



© Megan Peterson, 2013

# Shadow Report

Prepared for 52<sup>nd</sup> Session  
of the UN Committee Against Torture  
in Connection with its Review of the **Holy See**

Submitted by the Center for Constitutional Rights  
on behalf of the Survivors Network of those Abused by Priests

April 2014

**Cover Art**

Copyright Megan Peterson, 2013. All rights reserved. Megan Peterson is an artist and survivor of sexual violence by a priest. She is also a complainant in the effort to hold Vatican officials accountable for rape and sexual violence as crimes against humanity in the International Criminal Court and a member of the Survivors Network of those Abused by Priests.

# Table of Contents

Submitting Organizations.....	iii
List of Key Commissions, Inquiries and Investigations.....	iv-v
Introduction.....	1
I. The Committee Has Long Recognized Rape and Sexual Violence as Forms of Torture and Cruel, Inhuman, and Degrading Treatment and Punishment.....	4
II. Numerous Commissions and Inquiries Around the World Have Established the Existence of Widespread Rape and Sexual Violence in the Church.....	6
III. Rape and Sexual Violence Have Resulted in Severe Pain and Suffering, Both Physical and Mental, and Have Amounted to Torture and Cruel, Inhuman and Degrading Treatment.....	8
A. Suicides.....	10
B. Lasting Physical, Mental, Psychological and Emotional Harm.....	11
IV. The Holy See’s Policies and Practices Have Enabled, and Continue to Enable, the Widespread Rape and Sexual Violence and Result in Severe Physical and Mental Harm.....	13
A. Legal Status of the Holy See and Implications for Fulfillment of its Obligations under the Convention.....	13
B. Structure of the Church and Chain of Command.....	14
C. Church Structure and Policies Related to Sexual Violence Cases.....	15
D. Change in Vatican City Law.....	16
E. Shadow Policies and Practices Behind the Veil of Reforms, Non-Mandatory Reporting.....	17
F. The Vatican Refusal to Discipline Bishops and Cardinals.....	20
V. Specific Areas of Concern Regarding Holy See’s Failure to Fulfill Its Obligations Under the Convention.....	26
A. Articles 1, 4 and 16: Torture, Domestic Criminal Law, And Cruel, Inhuman, and Degrading Treatment or Punishment.....	26
B. Articles 2, 8 and 9: Take all effective measures to prevent acts of torture in any territory under its jurisdiction and assist with criminal proceedings for torture, including by extraditing those who have committed Convention violations and supplying all evidence at its disposal necessary for the proceedings.....	29
C. Articles 12, 13 and 14: Right of Torture Victims to Adequate Remedy and Reparation, including Right to file Complaints and to Prompt and Impartial Investigations.....	32
Endnotes	

## Annex

- A. Summaries of Key Commissions and Investigations Into Sexual Violence by Catholic Clergy with Highlights of Findings
- B. Organizational Chart of Holy See
- C. Expert Declaration of Fr. Thomas Doyle, J.C.D., C.A.D.C.

## Submitting Organizations

This report is submitted by the **Center for Constitutional Rights** (CCR) on behalf of the **Survivors Network of those Abused by Priests** (SNAP). CCR is a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. SNAP is a non-profit organization that was founded 25 years ago by a small group of survivors of rape and sexual violence committed by priests. Today, the Network has over 18,000 members in 79 countries, with support group meetings in 65 cities.<sup>1</sup>

Recognizing that this is the first time that the Holy See's record on this most vital issue regarding the severe mental and physical harm caused by sexual violence committed by Catholic clergy is being surfaced at the Committee, SNAP and its global members stand ready to assist the Committee in conducting a thorough review of the Holy See's adherence to the Convention Against Torture.

# List of Key Commissions, Inquiries, Investigations and Reports Into Rape and Sexual Violence in the Catholic Church

(See Appendix A for Summaries and Key Findings)

## GOVERNMENT AND INTER-GOVERNMENTAL COMMISSIONS, INQUIRIES, REPORTS, AND INVESTIGATIONS

<b>Australia</b>	<p><u>Protecting Victoria’s Vulnerable Children Inquiry</u> (“Cummins Inquiry”), 2011-2012</p> <p><u>Inquiry Into the Handling of Child Abuse by Religious and Other Organizations – Parliament of Victoria</u> (“Victoria Inquiry”), 2012-2013</p> <p><u>Royal Commission into Institutional Responses to Child Sexual Abuse</u> (“Royal Commission”), 2013-ongoing</p> <p><u>Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle</u>, 2012-Ongoing</p>
<b>Canada</b>	<p><u>Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints</u> (“Hughes Report”), 1989</p> <p><u>Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy</u> (“Winter Commission”), 1990</p>
<b>Ireland</b>	<p><u>The Ferns Report</u> (2005)</p> <p><u>The Ryan Report</u> (2009)</p> <p><u>The Murphy Report</u> (2009)</p> <p><u>The Cloyne Report</u> (2011)</p>
<b>United States</b>	<p><u>New York: Report of the Grand Jury, Westchester County</u> (“Westchester Report”) (2002)</p> <p><u>New York: Report of the Grand Jury, Suffolk County</u> (“Suffolk Report”) (2003)</p> <p><u>New York: Albany Diocese, 14 District Attorneys and a Memorandum of Understanding</u> (2012)</p> <p><u>New Hampshire: Report of the Office of the Attorney General on the Investigation of the Diocese of Manchester</u> (“Manchester Report”) (2003)</p> <p><u>Massachusetts: Attorney General Report Regarding the Archdiocese of Boston</u> (“Boston Report”) (2003)</p> <p><u>Pennsylvania: Philadelphia Grand Jury Report</u> (2003)</p> <p><u>Pennsylvania: Philadelphia Grand Jury Report</u> (2005)</p> <p><u>Pennsylvania: Philadelphia Grand Jury Report</u> (2011)</p> <p><u>Arizona: Agreement Between Maricopa County District Attorney and Bishop Thomas O’Brien</u> (2003)</p>

## INTER-GOVERNMENTAL AND TREATY BODIES

<b>Council of Europe</b>	<u><i>Child Abuse in Institutions: Ensuring Full Protection of the Victims</i>, Report to Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe</u>
<b>UN Committee on the Rights of the Child</b>	<u>United Nations Committee on the Rights of the Child, Concluding Observations on the Second Periodic Report of the Holy See, CRC/C/VAT/CO/2, 25 Feb. 2014</u>
<hr/>	
<h2>CHURCH-APPOINTED COMMISSIONS AND EXPERTS</h2>	
<b>Belgium</b>	<u>The Adriaenssens Report (2010)</u>
<b>England and Wales</b>	<u>Nolan Report (2001)</u> <u>Cumberlege Report (2007)</u>
<b>Germany</b>	<u>Munich/Freising Report (2010). (English Press Statement)</u>
<b>Ireland</b>	<u>National Board for Safeguarding Children in the Catholic Church, Report into Six Irish Dioceses (2011)</u>
<b>The Netherlands</b>	<u>The Sexual Abuse of Minors Within the Roman Catholic Church (“Deetman Report” English Summary) 2011</u>
<b>United States</b>	<u><i>The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States</i>, John Jay College of Criminal Justice</u>

*“We feel as if we’ve lost our grounding on Earth.  
The church requires repentance from us, but not from itself.”*

Wlademar Maziejuk  
Poland<sup>2</sup>

## Introduction

Naming is important. Pope John Paul II recognized as much when he observed that “[t]orture must be called by its proper name” upon the Holy See’s accession to the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>3</sup> Yet nowhere in the Holy See’s Initial Report under the Convention (“Initial Report”) does it make any mention of the widespread and systemic rape and sexual violence committed by Catholic clergy against hundreds of thousands of children and vulnerable adults around the world.<sup>4</sup> There is no mention of acts that have resulted in an astonishing and incalculable amount of harm around the world – profound and lasting physical and mental suffering – with little to no accountability and access to redress.

The Center for Constitutional Rights (“CCR”) and the Survivors Network of those Abused by Priests (“SNAP”) welcome the opportunity to submit this report, which sets out the refusal of the Holy See to uphold the core principle of respect for the inherent dignity and protection of the physical and mental well-being of the human person enshrined in the Convention against Torture (“Convention” or “CAT”) through its absolute prohibition on torture, and obligations set forth therein. This Committee has played an important role in recognizing rape and other forms of sexual violence as what they are – forms of torture and cruel, inhuman and degrading treatment, as is discussed further herein. This Committee has also articulated the importance of naming such acts in this way so as to “directly advance the Convention’s overarching aim of preventing torture and ill-treatment. Naming and defining this crime will promote the Convention’s aim, *inter alia*, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture.”<sup>5</sup>

By contrast, the Vatican has consistently minimized the harm caused by the actions of the clergy, through both the direct acts of sexual violence and church officials’ actions which follow, such as cover-ups and victim-blaming. As a member of the Parliament of Victoria (Australia) recently observed:

The Catholic church minimized and trivialized the problem; contributed to abuse not being disclosed, or not being responded to... ensured that the Victorian community remained uninformed of the abuse; and ensured that perpetrators were not held accountable with the tragic result being that children continued to be abused. We found that today’s church leaders view the current question of abuse of children as a ‘short term embarrassment’, which should be



handled as quickly as possible to cause the least damage to the church's standing. They do not see the problems as raising questions about the church's own culture.<sup>6</sup>

The Holy See's Initial Report to this Committee is itself evidence of the minimization of these offenses and the resulting harm. While the Holy See's report unequivocally condemns torture and other forms of cruel, inhuman and degrading treatment, and purports to claim that its status as a party to this Convention serves as an example to others,<sup>7</sup> it makes *no* mention of the widespread and systemic rape and sexual violence against children and vulnerable adults by its priests and others associated with the Church. Upon accession to the Convention, the Holy See noted that it had "unequivocally condemned 'whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself.'"<sup>8</sup> Still, after numerous commissions, inquiries, ongoing scandals and tens of thousands of victims coming forward, the Holy See has not recognized in its reporting to this Committee the ways in which the sexual violence it has enabled and fostered have "violated the integrity" of countless human persons, resulting in harm that is devastating on an individual and collective level.

Survivor testimonies in recent commissions of inquiry have borne out what studies have shown for some time: victims and survivors of childhood sexual violence face much higher risks of suicide, serious mental and physical illnesses, severe and often debilitating anxieties, and addictive disorders, than others who have not experienced such violence. The risks are higher when the perpetrators are known to the victims and enjoy "high moral standing" in their community as priests and religious officials often do, as a parliamentary inquiry in Victoria, Australia recently noted.<sup>9</sup> Other commissions of inquiry and grand jury investigations that have looked into the scandals over the years are replete with stark testimonies from survivors of clergy sexual violence of the devastating impact on their lives and the lives of their families. Worse still, inquiries and other investigations have documented the fact that many have not survived these experiences, and ended up taking their own lives. It must be said that it is thanks to survivors who have come forward in different places around the world, despite incredible odds and the pulls toward silence, that such commissions and inquiries have been undertaken in the first place. Over the years, as more investigations have been launched and more questions have been asked, the world now has a substantial, and still growing, body of information that has brought into clearer view the heretofore obscure and murky ways the Church has operated to conceal and perpetuate these travesties.

