

## Committee against Torture

### Concluding observations on the initial report of the Holy See

#### ADVANCE UNEDITED VERSION

1. The Committee against Torture considered the initial report of the Holy See (CAT/C/VAT/1) at its 1220<sup>th</sup> and 1223<sup>rd</sup> meetings, held on 5 and 6 May 2014 (CAT/C/SR.1220 and CAT/C/SR.1223), and adopted the following concluding observations at its 1245<sup>th</sup>, 1246<sup>th</sup> and 1247<sup>th</sup> meetings (CAT/C/SR.1245, CAT/C/SR.1246 and CAT/C/SR.1247) held on 21 and 22 May 2014.

#### A. Introduction

2. The Committee welcomes the initial report of the Holy See (CAT/C/VAT/1), which follows the Committee's Guidelines on the form and content of initial reports (CAT/C/4/Rev.3) required under article 19 on the measures they have taken to give effect to their undertakings under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. However, it regrets that the report was submitted nine years late.

3. The Committee also appreciates the open and constructive dialogue with the high-level delegation of the State party and the supplementary information provided during the examination of the report.

#### B. Positive aspects

4. The Committee welcomes the fact that following the ratification of the Convention, the State party acceded to the Convention against Transnational Organized Crime, on 25 January 2012.

5. The Committee also welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) The issuance *motu proprio* by Pope Francis of an Apostolic Letter "On the Jurisdiction of Judicial Authorities of Vatican City State in Criminal Matters", on 11 July 2013. The letter was promulgated and entered into force on 1 September 2013, establishing the exercise of penal jurisdiction by the Judicial Authorities of Vatican City State over crimes whose prosecution is required by international agreements ratified by the Holy See. This modified Vatican City State legislation, specifically Law No. VIII on Supplementary Norms on Criminal Law Matters, which became effective 1 September 2013, and which incorporates into the legal system the crime of torture, crimes against humanity and a definition of crimes against minors; and Law N. IX which amends the Criminal Code and the Code of Criminal Procedure to provide for jurisdiction over offenses committed by public officials and citizens abroad and to set standards governing extradition, judicial cooperation, mutual legal assistance, and other matters relevant to the Convention.

(b) The issuance by the Congregation for the Doctrine of the Faith of a Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics, on 3 May 2011, which confirms, as

established in the 2001 *Motu Proprio Sacramentorum Sanctitatis Tutela*, that Bishops and Major Superiors are to refer all credible allegations of sexual abuse of minors by clerics to the Congregation for the Doctrine of the Faith. The Circular Letter also establishes, in its own words, that “the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed.”

6. The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) The clear condemnation, in the Holy See’s report, of the use of torture and other acts of cruel, inhuman or degrading treatment or punishment as contrary to the dignity, integrity and identity of the human person and its references to the statements by several Popes against torture and against the death penalty, including Pope Benedict XVI’s reminder, in 2007, to members of the International Commission for Catholic Prison Pastoral Care, which represents prison chaplains from 62 countries, stating that “I reiterate that the prohibition against torture cannot be contravened under any circumstances”;

(b) The establishment of a Special Office within the Governorate of the Vatican City State to oversee the implementation of international agreements to which the Vatican City State is a party, on 10 August 2013;

(c) The creation of the Pontifical Commission for the Protection of Minors, on 5 December 2013, to serve as an advisory committee to the Pope, and its members’ statement on 3 May 2014 that they view ensuring accountability as especially important;

(d) The statement by Pope Francis, during a meeting with the International Catholic Child Bureau on 11 April 2014, acknowledging the damage done by the sexual abuse of children by some priests, in which the Pontiff affirmed that “we will not take one step backward with regards to how we will deal with this problem and the sanctions that must be imposed. On the contrary, we have to be even stronger.”

7. The affirmation by the head of the delegation that international treaties, including the Convention, ratified by the Holy See and agreements made by the Holy See with other international subjects or other States take precedence over the domestic law of the Vatican City State.

