protect themselves from sexual abuse.

The Committee therefore strongly urged the Holy See to:

¹⁴ Committee on the Rights of the Child, section IV.A.

¹⁵ Committee on the Rights of the Child, section IV.D.

- Ensure that the Commission created in December 2013 will independently investigate all cases of child sexual abuse as well as the conduct of the Catholic hierarchy in dealing with them; consider inviting civil society and victims organizations to join the Commission , and inviting international human rights mechanisms to support its work. The outcome of the investigation should be made public and serve to prevent the recurrence of child sexual abuse by members of the Catholic Church;
- Immediately remove all known and suspected child sexual abusers from service and refer the matter to the relevant law enforcement authorities for investigation and prosecution;
- Ensure transparent sharing of all archives which can be used to hold accountable child sexual abusers and all those who concealed their crimes and knowingly placed offenders in contact with children;
- Amend the Canon Law in order for child sexual abuse to be considered a crime and not a “ delict against the moral ” and repeal all provisions which may impose an obligation of silence on the victims and on all those that become aware of such crimes;
- Establish clear rules, mechanisms and procedures for the mandatory reporting of all suspected cases of child sexual abuse and exploitation to law enforcement authorities;
- Ensure that all priests, religious personnel and individuals working under the authority of the Holy See are made aware of their reporting obligations and of the fact that, in case of conflict, these obligations prevail over Canon law provisions;
- Develop programmes and policies for the prevention of such crimes and for the recovery and social reintegration of child victims, in accordance with the outcome documents adopted at the 1996, 2001 and 2008 World Congresses against Sexual Exploitation of Children, held in Stockholm, Yokohama , Japan, and Rio de Janeiro, Brazil, respectively;
- Develop educational preventive programmes to increase children’s awareness of sexual abuse and to teach them the necessary skills with which to protect themselves;
- Consider ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

Under section IV.D. of its concluding observations, the CRC also made reference to the recommendations made in 2011 by the Committee against Torture to Ireland to prosecute and punish perpetrators with penalties commensurate with the gravity of the offences committed, and to ensure that all victims obtain redress and have an enforceable right to compensation.¹⁶

III. Conclusion and recommendations

It will now be important for the Committee against Torture to follow-up on these recommendations and ensure that the Holy See complies with all of its obligations under the UN human rights framework.

We urge the Committee to consider sexual abuse of children by Catholic clergy and independent entities under their supervision as falling under the Convention and therefore within its remit of the review of the Holy See’s initial report.

We suggest that the Committee should consider the following recommendations for the Holy See:

¹⁶ Committee on the Rights of the Child, section IV.D.

- Disclose to the Committee details of all cases of child sexual abuse by clerics which it is aware of in adhering to the issues raised by the Committee and which measures it has taken in response to these cases;
- Create a publicly accessible complaints procedure for victims of sexual abuse;
- Commit to co-operate with national law enforcement authorities in order to bring perpetrators of child sexual abuse to justice and refrain from obstructing civil legal processes;
- Prohibit further contact of children with clerics who are known to the Holy See to have previously sexually abused children by removing them indefinitely from any such functions which require any contact with children;
- Enhance transparency by abandoning the internal secrecy requirement for clerical child abuse cases;
- Develop a comprehensive reparations scheme for victims of sexual abuse by clerics in line with General Comment 3 of the UN Committee Against Torture, and increase the overall level of support and protection of victims of child abuse.