Naming alone is not enough. The Holy See has consistently side-stepped real accountability and serious reform. As discussed herein, despite the so-called reforms over the years, the key factor enabling the widespread violence remains firmly in place: lack of accountability for church authorities tasked with overseeing the handling of these crimes. Indeed, rather than holding bishops and cardinals accountable for cover-ups and enabling these offenses, the Holy See has taken steps to protect and reward those against whom there is clear evidence of concealing the offenses and working to sustain the climate of impunity within the Church. One member of the United Nations Committee on the Rights of the Child recently queried representatives of the Holy See about this very dynamic:

We have a guideline to understanding basic CDF [Congregation for the Doctrine of the Faith] procedures concerning child sexual abuse allegations. We have a letter to assist episcopal conferences in developing guidelines for dealing with cases of

sexual abuse of minors perpetrated by clerics. We have a letter from Pope Francis urging Bishop Müller, head of the CDF, to act decisively as far as cases of sexual abuse are concerned.... Now what will it take for the Holy See, for instance, to have a guideline with a threat of serious sanctions for noncompliance on cooperating with civil authorities on child abuse cases? What does “to act decisively” actually mean? What more do we need in terms of guidance to get to this point? Or a letter establishing a duty to report on abuses and accountability for wrongdoing? Or how can we address this whole systemic policy of silencing of victims?<sup>10</sup>

Instead of taking the steps necessary to prevent and punish these crimes, church policies and practices have not only served to conceal but enable widespread acts of sexual violence, including rape. What is more shocking is the evidence indicating that high-ranking church officials were often cognizant of and disregarded the fact that their actions could expose others to — and in fact in too many cases led to — further acts of rape and sexual violence.<sup>11</sup>

While a number of the reports referenced herein relate to cases that pre-date 2002, the year the Holy See acceded to the Convention, the findings in those reports are necessary to understand the continuing pattern and practices that have given rise to the culture of rape and sexual violence as it exists today. Even the crimes that are seemingly more remote in time are not truly “a thing of the past” as the violations continue to cause harm, especially for those for whom there is no redress, and where the perpetrators have gone on to harm other children and have benefitted from a culture of impunity that Church officials have helped to create and maintain in ways that are discussed further below. As this Committee has found, “[w]hen impunity is allowed by law or exists *de facto*, it bars victims from seeking full redress as it allows the violators to go unpunished and denies victims full assurance of their rights,” under the Convention.<sup>12</sup> The vast majority of the priests who committed acts of sexual violence against children and vulnerable adults have faced no punishment or criminal sanction for their actions; many are allowed to stay on the job, and have privileged access to future victims because of their status as a member of the Catholic clergy. The high-level officials of the Church who refused, or are still refusing, to prevent and punish these criminal actions, and too often facilitated or enabled the acts of sexual violence described herein have, to date, enjoyed absolute impunity as well, and for that the Vatican bears responsibility and must be held accountable.<sup>13</sup>

*"It reminds us that Irish children were subjected to treatment that would be horrifying if it were done to prisoners of war, never mind little boys and girls... ."*

-Frances Fitzgerald,  
Irish Minister for Children and Youth Affairs,  
2011<sup>14</sup>

## **I. The Committee Has Recognized Rape and Sexual Violence as Forms of Torture and Cruel, Inhuman, and Degrading Treatment and Punishment.**

This Committee has called rape and other forms of sexual violence by their proper name – torture and cruel, inhuman and degrading treatment.<sup>15</sup> The Committee’s approach reflects the universal recognition and acceptance of rape and sexual violence as forms of torture in the international human rights system.<sup>16</sup> More specifically, the *ad hoc* tribunals in Rwanda and the former Yugoslavia have repeatedly recognized such acts as also constituting torture.<sup>17</sup> As the ICTY Trial Chamber found in the *Čelebići* case: “Rape causes severe pain and suffering, both physical and psychological. The psychological suffering of persons upon whom rape is inflicted may be exacerbated by social and cultural conditions and can be particularly acute and long-lasting.”<sup>18</sup> The Appeals Judgment in the *Kunarac* case in the ICTY is also instructive in this regard:

Generally speaking, some acts establish *per se* the suffering of those upon whom they were inflicted. Rape is obviously such an act. The Trial Chamber could only conclude that such suffering occurred even without a medical certificate. Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterization as an act of torture.<sup>19</sup>

The Committee has consistently issued Concluding Observations that address rape and other forms of sexual violence in the context of obligations to prevent, punish and redress acts of torture and cruel, inhuman and degrading treatment.<sup>20</sup> The Committee’s jurisprudence, like that of international, regional and national judicial bodies, demonstrates an understanding of the true nature of rape and sexual violence that reflects the lived realities of victims of these offenses.<sup>21</sup> Whereas in the past, discriminatory rape laws required a victim to “resist to the utmost,” risking death and serious physical violence to prove a crime of rape, the Rome Statute of the International Criminal Court, for example, recognizes the fact that rape and other forms of sexual violence are often committed under coercive circumstances that negate the possibility of genuine consent.<sup>22</sup> The framework of the Rome Statute grew out of a growing body of jurisprudence developed in national jurisdictions, regional human rights mechanisms, United Nations’ mechanisms, including this Committee, and the international criminal tribunals which came to recognize that the essence of the crime of rape or other forms of sexual violence is the violation of one’s bodily and sexual autonomy.<sup>23</sup>

This analysis is especially significant in cases where sexual violence is committed by priests or clergy, who operate with a grant of religious authority and exploit power imbalances, with the “consent or acquiescence” of higher-ranking officials within the church. Often, especially with regard to children, the victims are in the effective “custody or control” of their perpetrators

— often in confessional situations, orphanages, boarding schools, seminaries or other educational or religious settings.<sup>24</sup> The Special Rapporteur on Torture has emphasized the powerlessness involved in situations of torture and that “[r]ape is an extreme expression of this power relation, of one person treating another person as merely an object.”<sup>25</sup> Moreover, the Special Rapporteur has specifically identified religion as a factor to be taken into consideration when assessing power relations, as well as “sex, age, and physical and mental health, in some cases religion.”<sup>26</sup>

It is well established that torture and ill-treatment may occur “in all contexts of custody or control; for example, in ... schools, institutions that engage in the care of children, ... the mentally ill or disabled, ... and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.”<sup>27</sup> Additionally, if they or their family members report such abuses, under established Vatican procedure requiring their secrecy, they risked excommunication from the church. The established Vatican procedure thereby further perpetuates the violation and the harm.<sup>28</sup>

With regard to the requirement of severe physical or mental suffering, as the ICTY noted in *Kunarac and Čelebići*, rape is an act that *per se* establishes “the suffering of those upon whom it is inflicted” and “strikes at the very core of human dignity and physical integrity.”<sup>29</sup> It is particularly important to emphasize the mental suffering in this context – that of sexual violence by clergy in the Catholic Church. As discussed further herein, especially for children, such traumatic acts, when committed and repeated, tolerated or tacitly supported by the familial, social, and religious authority upon which the child depends can have potentially devastating short and long term consequences for the victims.

While cruel, inhuman and degrading treatment and punishment does not require a showing of purpose, with regard to the purpose requirement of torture, the Special Rapporteur has noted that “the purpose element is always fulfilled, if the acts can be shown to be gender-specific” since discrimination is one of the elements of the CAT definition.<sup>30</sup> Moreover, in the context of custodial settings or situations where a victim is powerless relative to the perpetrator, the elements of coercion and intimidation are ever present.

The Committee has made clear that where State authorities or others acting in official capacity or under color of 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.<sup>31</sup> Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission.<sup>32</sup> The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.

Moreover, the Committee has highlighted that legal responsibility lies not only with direct perpetrators but also with “officials in the chain of command, whether by acts of instigation, consent or acquiescence.”<sup>33</sup> It would be difficult to imagine an organization or entity with a more centralized, hierarchical chain of command than the Vatican.

## **II. Numerous Commissions and Inquiries Around the World Have Established the Existence of Widespread Rape and Sexual Violence in the Church.**

As a result of the efforts of survivors and advocates who have come forward in different countries over the past few decades, often with considerable personal sacrifice and risk, the widespread and systemic rape and sexual violence of children by priests and others associated with the Roman Catholic Church is now well-documented and incontrovertible. Indeed, earlier this year, the United Nations Committee on the Rights of the Child (“CRC”) recognized that “tens of thousands of children worldwide” have been subjected to acts of sexual violence by members of the Catholic church and that this crisis is on-going.<sup>34</sup> The revelations of sexual violence by clergy arising in recent years in Austria, Australia, Belgium, Canada, Chile, France, Germany, Ireland, Italy, Kenya, Malta, Mexico, the Netherlands, Poland, the United States and elsewhere demonstrate that the rates of abuse in any one country or diocese are not an anomaly but part of a much larger pattern and practice. Experts accepted by the Vatican have estimated that the number of victims of sexual violence by catholic clergy in the United States alone is approximately 100,000.<sup>35</sup> Another expert has informed Vatican officials that 95% of accusations against clergy are well-founded.<sup>36</sup>

A summary of key findings from commissions and inquiries is annexed hereto as Appendix A. These commissions of inquiry and grand juries have been convened in Canada,<sup>37</sup> Australia,<sup>38</sup> and Germany,<sup>39</sup> as well as the United States, some of which will be discussed below. Ireland has seen a number of inquiries, resulting in the Ferns Report,<sup>40</sup> the Ryan Report,<sup>41</sup> the Murphy Report,<sup>42</sup> and the Cloyne Report.<sup>43</sup> There have also been Church-appointed commissions, as well as non-governmental reports setting forth widespread and systematic sexual violence and cover-ups within the Catholic church, in Belgium,<sup>44</sup> Germany,<sup>45</sup> The Netherlands,<sup>46</sup> and the United States.

Every investigative body that has studied these situations has identified the same policies and practices that allowed the sexual violence to proliferate and that furthered the harm to the direct victims.<sup>47</sup> The Church practices noted in these various commissions and inquiries include: priest-shifting, i.e. when bishops, cardinals or other high-ranking officials have transferred known offenders to other locations where they continued to have access to children or vulnerable adults and who officials knew or had reason to know continued to commit rape and other acts of sexual violence; blaming the victims for the acts committed against them; failure or refusal to cooperate with civil authorities as well as acts of destruction of evidence and obstruction of justice.<sup>48</sup>

Without exception, each of these inquiries has reached the same inevitable conclusion: The primary concern of Church officials in these cases has been to protect the reputation of the Church and careers of its bishops and priests – not the best interest of the child or its parishioners. This conclusion was perhaps most succinctly expressed by a grand jury in the United States when it observed that Church authorities “continued and/or established policies that made the protection of the Church from ‘scandal’ more important than the protection of children from sexual predators.”<sup>49</sup> Similarly, the Ryan Commission in Ireland found that:

Cases of sexual abuse were managed with a view to minimizing the risk of public disclosure and consequent damage to the institution and the Congregation. This policy resulted in the protection of the perpetrator. When lay people were discovered

to have sexually abused, they were generally reported to the Gardai. When a member of a Congregation was found to be abusing, it was dealt with internally and was not reported to the Gardai. The damage to the children affected and the danger to others were disregarded. [...] The desire to protect the reputation of the Congregation and institution was paramount.<sup>50</sup>

Moreover, these crimes are not a problem confined to the past. The period the Cloyne report from Ireland covers is significant in that it coincides with the supposed implementation of detailed procedures for dealing with child sexual abuse promulgated in 1996 by the Catholic Church in Ireland entitled *Child Sexual Abuse: Framework for a Church Response*, (“Framework Document”) which included a requirement to report such allegations to the civil authorities. By letter, the Cloyne bishop, John Magee, notified all priests in the diocese that he had adopted the procedures in 1996. However, the Cloyne Commissioners found that despite his stated position, “the reality is that the guidelines set out in that document were not fully or consistently implemented” during the period between 1996 and 2009.<sup>51</sup> The Commissioners noted that Magee paid little attention to the procedures until 2008, which incidentally coincided with media exposure of a looming scandal. The Cloyne Commission found that Magee failed to report nine of 15 cases which clearly should have been reported to the civil authorities under the Framework Document. The Commission also found that the diocese failed to report any complaints to the health authorities between 1996 and 2008, failed to appoint support people for complainants and failed to operate an independent advisory panel as required by the Framework Document.<sup>52</sup>

Similarly, in February 2011, a third Grand Jury convened to look into sex abuse allegations in the Philadelphia Archdiocese in the United States concluded that the same patterns persisted even well after much-heralded reforms had gone into effect:

Most disheartening to the grand jury was what we learned about the current practice toward accused abusers in the Philadelphia Archdiocese. *We would have assumed, by the year 2011, after all the revelations both here and around the world, that the church would not risk its youth by leaving them in the presence of priests subject to substantial evidence of abuse. That is not the case.* In fact, we discovered that there have been at least 37 such priests who have been kept in assignments that expose them to children. Ten of these priests have been in place since before 2005 – over six years ago.<sup>53</sup> (emphasis added)

As noted above, even the crimes that are more remote in time are not truly “a thing of the past” as the violations continue to cause harm, especially for those for whom there is no redress, and where the perpetrators have benefitted from a culture of impunity that Church officials have helped to create and maintain in ways that are discussed further below.