## **C. Principal subjects of concern and recommendations**

### **Scope of Application of the Convention**

8. The Committee notes the Interpretative Declaration made by the Holy See in acceding to the Convention and statements in the report of the State party reinforced by the delegation during the dialogue, expressing the view that the Convention applies exclusively to the Vatican City State. The Committee further notes that the 2013 amendments to laws of the Vatican City State, referred to above, establish that public officials of the Vatican City State include, among other persons, (a) members, officials and personnel of the various organs of the Roman Curia and of the Institutions connected to it and (b) papal legates and diplomatic personnel of the Holy See. The Committee’s General Comment No. 2 recalls that States bear international responsibility for the acts and omissions of their officials and others acting in an official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law. This responsibility extends to actions and omissions of the public servants of a State party deployed on operations abroad. The Committee reminds States parties to the Convention that they are obligated to adopt effective measures to prevent their officials and others acting in an official capacity from perpetrating or instigating the commission of torture or ill-treatment and from consenting to or acquiescing in the commission of such violations by

others, including non-state actors, in any situation in which they exercise jurisdiction or effective control.

**The Committee notes that the Interpretative Declaration made by the State party is not consistent with the above-mentioned norms under their own law as well as the Convention. The Committee invites the State party to view the Interpretative Declaration in light of the aforementioned considerations, not excluding the possibility of reinterpretation or withdrawal. The Committee recalls that the State party's obligations under the Convention concern all public officials of the State party and other persons acting in an official capacity or under colour of law. These obligations concern the actions and omissions of such persons wherever they exercise effective control over persons or territory.**

#### **Definition of torture**

9. The Committee welcomes the adoption of Law No. VIII of 11 July 2013 which contains a definition of torture and other elements set forth in the Convention. The Committee notes that this Law refers to "the public official having judicial, judicial police or law enforcement functions, as well as whoever performs in an official capacity a similar or analogous role, and whoever, under their instigation or with their consent and acquiescence " The Apostolic Letter of 11 July 2013 states in paragraph 3 that the following persons are deemed public officials: "(a) members, officials and personnel of the various organs of the Roman Curia and of the Institutions connected to it. (b) papal legates and diplomatic personnel of the Holy See. (c) those persons who serve as representatives, managers or directors, as well as persons who even de fact manage or exercise control over the entities directly dependent on the Holy See and listed in the registry of canonical juridical persons kept by the Governorate of Vatican City State. (d) any other person holding an administrative or judicial mandate in the Holy See, permanent or temporary, paid or unpaid, irrespective of that person's seniority." The Committee also recalls that article 4 of the Convention requires States parties to ensure that "an attempt to commit torture and an act by any person which constitutes complicity or participation in torture" is an offence under its criminal law. The Committee has expressed in its General Comment No. 3 that statutes of limitations should not be applicable to the crime of torture. (arts.1 and 4)

**The Committee seeks confirmation that the State party fully complies with the requirements of the Convention that "all public officials or persons acting in an official capacity" are covered in line with article 1 of the Convention. It invites the State party to adopt effective measures to ensure that its definition of torture applies to all public officials, as established in the Convention and that the State party discharges all its obligations under the Convention. The Committee further seeks clarification that "an attempt to commit torture and an act by any persons which constitutes complicity or participation in torture" is prohibited under its criminal law. The Committee reminds the State party that General Comment No. 3 states that statutes of limitations should not be applicable to the crime of torture and requests that the State party clarify that there is no statute of limitations for the offence of torture.**

#### **Prevention of torture and cruel, inhuman and degrading treatment or punishment**

10. The Committee notes that since 2001 Holy See officials have required mandatory reporting of all credible allegations of sexual abuse of minors by clergy to the Congregation for the Doctrine of the Faith in Vatican City State. The Committee appreciates the data provided by the delegation indicating that the Congregation for the Doctrine of the Faith confirmed 3420 credible allegations of sexual abuse by priests between 2004-2013, resulting in the implementation of numerous canonical penalties meted out through an

ecclesiastical penal process, including the defrocking of 848 priests and disciplining of 2572 others such as through imposition of a life of prayer or penance. In its General Comment No. 2 the Committee recalls that State authorities or others acting in official capacity or under colour of law have an obligation to exercise due diligence to prevent violations of the Convention, including by non-State officials or private actors under their effective control, whenever they know or have reasonable grounds to believe that violations of the Convention are being committed.