*“I have not attempted to kill myself recently but the thought is constantly with me.”*

- Jessie Turner-Booth,  
Victoria, Australia<sup>54</sup>

### **III. Rape and Sexual Violence Have Resulted in Severe Physical and Mental Harm and Have Amounted to Torture and Cruel, Inhuman and Degrading Treatment**

As this Committee has found, naming and defining the crime for what it is – torture – is critical to achieving the Convention’s aims.<sup>55</sup> Often the acts of rape and sexual violence in this context are referred to as “abuse.”<sup>56</sup> Descriptions such as ‘sexual abuse’ tend to minimize the seriousness of the conduct at issue as though it is something other than torture, rape or serious sexual violence when committed by priests or others associated with the church.<sup>57</sup> Such terminology masks the true extent of the harm such acts cause and the severe pain and suffering associated with the abuse of power, violation of trust and bodily autonomy, as well as the alienation and isolation from family, friends, community, and other sources of support that often follows.

Especially for children, such traumatic acts, when committed and repeated, tolerated or tacitly supported by the familial, social, and religious authority upon which the child depends can have potentially devastating short- and long-term consequences for the victims. Over a century of empirical, psychological, medical, and now neurobiological research across different cultural and social configurations has resulted in a well-established consensus that, although there are compound causal factors which can determine the precise short- and long- term impact for each individual, sexual abuse should be considered a major traumatic event with serious long-term consequences.<sup>58</sup>

A Grand Jury in Philadelphia noted the tendency to minimize the offenses and reaffirmed the multi-dimensional effects and gravity of all forms of sexual violence in this context, even that which may seem to some as less invasive:

We should begin by making one thing clear. When we say abuse, we don’t just mean “inappropriate touching” (as the Archdiocese often chose to refer to it). We mean rape. Boys who were raped orally, boys who were raped anally, girls who were raped vaginally. *But even those victims whose physical abuse did not include actual rape – those who were subjected to fondling, to masturbation, to pornography – suffered psychological abuse that scarred their lives and sapped the faith in which they had been raised.*<sup>59</sup> (emphasis added)

A report issued by experts in Germany also observed that “euphemistic, trivializing language was used” to describe the offenses which in the experts’ view “gave no more than an inkling of the complete extent of the offence and its effect on the victim.”<sup>60</sup> A study conducted by the John Jay College of Criminal Justice in the United States found that of the more than 10,000 credible allegations of ‘child sexual abuse’ reported to church officials in the U.S. between the

years 1950 and 2002, a large percentage involved penile penetration or attempted penile penetration or oral sex, acts which constitute rape, attempted rape or sexual violence.<sup>61</sup> The Hughes Commission in Canada, which was formed to investigate the systemic physical and sexual violence committed against young boys at the Mount Cashel Orphanage operated by the Christian Brothers in St. John's Newfoundland, found that the evidence of sexual violence adduced at the hearings "was of such a nature as to shock profoundly the conscience and susceptibilities of the people of Newfoundland and Labrador."<sup>62</sup>

A Philadelphia Grand Jury report provided a sampling of the kind of harm done to children that was subsequently covered up by Church officials:

*A girl, 11 years old, was raped by her priest and became pregnant. The priest took her in for an abortion.*

*A 5th-grader was molested by her priest inside the confessional booth.*

*A teenage girl was groped by her priest while she lay immobilized in traction in a hospital bed. The priest stopped only when the girl was able to ring for a nurse.*

*A boy was repeatedly molested in his own school auditorium, where his priest/teacher bent the boy over and rubbed his genitals against the boy until the priest ejaculated.*

*A priest, no longer satisfied with mere pederasty, regularly began forcing sex on two boys at once in his bed.*

*A boy woke up intoxicated in a priest's bed to find the Father sucking on his penis while three other priests watched and masturbated themselves.*

*A priest offered money to boys in exchange for sadomasochism – directing them to place him in bondage, to "break" him, to make him their "slave," and to defecate so that he could lick excrement from them.*

*A 12-year-old, who was raped and sodomized by his priest, tried to commit suicide, and remains institutionalized in a mental hospital as an adult.*

*A priest told a 12-year-old boy that his mother knew of and had agreed to the priest's repeated rape of her son.*

*A boy who told his father about the abuse his younger brother was suffering was beaten to the point of unconsciousness. "Priests don't do that," said the father as he punished his son for what he thought was a vicious lie against the clergy.<sup>63</sup>*

Indeed, the gravity of the harm is such that as is demonstrated in the reports and investigations summarized below and in Appendix A, many have not survived these experiences. The reports reveal the deep, psychic harm that can result from this type of assault and betrayal due to not only the sexual violence inflicted on the girls, boys and vulnerable adults but the psychological violence, including the alienation and isolation, inflicted by the Church in the aftermath. The brutality involved in a system that knowingly exposes and subjects children and vulnerable



adults to violent acts and then protects the perpetrators while turning its back on and on condemning the victims, greatly exacerbates and deepens the harm.<sup>64</sup>

The consequences of this kind of childhood trauma include a variety of developmental, personal and social disorders consistent with other traumatic events, including complex post-traumatic stress, cognitive distortions, dissociative disorders, emotional pain, avoidance, an impaired sense of self, depressive disorders, anxiety, fear, and suicidal ideas and behavior.<sup>65</sup> The age of the victim at the onset of the abuse, the relationship and social status of the offender, the duration of the acts, and the use of physical or psychological coercion, force or threats, are all associated with greater impact, and greater long-term harm.<sup>66</sup> Sexual violence in this context in particular separates the victim from a necessary sense of connection to their family, the spiritual community and the very foundations through which they are taught to view the world and, indeed, the world itself. As one adult survivor of childhood sexual violence by a priest reported: “It keeps me isolated. It keeps me from experiencing myself and others on a much deeper level. It keeps it very superficial. It’s like a tremendous emptiness, like a desert...”<sup>67</sup>

### **A. Suicides**

As noted by a recent commission of inquiry, research shows that suicide attempts and suicidal thoughts are common among people who have been violated in childhood, with one study identifying rates of attempted suicide as much as 12 times higher for people who had experienced abuse than those who had not.<sup>68</sup> Tragically, the summaries of reports of commissions and investigations set out in Appendix A contain accounts of suicides and attempted suicides by people who suffered sexual violence at the hands of priests.

Most recently, amid the controversy surrounding a police investigation detailing the suicides of 40 people who had been reportedly sexually assaulted by Catholic clergy in Australia, an inquiry was established in the state of Victoria.<sup>69</sup> The police investigation suggested that Church officials had known about a shockingly high rate of suicides and premature deaths but had “chosen to remain silent.”<sup>70</sup> On 12 November 2013, the Victorian commission tabled its report in the state parliament after an exhaustive inquiry.<sup>71</sup> The report acknowledged that the committee in fact heard accounts of people who had been sexually assaulted and who took their own lives. The committee also heard testimonies from people who had attempted to do so in the past.

In Belgium, an investigation into clergy sexual violence found 13 people were believed to have committed suicide as a result of the sexual assault by clerics and that six others were reported to have attempted suicide as a result.<sup>72</sup> In the United States in 2003, a cluster of five suicides in a small community in Kansas were traced back by the surviving family members and police investigators to the sexual assaults committed by a priest when the men served as altar boys.<sup>73</sup> Evidence emerged that higher church officials had known of the priests assaults and moved him around from parish to parish.<sup>74</sup> The note left by one of the priest’s victims reveals the hopelessness and deep anguish he suffered:

It has just become too much pain and trouble for me to continue on. Thank you for always trying to help me out. The fault for this is not yours. You did everything you could. I don't want any regret for anyone as this should leave with me. I have seen over and over again that my life will never be how I want

it to be. So I have to take the easy way out. Goodbye and love  
always. Your child, Bobby J. Thompson.<sup>75</sup>

The Philadelphia Grand Jury reported that one 12-year-old child attempted to kill himself and was institutionalized in a mental hospital afterward.<sup>76</sup>

## **B. Lasting Physical, Mental, Psychological and Emotional Harm**

In addition to the increased risk of suicide, research shows that adult survivors of childhood sexual violence are more likely to experience acute and chronic mental health issues such as post-traumatic stress disorder (“PTSD”), dissociative identity disorder (“DID”), major depression, both acute and chronic, eating disorders, and drug abuse, as well as problems with relationships, sexual function and other health issues.<sup>77</sup> This is in addition to any physical injuries that may have occurred during the commission of the assault. Recent research indicates that traumatic stress caused by childhood sexual violence causes neurological damage and changes in brain function.<sup>78</sup> More recently, studies have even shown increased risk of cancer by those who experienced childhood sexual violence<sup>79</sup> as well as a correlation to significantly higher health care costs for women who were abused as children than those who did not experience such abuse.<sup>80</sup>

The long-term effects are more likely when the perpetrator has enjoyed a position of trust or authority and/or when the abuse occurs in an institutional or organizational setting. The Victoria Report noted that the harm of sexual violence is exacerbated when the perpetrator enjoys a position of “high moral standing” as priests and others associated with the church often do.<sup>81</sup> The Philadelphia Grand Jury in the United States observed the dual dynamics that play upon victims of sexual violence in the context of the Church: “the human toll of the Archdiocesan policies is staggering. Children suffered the horror of being sexually assaulted by priests” and “were then victimized a second time by an Archdiocesan administration that in many cases ignored, minimized or attempted to conceal their abuse.”<sup>82</sup>

The Victoria Report presents the most recent institutional overview of the severity and long-term impact of childhood sexual violence. The report combines the first-hand accounts of survivors themselves with an overview of the studies and research that also bear out the individual experiences of those who presented evidence to the inquiry. The report noted research which indicates that adult survivors of childhood sexual violence are four times more likely to develop major depression than others who have not experienced such abuse and linkages between childhood abuse and neglect and conditions such as PTSD, depression and anxiety.<sup>83</sup>

Recently, a survivor of sexual violence by a priest belonging to the Christian Brothers – violence which the judge described as the “most extreme” he had seen – was awarded what is believed to be the highest court settlement in such a case in Ireland.<sup>84</sup> In his decision, the judge made clear he accepted the witness’ evidence that the severe sexual violence caused him “significant trauma.”<sup>85</sup> One survivor in Australia, Barry Wilson, was recently diagnosed with terminal cancer, and testified from his bedside for Australia’s Royal Commission into child sexual abuse.<sup>86</sup> Noting the sustained sexual violence he and his brother suffered in an orphanage (also run by the Christian Brothers) in the state of Victoria, he stated: “[The abuse] destroyed my life... to touch somebody else is really hard for me. My sex life’s been a bad

thing to me all my life...”<sup>87</sup> Wilson only recently came forward to report the sexual violence stating that he had been too scared before. After reporting, he learned his brother had also endured sexual assaults at the orphanage.

*“The Church is not a democracy. And no one from below can decide on the truth.”*

- Pope John Paul II

#### **IV. The Holy See’s Policies and Practices Have Enabled, and Continue to Enable, the Widespread Rape and Sexual Violence and Result in Severe Physical and Mental Harm**

##### **A. Legal Status of the Holy See and Implications for Fulfillment of its Obligations under the Convention**

In its reporting to this Committee, the Holy See reiterates its designation as a sovereign state and subject of international law.<sup>88</sup> This has been the subject of much debate in recent years among international law experts. Those who argue against its designation as a sovereign state point to the diminutive size of its territory and the fact that it has no stable population.<sup>89</sup> Those who argue in support of Vatican statehood point to the fact that it has territorial control of the territory, no matter how small, a governing structure and an international legal personality.<sup>90</sup>

While for purposes of this report the issue is a moot one since the Holy See has ratified the Convention,<sup>91</sup> the very fact of these arguments underscores the point that the Holy See inhabits a unique and hybrid space in the world unlike any other country or entity. In many ways, the extraordinary legal status and nature of the Holy See – a tiny territorial state with a virtually global presence and the protections afforded sovereigns *and* religious entities – is a significant factor enabling the widespread sexual violence within the Church. In addition to the obstacles church officials have placed in the path of victims who would seek justice, secular authorities have also been reluctant historically to investigate wrongdoing by church officials because they are “church officials.” Because bishops and cardinals enjoy unusual status as both religious *and* at times government officials, police and prosecutors have often been timid about pursuing investigations and charges against them. This hybrid status has long allowed it to avoid accountability, both internally and externally, as well as meaningful compliance with the core obligations of the Convention – prevention of and protection against torture and cruel, inhuman and degrading treatment in the form of rape and other acts of sexual violence when committed by those associated with the Church.

The Church exists alongside as well as within other countries which gives rise to a situation that operates on the ground to the severe detriment of victims of sexual violence by clergy and very often results in no means or avenues of redress. In its Initial Report under the Convention, the Holy See makes distinctions between the territory and citizens of Vatican City State who are governed by the laws pertaining thereto and that of the Holy See as it relates to the “universal Church.” Both within the confines of Vatican City and beyond in the realm of the universal Church, the Holy See has refused – and is still refusing – to honor its obligations under the Convention to prevent and punish acts of acts of torture and cruel, inhuman and degrading treatment.

## B. Structure of the Church and Chain of Command

The Vatican is a highly centralized and hierarchical institution that is monarchical in practice,<sup>92</sup> with all authority leading to and ultimately residing in the Pope in Rome.<sup>93</sup> (See Organizational Chart annexed hereto as Appendix B). Canon law provides that the Pope has “supreme full, immediate and universal ordinary power” and that “he can always freely exercise this power.”<sup>94</sup> The 1983 code of canon law goes on to describe just what is meant by “supreme full, immediate and universal ordinary power” that the pope “can always freely exercise:”

By virtue of his office, the Roman Pontiff not only possesses power over [sic] the universal Church but also obtains the primacy of ordinary power over [sic] all particular churches and groups of them. Moreover, this primacy strengthens and protects the proper, ordinary, and immediate power which bishops possess in the particular churches entrusted to their care.<sup>95</sup>

Under the Pope, the “basic governmental office” is the bishop.<sup>96</sup> Bishops are the heads of dioceses.<sup>97</sup> While bishops are responsible for the clergy who serve in their dioceses, they are in turn subject to the directions and limitations imposed on them by the Pope, and by the Code of Canon Law. An archdiocese is a major diocese and is led by an archbishop.<sup>98</sup> Archbishops are subject to the directions and limitations imposed on them by the Pope, and by the Code of Canon Law. Similarly, cardinals are appointed by the Pope. The cardinals are also citizens of Vatican City State and members of the College of Cardinals, which serves as the Pope’s “supreme advisory body,” while still remaining under the authority of the Pope.<sup>99</sup>

Dioceses are comprised of parishes, which are headed by a pastor. A pastor must be a priest. A vertical line of authority runs from the priest to the bishop to the Pope. The Pope can, however, by-pass all intermediate levels of authority.<sup>100</sup>

With respect to the role of bishops, the Code of Canon Law sets forth:

Bishops assist the Roman Pontiff in exercising his office. They are able to render him cooperative assistance in various ways, among which is the synod of bishops. The cardinals also assist him, as do other persons and various institutes according to the needs of the times. In his name and by his authority, all these persons and institutes fulfill the function entrusted to them for the good of all the churches, according to the norms defined by law.<sup>101</sup>

Within the Vatican, the Roman Curia is the central administrative apparatus of the Vatican through which the Pope governs. It is comprised of secretariats, pontifical councils and commissions, tribunals and other offices as well as nine “congregations” or departments.<sup>102</sup> Within the Curia, the Secretariat of State, headed by the papal Secretary of State (who must be a cardinal), is the “highest level of authority” under the Pope.<sup>103</sup> “The Secretary of State is, in practice, the second in command of the Catholic Church.”<sup>104</sup> The secretariat is responsible for *inter alia* affairs pertaining to the various dioceses and relations with the heads of foreign governments.<sup>105</sup> As of 2012, the Vatican confirms 588 citizens of Vatican City State.<sup>106</sup>

### C. Church Structure and Policies Related to Sexual Violence Cases

The Congregation of the Doctrine of the Faith (CDF), originally known as the “Sacred Congregation of the Universal Inquisition” and given its current name in 1965, was founded in 1542 “to combat heresy” and has as its primary duty to safeguard “faith and morals” throughout the Church.<sup>107</sup> As one of the nine congregations within the Roman Curia, the CDF is the entity tasked with overseeing proceedings against those accused of ‘abuse’ against children.<sup>108</sup> Two key documents set out the procedures for handling allegations of sexual violence by priests, *Crimen Sollicitationis*, *Sacramentorum sanctitatis tutela*, which supplemented *Crimen* in 2001.

*Crimen Sollicitationis*, first issued in 1922, grants the CDF with explicit jurisdiction over sexual ‘abuse’ of minors, and sets out procedures for processing such cases.<sup>109</sup> *Crimen Sollicitationis* was updated in 1962 to include religious orders, in addition to dioceses.<sup>110</sup> It is a key document that exemplifies the Vatican’s preoccupation with secrecy in these cases and the wall of silence to which even victims were required to adhere. It required all actors involved, including victims, their family members and witnesses, to maintain secrecy at the risk of excommunication.<sup>111</sup> Excommunication constitutes an extreme penalty for breaking the silence in that, for many believers, it not only means being ostracized from a community, but also being excluded from the protection of the faith and condemned to eternal damnation.<sup>112</sup> This stands in stark contrast to the penalty for an accused if found guilty in the canonical process of having committed the actual rape or sexual violence as the possible repercussions do not include excommunication.

*Sacramentorum sanctitatis tutela* was issued in May 2001, pursuant to the Apostolic Letter issued by Pope John Paul II on 30 April 2001.<sup>113</sup> This instruction confirmed that after investigation of claims at the local level, all claims of ‘abuse’ must be referred to the CDF which had primary authority for determining the handling and resolution of such claims.<sup>114</sup> Following the referral of a case to CDF, the CDF determines whether to refer the case to a diocese for processing or whether to retain the case and process it itself. Cardinal Joseph Ratzinger was head of CDF at the time that *Sacramentorum sanctitatis tutela* was issued.

Ratzinger issued a letter to all bishops of the Catholic Church on 18 May 2001 informing them of the new norms and that all cases of clerical abuse are “reserved to the apostolic tribunal of the Congregation for the Doctrine of the Faith.”<sup>115</sup> The letter further stated that “the criminal action on delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by a prescription of ten years. The prescription runs according to the universal and common law; however, in the delict perpetrated with a minor by a cleric, the prescription begins to run from the day when the minor has completed the 18th year of age.”<sup>116</sup>

Changes were added to certain norms of the instruction by the Holy See in 2003 that purportedly expedited procedures for the laicization of priests found guilty by the Congregation of serious acts of sexual violence.<sup>117</sup> In 2010, those changes were codified in Substantive Norms which also lengthened the statute of limitations to 20 years from the victim’s 18<sup>th</sup> birthday. The norms also included child pornography among the delicts.<sup>118</sup>

What is not broached in any of these norms and instructions is the consequence or punishment for those in the church hierarchy who fail to follow them and who cover up the offenses. The prohibition in and of itself has not prevented the proliferation of sexual violence throughout the church, which has been concealed and enabled by higher authorities – a key factor in

creating the culture of rape and sexual violence. Nor do the applicable rules explicitly require reporting to appropriate civil authorities of allegations of sexual violence.

While the Holy See claims that “the universal law of the Church has always viewed sexual abuse of a minor by a cleric/religious as one of the most serious offenses that sacred ministers can commit,”<sup>119</sup> sexual violence against a minor by clergy is treated in the same way and carries the same penalties as attempts by clergy to ordain women in the revised procedural norms issued by the Vatican in 2010.<sup>120</sup> Such treatment casts serious doubt on the validity of the Holy See’s claim in this regard and its ability to comprehend and address the full scale and gravity of the harm to children resulting from sexual violence by clergy. Moreover, the Vatican decreed in 2008 that any bishop who conferred holy orders on a woman would be immediately “punished with excommunication.”<sup>121</sup> There is no such express penalty for those bishops found to have covered up and/or enabled sexual violence.

Although the number of cases the Vatican has adjudicated is minimal considering the global scale of violations, it is worth considering the cases the Holy See reviewed, as they reveal the serious shortcomings in the Vatican process, i.e., the minimization of the violations, the lack of sufficient punishment for the direct perpetrators and the failure to hold accountable those in higher-level officials who failed to prevent or adequately punish the violations and instead enabled additional violations. In February 2012, Cardinal William Levada, then-Prefect of the CDF, acknowledged that “[m]ore than four thousand cases of sexual abuse of minors have been reported to the CDF in the past decade.” In 2010, then-Msgr. Charles Scicluna, who served as Promoter of Justice for the CDF for years, said in an interview that the CDF from 2001 to 2010 had adjudicated canonically “around 3,000” cases of alleged child abuse by diocesan and religious priests from countries throughout the world.<sup>122</sup> What is known about these processes is that the most severe penalty for being found guilty of this kind of offense is laicization. An oft-used form of punishment is to order the accused priest to live a period of “prayer and penitence.” What is not known from this information is how many cases were referred to civil authorities for investigation and prosecution, whether or to what extent Vatican or other church officials cooperated with other national authorities in the investigation and prosecution of such offenses, and whether or to what extent higher-level church officials were held accountable in any way for concealing the offenses, or failing to report or cooperate with civil authorities.

#### **D. Change to Vatican City law**

Subsequent to submitting its initial report to this Committee, the Vatican updated its criminal code governing Vatican City State presumably to meet its longstanding treaty obligations under CAT, as well as the Convention on the Rights of the Child and its optional protocols.<sup>123</sup> These provisions apply to the law governing Vatican City State and do not apply to the “universal church.” The new law introduces the crime of torture into the Vatican City State criminal code. The implications of these amendments for the Holy See’s fulfillment of its obligations under the CAT are discussed further in Section V. Briefly stated, the definition is flawed in that it incorrectly narrows and limits the class of persons who can be held liable for an act of torture to those serving in a judicial or law enforcement capacity rather than to “any” official as the Convention requires. Nor do the new provisions aim to promote and ensure compliance and international cooperation with other secular authorities and their long-established laws on sexual abuse.