In this regard, the Committee regrets the State party did not provide requested data on the number of cases in which the State party provided information to civil authorities in the places where the cases arose and in the places where the priests concerned are currently located. The Committee welcomes the assurance made by the delegation that Catholic clergy are instructed to report allegations of sexual abuse of minors perpetrated by clergy members to the civil authorities as well as to the Congregation for the Doctrine of the Faith. Nevertheless, the Committee is concerned by reports that the State party's officials resist the principle of mandatory reporting of such allegations to civil authorities.

The Committee is further concerned by numerous reports of cases in which clergy accused or convicted by civil authorities of such offenses were transferred to other dioceses and institutions where they remained in contact with minors and others who are vulnerable, and in some cases committed abuse in their subsequent placements. Such allegations appear in the reports of commissions and investigations undertaken in diverse countries. During the dialogue with the State party, the Committee raised the case of Father Joseph Jeyapaul, the case of Father Peter Kramer, and the findings reached by a grand jury in Philadelphia, USA, in 2005, as illustrative of these concerns. (art. 2)

**The State party should ensure that Holy See officials and other public officials of the Vatican City State take effective measures to monitor the conduct of individuals under their effective control, to stop and sanction such conduct in any case where they become aware of credible allegations of violations of the Convention, and to take other measures within their control to prevent the commission of subsequent violations by the individuals concerned, including to:**

**(a) Continue to develop and implement programmes and policies to prevent violations of the Convention;**

**(b) Ensure that individuals that are subject to an allegation of abuse brought to the attention of the Congregation for the Doctrine of the Faith or other officials of the State party are immediately suspended from their duties pending the investigation of the complaint, to guard against the possibility of subsequent abuse or intimidation of victims;**

**(c) Ensure effective monitoring of the placements of all clergy that are under investigation by the Congregation for the Doctrine of the Faith and prevent the transfer of clergy who have been credibly accused of abuse for the purposes of avoiding proper investigation and punishment of their crimes. For those found responsible, apply sanctions, including dismissal from clerical service;**

**(d) Ensure that all State party officials exercise due diligence and react properly to credible allegations of abuse, subjecting any official that fails to do so to meaningful sanctions;**

**(e) Take effective measures to ensure that allegations received by its officials concerning violations of the Convention are communicated to the proper civil authorities to facilitate their investigation and prosecution of alleged perpetrators. The State party should provide data to the Committee in its next periodic report on the number of cases in which it provided information to civil authorities both in the**

**places where cases arose and in the places where the persons concerned are currently located.**

### **Impunity**

11. While the Committee appreciates the confirmation provided regarding the ongoing investigation under the Vatican City State Criminal Code of allegations of sexual abuse of minors by Archbishop Josef Wesolowski, former papal nuncio to the Dominican Republic. The Committee notes that the Republic of Poland has reportedly requested the extradition of Archbishop Wesolowski. The Committee is concerned that the State party did not identify any case to date in which it has prosecuted an individual responsible for the commission of or complicity or participation in a violation of the Convention (arts. 4, 5, 6, 7 and 8).

**The State party should ensure that its competent authorities proceed to a prompt and impartial investigation of Archbishop Wesolowski and any other persons accused of perpetrating or being complicit in violations of the Convention who are nationals of the State party or are present on the territory of the State party. If warranted, the State party should ensure such persons are criminally prosecuted or extradited for prosecution by the civil authorities of another State party. The Committee requests the State party to provide it with information on the outcome of the investigation concerning Archbishop Wesolowski.**

### **Cooperation with civil and criminal proceedings**

12. The Committee is concerned by reports it has received of cases in which the State party has declined to provide information to civil authorities in connection with proceedings relating to allegations that clergy members committed violations of the Convention, despite the fact that since 2001 the Congregation for the Doctrine of the Faith in the Vatican City State has had responsibility for receiving and investigating all allegations of sexual abuse of minors by Catholic clergy. The Committee expresses concern about allegations that in 2013 the papal nuncio to Australia invoked diplomatic immunity in refusing to provide archival documentation to assist the New South Wales Special Commission of Inquiry into sex abuse. The Committee recalls that article 9 of the Convention obligates States parties to “afford one another the greatest measure of assistance” in connection with criminal proceedings related to violations of the Convention, “including the supply of all evidence at their disposal necessary for the proceedings” (art. 9).