The reforms, which took effect on 1 September 2013, also include a broader definition of the category of “crimes against minors,” including the sale of children, child prostitution, the military recruitment of children, sexual violence against children, and producing or possessing

child pornography. Despite having long been a State Party to the Convention and OPSC, these offenses had not previously been criminalized by the Holy See. Sexual offenses existed under the Vatican's penal code only in a general form, as crimes against "good customs," carrying a maximum penalty of 3 to 10 years. Under the revision, the punishments range from 5 to 10 years in prison, with aggravating circumstances increasing the maximum sentence to 12 years with a fine of 250,000 euros.<sup>124</sup>

#### **E. Shadow Policies and Practices Behind the Veil of Reform, Non-Mandatory Reporting**

The above norms and instructions for dealing with allegations of sexual violence relate only to internal church procedure. It was not until 2010 that the Vatican suggested in a set of guidelines that "civil law concerning reporting of crimes to the appropriate authorities" should be followed, while stopping far short of requiring such reporting throughout the church even in jurisdictions where reporting of such acts is not mandated by law.<sup>125</sup> This late-coming guideline must be seen against the backdrop of a historic isolationist approach by those at the highest levels of the church and institutional refusal to cooperate with secular authorities.

As noted above, the Holy See self-describes as an absolute monarchy with all authority leading to and residing in the Pope in Rome who, according to canon law, has "supreme full, immediate and universal ordinary power" and can "always freely exercise this power."<sup>126</sup> This is important to understanding how policies and practices are expressed through those at the center of power at the Vatican. In one striking expression of the Church's unwritten policy privileging its canonical law and process and encouraging a lack of reporting to and cooperation with civil authorities, Pope John Paul II in 2001 authorized Cardinal Darío Castrillón Hoyos to send a letter to a French bishop to congratulate him for refusing to report to the French authorities a priest who had repeatedly raped one boy and sexually assaulted nine others, despite the fact that the priest had admitted his guilt to the bishop. The bishop, Pierre Pican, was sentenced by a French court to a suspended three-month sentence for failing to report the assaults while the priest was sentenced to 18 years in prison. In the letter, Castrillón Hoyos, who was serving as Prefect for the Congregation for the Clergy in Rome at the time, writes that he was "delighted to have a fellow member of the episcopate who, in the eyes of history and of other bishops, would prefer to go to prison rather than denounce his priest-son." Moreover, Castrillón Hoyos informed Pican that he would use him as an example for other bishops to follow when he wrote: "This Congregation, in order to encourage brothers in the episcopate in this delicate matter, will forward a copy of this letter to all the conferences of bishops."<sup>127</sup>

Similarly in 2002, Cardinal Tarcisio Bertone, who at one point served as Secretary for the CDF under Ratzinger and later served as Pope Benedict's Secretary of State, countered those who argued that mandatory reporting of sexual violence to state authorities should be required. He famously asserted that civil society should respect to the "professional secrecy" of priests even beyond the "seal of the confessional":

*In my opinion, the demand that a bishop be obligated to contact the police in order to denounce a priest who has admitted the offense of pedophilia is unfounded. Naturally civil society has the obligation to defend its citizens. But it must also respect the "professional secrecy" of priests, as it respects the professional secrecy of other categories, a respect that cannot be reduced simply to the inviolable seal of the confessional. If a priest*



cannot confide in his bishop for fear of being denounced, then it would mean that there is no more liberty of conscience.<sup>128</sup>  
(emphasis added)

Indeed, Vatican officials have rejected attempts by bishops to make reporting of sexual violence to civil authorities mandatory. In its Second Report under the CRC, the Holy See pointed to the Essential Norms adopted by a mixed commission of U.S. Bishops and Vatican hierarchy as a step taken to combat sexual abuse, also often referred to as the “Zero Tolerance” policy.<sup>129</sup> It failed to mention, however, that the Holy See was responsible for watering down that policy when it vetoed the requirement that all suspected child sexual abuse be mandatorily reported to civil authorities as the conference of U.S. bishops had initially proposed. The original June 2002 version of the norms would have required mandatory reporting to public authorities of any allegation of sexual abuse. Norm 10 of that document stated: “The diocese/eparchy will report to the public authorities any allegation (unless canonically privileged) of sexual abuse of a person who is currently a minor.”<sup>130</sup>

In October 2002, the Vatican dispatched a letter to the U.S. Conference of Catholic Bishops (USCCB) wherein it foreshadowed that the mandatory reporting would not stand:

[T]he application of the policies adopted at the Plenary Assembly in Dallas can be the source of confusion and ambiguity, because the 'Norms' and 'Charter' contain provisions which in some aspects are difficult to reconcile with the universal law of the Church. ... Questions ... remain concerning the concrete manner in which the procedures outlined in the 'Norms' and 'Charter' are to be applied in conjunction with the requirements of the Code of Canon Law and the *Motu proprio Sacramentorum sanctitatis tutela* (AAS 93, 2001, p. 787).<sup>131</sup>

A Mixed Commission, comprised of high-level Vatican officials and members of the USCCB, was convened in Rome in late 2002 to “reconcile” the June Charter and Norms with canon law. At this point, the Vatican deleted the mandatory reporting requirement from the original norms and replaced it with the watered down Norm 11, which simply requires compliance “with applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities.”<sup>132</sup> This is the Norm which is still in effect today in the U.S.

This is significant for a number of reasons. First, the Vatican’s resistance to mandatory reporting by diocesan officials in the U.S. is consistent with its practice of attempting to invalidate mandatory reporting voluntarily adopted by bishops elsewhere. For example, in its Second Report under the Convention, the Holy See also points to the principles adopted by the Irish Catholic Bishops’ Conference in the 2008 Safeguarding and Guidance Document without any mention of the level of involvement of and pressure brought to bear by Irish civil society and government actors after four separate commissions of inquiry into widespread and systemic abuses by clergy.<sup>133</sup>

The Holy See also fails to mention that it urged Irish bishops not to comply with any mandatory reporting requirements in the original Framework Document developed by bishops as early as 1996. In fact, a 1997 letter from the Vatican, channeled through the Vatican’s embassy to Ireland, put the bishops on notice that the “mandatory reporting” required by the Framework Document “gives rise to serious reservations of both a moral and a canonical nature” and appeared “contrary to the canonical discipline.”<sup>134</sup> The letter further put the bishops on notice

that “[i]f such procedures were to be followed by the Bishops and there were cases of eventual hierarchical recourse lodged at the Holy See, the results could be highly embarrassing and detrimental to those same Diocesan authorities.”<sup>135</sup>

More recently, bishops in Italy adopted a set of guidelines which was approved by the Vatican that explicitly states they are *not* required to inform law enforcement authorities if they suspect a child has been sexually assaulted.<sup>136</sup> The bishops pointed to a 1985 treaty between the Vatican and the government of Italy which provides that clergy are not obliged to report information to civil authorities obtained through their religious ministry.<sup>137</sup>

Secondly, high-ranking officials in U.S. dioceses are still failing to report despite the existence of so-called reforms. In a report issued in February 2011, a third Grand Jury was convened to look at cases of rape and sexual violence in the archdiocese of Philadelphia, found that the same policies and practices of cover-up, priest-shifting and victim-blaming were still happening despite the USCCB’s zero tolerance policy.<sup>138</sup> The Philadelphia archdiocese, which had been certified by an independent review board as functioning properly and in accordance with the model policy adopted by the bishops and approved by the Vatican in 2002, was shown to have 37 credibly accused priests still freely serving in ministry with access to congregants.<sup>139</sup> In particular, as noted above with respect to the role of Cardinal Rigali in overseeing the Philadelphia Archdiocese in recent years, the report stated: “*We would have assumed, by the year 2011, after all the revelations both here and around the world, that the church would not risk its youth by leaving them in the presence of priests subject to substantial evidence of abuse. That is not the case.*”<sup>140</sup> In fact, the Grand Jury concluded that the “*procedures implemented by the Archdiocese to help victims are in fact designed to help the abusers, and the Archdiocese itself.*”<sup>141</sup> (emphasis added)

The grand jurors also noted problems with the way that the Archdiocese’s independent review board, a mechanism also mandated by the 2002 reforms, has functioned in these cases and found that when it has taken action, “the results have often been even worse than no decision at all.”<sup>142</sup> The jurors concluded that even with the so-called reforms in place, such as the review board, “[t]hese are simply not the actions of an institution that is serious about ending sexual abuse of its children. There is no other conclusion.”<sup>143</sup>

Similarly, in February 2011, fourteen district attorneys in the United States whose counties are encompassed by the Albany diocese found it necessary to join efforts and strongly communicate their concerns about the diocese’s handling of sexual abuse allegations – again years after “reforms” had been implemented.<sup>144</sup> In fact, this was the second time in ten years that the district attorneys of those counties have jointly raised concerns about these matters with the diocese. In 2002, the district attorneys issued recommendations with which the diocese agreed to comply. In the 29 February 2012 letter, the prosecutors disagreed with the diocesan counsel’s claim that the diocese was fully in compliance with the 2002 recommendations made by prosecutors. The prosecutors also faulted the diocese for failing to “promptly” report “all” allegations to the appropriate district attorneys’ office. The D.A.s’ letter was issued soon after a notable trial last year of a priest who had worked in the Albany diocese and against whom complaints were made to diocesan officials in 2000 and 2008. The diocese never reported the allegations to appropriate authorities. When one of the now-adult victims learned that the priest was still working at a church affiliated with a school, he contacted the appropriate district attorney and recounted years of abuse by the priest. While the New York statute of limitations barred any charges against the priest, Massachusetts authorities were able to prosecute him as the offenses were not time-barred there.

The fourteen prosecutors proposed a new and strongly worded Memorandum of Understanding that requires the diocese to “immediately notify” the appropriate district attorney’s office with jurisdiction over the matter and even defines what is meant by “immediate notification,” i.e. “the same day or next business day.”<sup>145</sup> The memorandum also prohibits the diocese from transferring or re-assigning the accused member of the clergy during the pendency of the state’s investigation. The memorandum further prohibits the diocesan officials from investigating the matter themselves, including “screening” of cases for truth or falsity.

Likewise, commissions of inquiry in Ireland have found that some of the same practices have been happening even after reforms. For example, the Cloyne Commission, which released its report in June 2011 and a final chapter in December 2011, also found instances of failure to report, victim-blaming, exposing others to harm by leaving accused priests with access to children and congregants and minimizing the offenses. Indeed, it found that the bishop of the Cloyne diocese intentionally misled the Irish Minister for Children to believe that “the Framework Document guidelines [the reforms] were fully in place and were being fully complied with.”<sup>146</sup>

#### **F. The Vatican Refusal to Discipline Bishops and Cardinals**

As a result of the work of victims and survivors of sexual violence in coming forward and speaking out, there are now numerous examples around the world where it is clear that bishops have followed this policy as expressed by two men at the center of gravity of power in Rome. One recent example which has come to light is that of Cardinal Roger Mahony of the Los Angeles Archdiocese. In January 2013, tens of thousands of pages of documents were released because hundreds of plaintiffs in a clergy sex abuse lawsuit insisted they be disclosed as part of a legal settlement.<sup>147</sup> The documents showed that Mahony and other church officials worked to shield offending priests rather than risk having them reported to authorities. In particular, the documents show that Mahony and his top aide worked to keep priests from seeing therapists who would have been obliged under California law to alert police to suspected child abuse.<sup>148</sup> They also sent others out of state to avoid criminal investigations and civil suits.<sup>149</sup> The documents also show that while Mahony often took steps to conceal crimes and protect offending priests, there were also times when he attempted for years to get the Vatican to remove offenders from the priesthood and encountered resistance.<sup>150</sup> It should be noted that Mahony was only working within the Vatican’s own process in doing so – he was still not reporting the matter to or cooperating civil authorities or otherwise alerting others to the dangers posed by offending priests.

At no point has there been an effort to systemically address the culpability of higher-level church officials who have been responsible for holding in place the system of cover-up and enabling of offenses. Indeed, one of the recommendations of the Committee on the Rights of the Child was to share all archives so that both direct perpetrators “and all those who concealed their crimes and knowingly placed offenders in contact with children” can be held accountable.<sup>151</sup> As noted by Vatican expert and canon lawyer Fr. Thomas Doyle, no cardinal or bishop has been defrocked, disciplined or even denounced by top church officials for not following legal procedures or Vatican instructions concerning the handling of allegations, i.e. for concealing rape and sexual violence, protecting and moving offending priests or refusing to report or cooperate with civil authorities in the investigation and prosecution of these cases.<sup>152</sup> In fact, the opposite has often occurred.

In the examples listed below, it is significant that there is no indication that any of these men ever came under scrutiny by the Vatican despite multiple sources of evidence showing that they worked to cover-up and conceal sexual violence, and shifted offending priests:

*Cardinal William Levada.* William Levada retired in 2012 as Cardinal Joseph Ratzinger's successor to the Congregation for the Doctrine of the Faith (CDF), a post to which he was appointed in 2005 following Ratzinger's election as Pope (Pope Benedict XVI). Prior to that he served as Archbishop of San Francisco from 1995-2005 and before that as Archbishop of the Portland, Oregon from 1986-1995. Before Portland, he worked closely with Cardinal Ratzinger in Rome where he served as secretary of the CDF and was considered by some to be a protégé of Ratzinger.

When he was Archbishop of San Francisco, the archdiocese was sued by a whistleblower priest for retaliation and defamation after the priest reported a fellow priest to the authorities when he suspected he was sexually assaulting altar boys.<sup>153</sup> The whistleblower priest, Father John Conley, sued the archdiocese after he was accused by church officials of being unstable and negligent and placed on administrative leave. The suspected priest later admitted to sexual involvement with altar boys and was ushered into retirement.<sup>154</sup> Eventually, the archdiocese, under Levada, entered into a settlement with one of the altar boys who had sued. The archdiocese then also settled the defamation case brought by Father Conley, himself a lawyer and former federal prosecutor, in which the Archdiocese pre-funded his retirement.<sup>155</sup>

In 2004, a founding member of the Independent Review Board which was formed to monitor the handling of allegations of sexual abuse by priests in the San Francisco archdiocese resigned in protest when he accused Levada of blocking the release of the panel's findings on sexual abuse allegations involving 40 priests.<sup>156</sup> Levada has also been severely criticized for his handling of abuse allegations when he was serving as Archbishop in Portland.<sup>157</sup> Despite the accusations of impropriety, Levada was appointed by Pope Benedict XVI to be his successor in overseeing all sexual abuse allegations at the Congregation for the Doctrine in 2005.

*Cardinal Anthony Bevilacqua.* During the course of criminal proceedings in Philadelphia, Pennsylvania in the U.S., evidence was uncovered in February 2012 that revealed that Cardinal Anthony Bevilacqua ordered his subordinates to destroy a list of thirty-five priests credibly accused of sexual violence.<sup>158</sup> The order was recorded in a hand-written note made by the person who was ordered to destroy all existing copies of the document, Monsignor James Malloy, and was witnessed by Rev. Joseph Cistone. Malloy secretly stored the memo of a meeting and the shredding of the document in a safe which was not opened until after his death in 2006 when archdiocesan officials hired a locksmith to open it and found the letter. Malloy, the priest who destroyed the list on Bevilacqua's orders, died in 2006 but prior to his death expressed his reasons for documenting the destruction of the evidence:

I couldn't be sure that I could trust my superiors to do the right thing. I wanted my memos to be there if the archdiocese's decisions were

eventually put on the judicial scales. This way, anyone could come along in the future and say, this was right or this wrong. But they could never say it wasn't all written down.<sup>159</sup>

Bevilaqua appeared at least ten times before the grand jury and each time denied knowing the details or playing a significant role in the handling of allegations of sexual violence by priests, even testifying at one point that he "saw no evidence at any time that we did any cover-up."<sup>160</sup> In the first grand jury report, the jurors noted that Bevilaqua had publicly declared in 2002 that he had a "zero tolerance" policy and never transferred any priest who had abused a child to another assignment where he would have access to children. That grand jury found otherwise:

We find that despite those identified risks, these Archdiocesan managers continued and/or established policies that made the protection of the Church from "scandal" more important than the protection of children from sexual predators. These policies were followed, even at the cost of giving priests who had not only been accused of, but in many cases admitted to, sexually assaulting children, access to untold thousands of additional innocent children. We find that Archdiocesan managers as a whole acted not to prevent the sexual abuse of children by priests but to prevent the discovery that such abuse had occurred.<sup>161</sup>

The second Grand Jury documented additional evidence of priest-shifting and noted that the archdiocese's own records showed that one abusive priest was transferred so many times "they were running of places to send him where he would not already be known" and that Bevilaqua engaged in a practice of reciprocity with other bishops known as "bishops helping bishops" where he agreed to harbor accused priests in his diocese.<sup>162</sup> Bevilaqua died in January 2012, without ever undergoing scrutiny or any kind of rebuke from the Vatican on account of the overwhelming evidence that he covered up sexual abuse and exposed others to risk.

*Cardinal Justin Rigali.* Rigali served as Archbishop of Philadelphia from 2003-2011 and before that as Archbishop of St. Louis from 1994-2003.<sup>163</sup> Rigali's tenure at the head of the Philadelphia Archdiocese coincided with a period in which revelations of past crimes against children were brought forward and ongoing acts that placed children in jeopardy of sexual assault and exploitation were revealed. Philadelphia grand jury investigations yielded three scathing reports over nearly ten years finding evidence of cover-up and priest-shifting.<sup>164</sup> In fact, years after a so-called zero-tolerance policy was in place in the U.S., the grand jury reported that in 2011 there were 37 credibly accused priests still openly serving in the archdiocese.<sup>165</sup> What was more shocking to many is that the archdiocese had been declared to be in good working order by a review board tasked with ensuring compliance with the zero tolerance policy.

In particular, the Grand Jury noted:

Most disheartening to the grand jury was what we learned about the current practice toward accused abusers in the Philadelphia

Archdiocese. We would have assumed, by the year 2011, after all the revelations both here and around the world, that the church would not risk its youth by leaving them in the presence of priests subject to substantial evidence of abuse. That is not the case. In fact, we discovered that there have been at least 37 such priests who have been kept in assignments that expose them to children. Ten of these priests have been in place since before 2005 – over six years ago.<sup>166</sup>

The Grand Jury further reported that despite the zero-tolerance policy, the Archdiocese,

...continues to engage in practices that mislead victims, that violate their trust, that hinder prosecution of their abusers and that leave large numbers of credibly accused priests in ministry....<sup>167</sup>

*Cardinal Bernard Law.* Retired Cardinal Law became widely known when he resigned under public pressure as Archbishop of Boston in 2002 after the extent of his role in the cover-up of sexual violence by priests was unearthed by the Boston Globe.<sup>168</sup> The Massachusetts Attorney General launched an 18-month investigation which revealed that *250 priests and church workers stood accused of acts of rape and sexual assault of children and that the mistreatment was “so massive and so prolonged that it borders on the unbelievable.”*<sup>169</sup> (emphasis added) The report issued by the Attorney General further noted that “For decades, Cardinals, Bishops and others in positions of authority within the Archdiocese chose to protect the image and reputation of their institution rather than the safety and well-being of children.” Law, in particular, was singled out in the Attorney General’s report: “Law had direct knowledge of the scope, duration and severity of the crisis experienced by children in the Archdiocese; he participated directly in crucial decisions concerning the assignment of abusive priests, decisions that typically increased the risk to children.”<sup>170</sup>

Subsequent to his resignation as archbishop in Boston, Law relocated to Rome and in 2004 was appointed Archpriest of the Basilica di Santa Maria Maggiore, a coveted position. He retired from that post in November 2011.

*Cardinal Sean Brady, Ireland.* Brady was elevated by Pope Benedict XVI to cardinal in 2007. Before that he had been serving as Archbishop of Armagh and Primate of All Ireland since 1994. There have been repeated calls for his resignation due to his role in covering up sexual violence by priests, in particular once it became widely known that he participated in an internal canonical inquiry into cases of rape and sexual abuse committed by Father Brendan Smyth in 1975.<sup>171</sup> All participants in the proceeding were sworn to maintain confidentiality of the tribunal and Brady never reported the incidents to police or parents of those who had been abused. Smyth went on to commit other acts of sexual abuse against dozens of children before finally being investigated and prosecuted in 1994.

*Cardinal Godfried Danneels, Belgium.* Danneels served as Archbishop of Mechelen-Brussels in Belgium from 1979-2010. In 1998, a Belgian court found that the church failed to protect victims of an offending priest. When he testified in court, Danneels denied that he had known of the abuse. Subsequent to his

retirement, Danneels was surreptitiously recorded advising a victim of sexual abuse to delay a public statement until after the offending priest had retired.<sup>172</sup> It was later learned that another priest attempted to notify Danneels about the offending priest as early as 1996 but Danneels had not heeded the warning.<sup>173</sup> A series of revelations in Belgium about the scale and the scope of sexual violence involving clergy prompted Catholic church officials to set up a commission of inquiry into cases of sexual assault in the church from the 1960-1970's, with a primary goal of addressing older cases for which there could be no legal recourse due to the statute of limitations. The report set out evidence gathered by the Commission on 476 cases and found that at least 13 people were believed to have committed suicide as a result of the sexual assault by clerics and that six others had attempted suicide as a result. The report further noted that "many consider there to be an organized system of concealment."<sup>174</sup>

*Archbishop Gerhard Müller, Germany and now Prefect of CDF.* Upon taking office, Pope Francis appointed German Archbishop Gerhard Müller to be head of the CDF, the entity tasked with handling all allegations from around the world of sexual violence by clergy. As reported by the respected watchdog and research organization BishopAccountability.org, Müller badly mishandled the case of Rev. Peter Kramer, who had been convicted of sex offenses involving two boys, ages nine and twelve, prior to Müller's appointment as bishop.<sup>175</sup> Kramer's probation required that he not work with children but he was already doing so when Müller became bishop.<sup>176</sup> After Kramer's probation expired, Müller named him pastor in violation of the German bishops' 2002 guidelines forbidding appointments to ministry of priests with convictions for child abuse.<sup>177</sup> Müller also concealed his conviction from parishioners, during the years that Müller served as bishop of the Regensburg diocese.<sup>178</sup> Kramer was removed from his position only after the father of the original victims spoke out.<sup>179</sup> Additional victims came forward and Kramer was again convicted of additional acts of child abuse.<sup>180</sup> Müller asserted he bore no responsibility for the children abused as a result of his decision to place Kramer in ministry and even threatened legal action against those who spoke out against his actions.<sup>181</sup> When another German bishop affirmed that the bishops' guidelines forbid priests to have further contact with children, Müller declared that "there is no space free of children and youth."<sup>182</sup>