**The State party should take effective steps to ensure the provision of information to civil authorities in cases where they are carrying out criminal investigations of allegations of violations of the Convention perpetrated by Catholic clergy or acquiesced to by them. The State party should ensure the procedures for requesting such cooperation are clear and well-known to the civil authorities and that requests for cooperation are responded to promptly.**

### **Basic Legal Safeguards**

13. The Committee appreciates the information provided by the State party in its report and at the dialogue concerning legal protections for persons deprived of their liberty in the State party provided in the Criminal Code, Code of Criminal Procedure, and 2012 draft regulations of the Department of Security Services and Civil Protection. The Committee regrets that information was not provided as to whether these documents incorporate the particular legal safeguards against torture that the Committee has called on all States parties to ensure for all persons deprived of their liberty (arts. 2, 13, 15 and 16).

**The State party should ensure that its laws and regulations provide for the right of all persons deprived of their liberty to enjoy the legal safeguards against torture enumerated in the Committee's General Comment No. 2, including ensuring the right of all detainees to receive independent legal assistance, independent medical assistance, and to contact relatives from the moment of deprivation of liberty. The State party should monitor the provision of such safeguards by its public officials and ensure that any failure to provide such safeguards as required results in disciplinary or other penalties.**

#### **Complaints and prompt, thorough and impartial investigations**

14. The Committee welcomes the amendments to the Criminal Code and Code of Criminal Procedure of the Vatican City State that make it clear that authorities should prosecute allegations of violations of the Convention by citizens and officials. The Committee also welcomes information provided that the Pontifical Commission for the Protection of Minors, established by Pope Francis, will seek to ensure accountability and its members have announced that they plan to make specific proposals on raising awareness “regarding the tragic consequences of sexual abuse and of the devastating consequences of not listening, not reporting suspicion of abuse, and failing to support victims/survivors and their families”. To date there has been no information provided to the Committee as to the Pontifical Commission’s term, investigative powers, and ability to report publicly (arts.12 and 13).

#### **The State party should:**

**(a) Establish an independent complaints mechanisms to which victims of alleged violations of the Convention can confidentially report allegations of abuse and which has the power to cooperate with the State party’s authorities as well as civil authorities in the location where the alleged abuse occurred;**

**(b) Ensure that organs charged with carrying out investigations into allegations of violations of the Convention by public officials of the Vatican City State, including the Office of the Promoter of Justice, are independent with no hierarchical connection between the investigators and the alleged perpetrators. Ensure that such bodies carry out investigations promptly, thoroughly, and impartially;**

**(c) Clarify whether the Pontifical Commission for the Protection of Minors established in December 2013 will have the full power to investigate cases of alleged violations of the Convention, ensure that the results of any of its investigations are made public and that they are promptly acted upon by officials with a prosecutorial function, within a specific deadline.**

#### **Concordats and other agreements**

15. The Committee is concerned at allegations that concordats and other agreements negotiated by the Holy See with other States may effectively prevent prosecution of alleged perpetrators by limiting the ability of civil authorities to question, compel the production of documentation by, or prosecute individuals associated with the Catholic Church (arts. 2, 12, 13 and 16).