*Cardinal Jorge Bergoglio/Pope Francis.* Given Müller's careless and reckless stance that led to harm to more children and his combative unwillingness to comply with even the German bishops' own guidelines, the fact that Pope Francis appointed this man to lead the Vatican's entity charged with overseeing all claims of sexual violence from around the world does not bode well for the systemic changes urgently needed to protect children. Reviews of his tenure in Argentina have begun to surface questions and concerns about the handling of cases there.<sup>183</sup> BishopAccountability.org has compiled a summary of one of the more controversial cases arising during Bergoglio's watch, summarizing reports which indicate that Bergoglio may have "intervened behind the scenes" in a controversial case on behalf of a priest convicted of child molestation involving multiple victims, and worked to discredit the victims.<sup>184</sup> An advocate for the victims called the study commissioned by the Argentine bishops a "scandalous instance of lobbying and exerting pressure on the Court."<sup>185</sup>

*Bishop Robert Finn.* In September 2012, for the first time in the United States, a bishop was convicted of failing to report suspected child abuse by a priest in his diocese.<sup>186</sup> In October 2011, Bishop Robert Finn, head of the Kansas City-St. Joseph Diocese, was indicted in Jackson County, Missouri, for failing to report suspected sex offenses against children by Father Sean Ratigan. The priest has been charged in different local and federal jurisdictions with possessing, producing and attempting to produce child pornography. A lawsuit brought last year alleges that Bishop Finn's delay in reporting Ratigan to police enabled Ratigan to abuse a ten-year old girl during that time.<sup>187</sup>

On 5 April 2012, the trial court denied Finn's efforts to dismiss the indictments on the basis that he was not a designated, i.e. mandatory, reporter of sexual abuse under state law.<sup>188</sup> The trial court held a jury could conclude that Finn was a "designated reporter" under the statute, clearing the way for the case to proceed to trial. Previously, in November 2011, Finn avoided another indictment in a different county when he entered into a five-year diversion program with the Clay County prosecutor requiring him to meet monthly face-to-face with the District Attorney for the next five years to discuss any allegations of child sex abuse levied against clergy or diocesan staff within the diocese's Clay County facilities; describe what steps the diocese is taking to address the allegations; and visit all Clay County parishes to outline new programs the diocese is implementing to protect children. Pursuant to the agreement, Finn must be accompanied by the diocesan ombudsman and a new director of child and youth protection.<sup>189</sup> Today, Finn is still in place as bishop and there is no indication that he has suffered any adverse repercussions from the Vatican.



*“The Catholic Church is perhaps the only public institution to have acted with transparency and responsibility. No-one else has done more”*

- Pope Francis<sup>190</sup>

*“These are simply not the actions of an institution that is serious about ending sexual abuse of its children. There is no other conclusion.”*

- Philadelphia Grand Jury<sup>191</sup>

## **V. Specific Areas of Concern Regarding Holy See’s Failure to Fulfil Obligations Under the Convention**

The foregoing demonstrates that the Holy See has refused – and is still refusing – to uphold the core purpose of the Convention against Torture, namely to “make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.”<sup>192</sup>

### **A. Articles 1, 4 and 16: Torture, Domestic Criminal Law, And Cruel, Inhuman, and Degrading Treatment or Punishment**

Article 1 of the Convention defines torture as,

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>193</sup>

With respect to acts of cruel, inhuman and degrading treatment or punishment “which do not amount to torture,” article 16 requires that States Parties to the Convention undertake to prevent such acts when they 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.”<sup>194</sup> While the Convention does not specifically define cruel, inhuman and degrading treatment, the Special Rapporteur on Torture has identified various factors which help define it. For example, an act that lacks the requisite intent or specific purpose required for torture may nonetheless constitute cruel, inhuman and degrading treatment.<sup>195</sup> Likewise, acts that are aimed at humiliating the victim, even where severe pain has not been inflicted, may also rise to the level of cruel, inhuman and degrading treatment.<sup>196</sup> This Committee has noted that “[e]xperience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment.”<sup>197</sup>

It has thus considered the prohibition on cruel, inhuman and degrading treatment to be non-derogable under the Convention and its prevention to be an effective and non-derogable measure.

With regard to both torture and cruel, inhuman and degrading treatment, the Convention obliges states parties to undertake systemic efforts at prevention, including through education and training of officials and personnel (Art. 10), systematic review of interrogation rules and custody arrangements (Art. 11), prompt and impartial investigations of such acts (Art. 12), and complaint mechanisms and protection of complainants and witnesses against ill-treatment and intimidation (Art. 13). The Convention also obliges States Parties to incorporate all acts of torture, including attempts to commit torture, as offences in the State Party's criminal law and provide for universal jurisdiction over such acts.<sup>198</sup>

Subsequent to submitting its initial report to this Committee, the Vatican updated its criminal code presumably to incorporate offenses pursuant to its longstanding international treaty obligations such as the Convention Against Torture (State Party since 2002) and the Convention on the Rights of the Child (State Party since 1990) and its optional protocols.<sup>199</sup> The law, which took effect on 1 September 2003, applies only to the tiny territory of Vatican City State.<sup>200</sup> The new law introduces the crime of torture, which is codified as follows:

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 or acquiescence, inflicts severe pain or suffering, whether physical or mental, to a person in order to obtain from him or a third person some information or a confession, or to punishing him for an act that he or a third person has committed, or is suspected of having committed, or to intimidate or coerce him or a third person, or for any other reason based on any kind discrimination, is punished with five to ten years imprisonment.<sup>201</sup>

The Vatican's codification of torture differs significantly from what is required by the Convention in that it limits culpability to only certain public officials, i.e. those having "judicial, judicial police or law enforcement functions" or having a "similar or analogous role." This leaves acts of torture and ill-treatment committed or instigated or acquiesced to by a wide swathe of officials and persons acting in an official capacity unreachable by this law. The Convention, by contrast, makes no such distinctions but instead bestows liability upon any "public official" or anyone acting in an "official capacity." Neither does the new law incorporate as an offense cruel, inhuman and degrading treatment or punishment, although it does introduce a category of "crimes against minors" which includes the sale of children, child prostitution, the military recruitment of children, sexual violence against children, and producing or possessing child pornography. However, the codification of these laws does not appear to anticipate criminal liability for those who instigate, consent or acquiesce to or otherwise enable the offenses.

The Committee has been clear that legal responsibility lies not only with direct perpetrators but also with "officials in the chain of command, whether by acts of instigation, consent or acquiescence."<sup>202</sup> Just as superior orders cannot be invoked as a justification for torture, "those exercising superior responsibility... cannot avoid accountability or escape criminal

responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures.”<sup>203</sup> In particular, this Committee has emphasized that it is “essential” that,

The responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities.<sup>204</sup>

The Holy See’s newly enacted law leaves a gaping hole with respect to the culpable actions and omissions of a range of officials and those acting in an official capacity. The codification of other offenses such as forms of sexual violence and exploitation of children do not anticipate accomplice liability or superior responsibility. These offenses appear to apply only to offenses occurring in the territory of Vatican City State. As set out in Sec. IV, the Vatican is one of the most hierarchical and centralized institutions in the world with all authority residing in the Pope, and a direct chain of command running from the Pope to – and through – cardinals and bishops to priests.

Finally, this Committee has affirmed that whistleblowers and others who “resist unlawful orders or who cooperate in the investigation of torture or ill-treatment, including by superior officials, should be protected against retaliation of any kind.”<sup>205</sup> In contrast to the treatment of high-ranking officials, including bishops and cardinals, who appear to have been rewarded for having concealed and enabled further crimes, there are numerous accounts of instances where whistleblowers have been punished for taking actions to protect children.

Instances of this kind of retaliation were noted by a Philadelphia Grand Jury which found that Archdiocesan officials intimidated and retaliated against victims and witnesses who came forward about abuse.<sup>206</sup> The report noted that a nun was fired from her position as director of religious education after she complained about a priest who was still ministering to children despite a conviction for possession of child pornography; and that a seminarian was accused of homosexuality and dismissed him from the diocese after he reported he had been abused as an altar boy.<sup>207</sup>

In one notable case arising in the U.S. in 2006, a Michigan bishop broke with his Ohio colleagues by publicly supporting a reform that would enable more child victims to access justice in court (by extending the statute of limitations). Later, he was told by Vatican officials that he had violated canon law and was forced to resign from his post as pastor and asked to resign from his office of auxiliary bishop.<sup>208</sup> The swiftness and manner in which the Vatican responded to the conduct of a bishop who supported more access to justice for victims stands in stark contrast to the manner in which it responds to the conduct of bishops and cardinals when there is evidence they have covered up cases of sexual violence.

**B. Articles 2, 8 and 9: Take all effective measures to prevent acts of torture in any territory under its jurisdiction and assist with criminal proceedings for torture, including by extraditing those who have committed Convention violations and supplying all evidence at its disposal necessary for the proceedings**

In its December 2013 reply to the List of Issues presented by the Committee on the Rights of the Child, the Holy See asserted that it was only responsible for violations occurring on the sovereign territory of Vatican City State.<sup>209</sup> In doing so, the Holy See sought to divert responsibility for widespread and systemic violations of rape and sexual violence by clergy occurring beyond the confines of Vatican City State to national authorities of other States even when the offenses were committed, abetted, facilitated or covered up by Catholic officials acting under the church's authority.<sup>210</sup> The Holy See's position in this regard was extremely disingenuous for two reasons: a) It is inconsistent with international human rights law which affirms the extraterritorial obligations of States to respect and protect human rights; and b) it wholly ignores the vast and still-growing weight of evidence of the ways in which Church officials around the world have subverted the course of justice in countless cases in national systems -- actions which serve to not only deny victims the rights to a remedy and redress, they also undermine prevention efforts and enable further violations of the right to be free from torture and other forms of ill-treatment. Notably, the Committee considers that the obligation to provide redress is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party,<sup>211</sup> but rather it requires State parties to ensure "all" victims of torture and ill-treatment are able to obtain redress.<sup>212</sup>

Article 2 of the Convention requires the State Party to take "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." This Committee has interpreted the concept of "any territory under its jurisdiction" so as to be applied to "protect any person, citizen or non-citizen without discrimination subject to the *de jure* or *de facto* control of a State party," and has emphasized that the "obligation to prevent torture also applies to all persons who act, *de jure* or *de facto*, in the name of, in conjunction with, or at the behest of the State party."<sup>213</sup> The Committee has recognized "any territory" to include areas where "the State party exercises, directly or indirectly, in whole or in part, *de jure* or *de facto* effective control, in accordance with international law."<sup>214</sup>

This Committee's position on the extent of obligations of States Parties is consistent with the positions and jurisprudence of other treaty bodies. The Committee on the Rights of the Child has recognized that "the Convention [on the Rights of the Child] does not limit a State's jurisdiction to 'territory'" and further that "[i]n accordance with international law, the Committee has previously urged states to protect the rights of children who may be beyond their territorial borders."<sup>215</sup> Other human rights monitoring bodies have found that States' obligations extend to "those within the power or effective control" of the agents of a State Party acting outside its territory,<sup>216</sup> or when the "acts and omissions of its agents [...] produce effects or are undertaken outside that state's own territory"<sup>217</sup> or when there is a "causal nexus between the extraterritorial conduct of the State and the alleged violation of the rights and freedoms of an individual."<sup>218</sup>

As set out above and in the findings of commissions and investigations in different countries, the Holy See has been a key causal link to violations of the rights of children under the Convention in this context. At the same time, the acts and omissions of its agents have clearly produced effects that resulted in the violation of the rights of children to be free from sexual

exploitation and violence. These violations were wholly foreseeable, given the manner in which the Vatican operated on these issues, namely to protect the reputation of the Church and quietly shift offending priests around from one parish or country to another with knowledge that such persons continued to offend.