**The State party should consider reviewing its bilateral agreements concluded with other States, such as concordats, with a view to fulfilling its obligations under the Convention and preventing the agreements from serving to provide individuals alleged to have violated the Convention or believed to possess information concerning violations of the Convention with protection from investigation or prosecution by civil authorities as a result of their status or affiliation with the Catholic Church.**

## **Redress**

16. While noting that many dioceses and religious orders provided financial settlements to victims of abuse, the Committee remains deeply concerned at the reported inability to obtain redress experienced by many alleged victims of violations of the Convention perpetrated by or with the acquiescence of persons acting in an official capacity for the State party. The Committee is particularly concerned about allegations of past instances in which the State party has acquiesced to or authorized actions taken by certain church officials to protect assets from seizure by civil authorities for the purpose of providing redress to victims. The Committee is also concerned about the State party's response to the continued refusal by the four religious orders that ran the Magdalene laundries in Ireland to contribute to a redress fund for individuals subjected to abuse in those facilities. The Committee recalls that in accordance with General Comment No. 3, the concept of redress includes restitution, compensation, rehabilitation, satisfaction and the right to truth, and guarantees of non-repetition (arts. 12, 13, 14 and 16).

### **The State party should:**

(a) **In accordance with article 14 of the Convention and General Comment No. 3, take steps to ensure that victims of sexual abuse committed by or with the acquiescence of the State party's officials receive redress, including fair, adequate and enforceable right to compensation and as full rehabilitation as possible, regardless of whether perpetrators of such acts have been brought to justice. Appropriate measures should be taken to ensure the physical and psychological recovery and social reintegration of the victims of abuse.**

(b) **Encourage the provision of redress by individual religious orders to victims of violations of the Convention carried out by them and take additional steps to ensure that victims obtain redress as needed, including in the case of the Magdalene Laundries.**

### **Non-refoulement and asylum**

17. The Committee notes with appreciation the State party's confirmation that the Vatican City State would not expel, return or extradite a person to a State where the person might be tortured, and that amendments to the Criminal Code and Code of Criminal Procedure attached to the 13 July 2013 Apostolic Letter of Pope Francis elaborate on this matter. The Committee regrets, however, that there was no data provided in response to inquiries concerning the number of asylum requests received and granted, particularly in view of the statement that asylum applications are dealt with and adjudicated by the Italian government's authorities (art. 3).

**The Committee recommends that the State party provide in next report data on the number of asylum requests received by authorities of the State party located in its territory or abroad since 2002, as well as the number granted, and whether any asylum seeker was returned or refused asylum and in which countries. The State party should ensure its authorities monitor treatment of any persons seeking asylum who are sent to Italy to ascertain that they are not subsequently expelled to a place where they might be in danger of being subjected to torture or ill-treatment.**

### **Training of the Gendarmerie Corps**

18. While noting that the Gendarmerie Corps receives training in human rights, the Committee is concerned that they are not provided with specific training on the provisions of the Convention, including the absolute prohibition of torture, and that medical professionals dealing with persons deprived of liberty and asylum-seekers do not receive training on the Manual on the Effective Investigation and Documentation of Torture and

Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol). (art. 10)

**The State party should ensure that training for the Gendarmerie Corps includes the absolute prohibition of torture, other provisions of the Convention, and the Committee's conclusions, decisions and General Comments. It should also ensure that the Gendarmerie Corps and medical professionals and relevant law enforcement officers in the State party receive training in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol).**

#### **Statistical data**

19. The Committee regrets the absence of comprehensive and disaggregated data on complaints and investigations of cases amounting to violations of the Convention.

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention, including data on complaints and investigations of cases amounting to violations of the Convention as well as on means of redress, including compensation and rehabilitation, provided to the victims.**

20. The Committee invites the State party to consider ratifying the core international human rights instruments to which it is not yet a party, namely the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights and their Optional Protocols as well as the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, the Convention for the Protection of All Persons from Enforced Disappearance.

21. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

22. The State party is invited to submit its common core document, in accordance with the requirements contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

23. The Committee requests the State party to provide, by 23 May 2015, follow-up information in response to the Committee's recommendations related to the prevention of torture and cruel, inhuman and degrading treatment or punishment, and on impunity, as contained in paragraphs 10 and 11 of the present document. In addition, the Committee requests follow-up information on complaints and investigations and redress, as contained in paragraphs 14 and 16 of the present document.

24. The State party is invited to submit its next report, which will be the second periodic report, by 23 May 2018. For that purpose, the Committee invites the State party to accept, by 23 May 2015, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

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