This representation by the Holy See is particularly disingenuous in light of the all-too-numerous accounts of efforts by bishops, archbishops, cardinals and other Church officials around the world who have covered up these crimes and subvert the course of justice in other States, further compounding the harm to victims. Not only have Church officials not cooperated fully in investigations and prosecutions, in violation of art. 9 of the Convention, they have been found to have worked in many cases to ensure that the legal process in other States could not work as intended in order to protect rights, prevent harm and provide redress when it occurs.<sup>219</sup> As discussed above in Sec. IV, high-ranking officials at the Vatican have expressed the position that bishops and others associated with the church should *not* report these matters to and cooperate with civil authorities. As it stands now, the Vatican's stated position is that civil laws should be complied only with when it comes to mandatory reporting requirements but does not mandate such reporting throughout the church. (The fact that the Vatican now includes a specific guideline which does nothing more than suggest that civil laws where the church is operating should not be violated suggests that the positions of higher church officials like Former Secretary of State Tarcisio Bertone and Prefect of the Congregation for the Clergy Cardinal Dario Castrillon-Hoyos were in fact the position of the Vatican previously).

Commissions of inquiry and other investigations have shown repeatedly the existence of the practice of "priest shifting," meaning bishops, cardinals or other high-ranking officials have transferred known offenders to other locations where they continued to have access to children or vulnerable adults and who officials knew continued to commit rape and other acts of sexual violence. As a Westchester (New York) Grand Jury noted: "the religious institution consistently shuttled the abuser from place to place each time an allegation came to light" and "the new congregation was purposefully kept in the dark... By virtue of this reassignment strategy, the religious institution put more children at risk."<sup>220</sup> Similarly, the Ferns Commission in Ireland found that offending priests were moved from parish to parish with no warning to parishioners and others with whom they would come into contact; that victims' complaints were not handled in a sensitive or supportive manner, "which led to further hurt and alienation for the complainant" and that other children suffered further sexual violence as a result of these actions and inactions.<sup>221</sup> Priest shifting takes on truly global dimensions, as offender priests may be first moved out of one local jurisdiction to another part of a country, and then are moved to other countries or continents to evade accountability – and place more children in danger of sexual assault.<sup>222</sup>

Additionally, there are numerous accounts of the destruction of evidence and obstruction of justice. In many cases, not only did church officials not submit the matter to the competent authorities for investigation and prosecution, causing delay in an effort to bar the action due to the statute of limitations, but some went so far as to obstruct investigations and prosecutions and encouraged others to do so as well. The Westchester Grand Jury found that "[i]n many instances, the religious institution's internal investigation of the allegations was primarily geared to delay, with the hope that the victim and his family would not persist in pursuing their claim."<sup>223</sup>

Similarly, a Grand Jury in Philadelphia reported that a "previous grand jury was frustrated that it could not charge either the abusers or their protectors in the church, because the successful cover-up of the abuse resulted in the expiration of the statute of limitations."<sup>224</sup> In fact, it later

surfaced during the course of the trial in 2012 the Cardinal overseeing the archdiocese, Anthony Bevilacqua, had ordered the destruction of a list of 35 credibly accused priests. The order was recorded in a hand-written memo by the person ordered to destroy all existing copies of the document and then stored in a safe which was not opened until after his death.<sup>225</sup> The priest who destroyed the lists on Bevilacqua's orders expressed his reasons for documenting the destruction:

I couldn't be sure that I could trust my superiors to do the right thing. I wanted my memos to be there if the archdiocese's decisions were eventually put on the judicial scales. This way, anyone could come along in the future and say, this was right or this wrong. But they could never say it wasn't all written down.<sup>226</sup>

Other inquiries have reported their findings that evidence was deliberately destroyed. Experts investigating the situation in the Archdiocese of Munich and Freising in Germany reported that "destruction of documents took place in considerable measure."<sup>227</sup> An Archbishop in the United States testified to routinely shredding documents that he received on a weekly basis advising him of sexual abuse cases.<sup>228</sup>

The Holy See also attempts to make distinctions between the international legal personality and responsibility of the sovereign state and Catholic entities and organizations around the world without acknowledging the authority, control and oversight it exercises over such institutions, generally, and in particular with regard to allegations of rape and sexual violence by priests and others associated with the Church, like seminarians, brothers and nuns.<sup>229</sup> Moreover, it is significant that the Holy See acknowledges that cardinals, many of whom oversee large archdioceses around the world, are deemed citizens of Vatican City in light of mounting evidence and documentation, some of which is discussed above, that a number of these cardinals have followed policies and practices that covered up the sexual violence, protected offending priests, thwarted investigations, and hindered victims' access to justice.<sup>230</sup>

Finally, the Holy See has undermined the Convention's purpose of "avoiding safe haven for torturers"<sup>231</sup> by failing to respond to requests for extraditions, as required by Article 8 of the Convention. As the Convention itself makes clear, State parties are obligated to include torture and cruel, inhuman and degrading treatment as extraditable offenses in all extradition treaties, and, in the absence of such treaties, consider the Convention itself as a basis to extradite persons to another State party.<sup>232</sup> A recent example makes it clear that the Vatican continues to breach its obligations under Article 8: in January 2014, Poland reportedly sought the extradition of Polish Archbishop Josef Wesolowski who for alleged sex abuse claims committed while he was serving in the Dominican Republic. Rather than extradite him to Poland, the Vatican recalled him to Vatican City and refused to send him to Poland, arguing both that he enjoyed diplomatic immunity and that the Vatican does not extradite its citizens,<sup>233</sup> stating "Archbishop Wesolowski is a citizen of the Vatican, and Vatican law does not allow for his extradition."<sup>234</sup>

### **C. Articles 12, 13 and 14: Right of Torture Victims to Adequate Remedy and Reparation, including Right to file Complaints and to Prompt and Impartial Investigations**

Article 14 of the Convention provides, in part:

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

In 2012, this Committee adopted its General Comment No. 3 on the implementation of article 14 by States parties, which is focused on assisting victims and survivors in addressing the physical and mental harms, including the emotional suffering, caused by torture and ill-treatment.<sup>235</sup> An important aspect of redress is “the State attributing official recognition to survivors of torture.”<sup>236</sup> In General Comment 3, the Committee explains that “‘redress’ encompasses both an ‘effective remedy’ and ‘reparation,’” with reparations including “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”<sup>237</sup> All aspects of reparations must be available to meet the requirements of Article 14. Likewise, half-measures are not sufficient.<sup>238</sup>

This Committee has found that “[f]or restitution to be effective, efforts should be made to address any structural causes of the violation, including any kind of discrimination,” including on the basis of gender, age and religion.<sup>239</sup> There is no indication that the Vatican has taken steps to address any “structural” discrimination, particularly gender-based discrimination. Indeed, the Committee has advised that “complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, [and] rape [...] are able to come forward and seek and obtain redress.”<sup>240</sup> Moreover, as this Committee has advised, “the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed against them.”<sup>241</sup> As this Committee has found, the “pervasive effect of torture” requires a long-term and integrated, holistic approach that includes readily accessible specialist services.<sup>242</sup> Church-established programs to respond to the sexual violence have failed in creating a “context of confidence and trust,”<sup>243</sup> as these programs generally still place the interests of the Church ahead of those of victims.<sup>244</sup>

The Church has wholly failed to meet the indicators that the Committee has set out as part of a remedy — effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; official declaration or judicial decision restoring the dignity, reputation and rights of the victims and those closely connected with the victim; sanction against persons liable for the violations; public apologies that include an acknowledgment of the facts and acceptance of responsibility; and tributes to the victim.<sup>245</sup>

As discussed above, the actions by the Church have been the opposite of what is required: it has failed to make the reforms necessary to prevent sexual violence within the Church, has refused to provide data with appropriate institutions and law enforcement agencies, and has fostered an atmosphere of impunity within the Church.<sup>246</sup> The Church has operated with secrecy rather than transparency, and demanded silence from victims as part of any settlement.

Rather than hiding files and destroying evidence, as the Church has done, the Committee calls on States to “make readily available to the victims all evidence concerning acts of torture or ill-treatment upon the request of victims, their legal counsel, or a judge.”<sup>247</sup> Incredibly, despite the thousands of survivors who have come forward and the numerous commissions of inquiry, the Vatican continues to refuse to accept full responsibility or acknowledge the scale of the violations.<sup>248</sup> The actions by the Holy See constitute violations of its obligations under Article 14.

The Church has also responded to reports of sexual violence against children and vulnerable adults by blaming the victims. This is among the most insidious and cruel practices used in the Church, and the impact on the victims – the survivors – can be devastating. The Grand Jury in Westchester found that “the religious institution, when it became aware of the abuse, rather than seeking to alleviate the trauma to the victim, increased it” and that there was a “concerted effort on the part of the religious institution to mislead the community: defending the abuser while simultaneously attempting to humiliate the victims and their families...”<sup>249</sup> The Ryan Commission in Ireland found that there were times when “the child was blamed and seen as corrupted by the sexual activity, and was punished severely.”<sup>250</sup> Similarly, the Winter Commission in Canada found that “victims of child sexual abuse have been wrongly blamed for their own victimization.”<sup>251</sup> The manner in which victims are doubted or blamed when they come forward seeking some measure of redress leads to the very re-traumatization the Committee warns against.<sup>252</sup>

As detailed above, clergy and church officials can be found to have acted in their “official capacity” because they are exercising functions prescribed by the Vatican, with official sanction of the Vatican in placing such individuals in their specific roles and churches, school or other institutions. In this regard, the Committee has found, that “[w]here State authorities or others acting in their official capacity have committed, know or have reasonable grounds to believe that acts of torture or ill-treatment have been committed by non-State officials or private actors and failed to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors in accordance with the Convention, the State bears responsibility for providing redress for the victims.”<sup>253</sup>

The Committee has highlighted the “important relationship” between the prompt, effective and impartial investigations required by Article 12, the impartial and effective complaint mechanism set out in Article 13, and the obligations related to redress under Article 14.<sup>254</sup> As explained above, the Holy See remains unwilling to impose meaningful sanctions against its officials across the world who have been, and continue to be, complicit in sexual violence, including those who have covered it up and failed to cooperate with civil authorities.

The Committee found “[a] State's failure to investigate, criminally prosecute or to allow civil proceedings...in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation” of the Convention.<sup>255</sup> The Convention further requires that State parties “enact legislation specifically providing a victim of torture and ill-treatment an effective remedy and the right to obtain adequate and appropriate redress, including compensation and as full a rehabilitation as possible.”<sup>256</sup> The Holy See has not adopted legislation to enable survivors of torture and ill-treatment to seek compensation and redress for acts of rape and sexual violence to which they were subjected by members of the Church.

Moreover, the Church has moved regularly to block survivors’ efforts for redress.<sup>257</sup> Survivors have often had to engage in lengthy, expensive efforts to seeking redress through civil



actions—contrary to the Committee’s finding that civil proceedings “should not impose a financial burden on victims.”<sup>258</sup> Church authorities have fought efforts to reform statutes of limitations with respect to cases of child rape and sexual violence which would allow victims to seek redress once they are finally able and willing to come forward, which for most victims is late in life. As the Committee has observed, “[f]or many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those who have not received redress” and has accordingly required that all victims of torture and ill-treatment have access to redress “regardless of when the violation occurred.”<sup>259</sup> The invocation, or the promotion of the maintenance, of statutes of limitation to bar adult survivors from seeking redress for serious harms they suffered as a child runs precisely counter to what Article 14 of the Convention requires.<sup>260</sup> The Holy See has continued to oppose meaningful reforms to secular laws in ways that serve to obstruct justice for survivors of abuse, including restrictive statutes of limitations. The Church has actively resisted similar legislative efforts in states across the U.S., even hiring lobbying and public relations firms to assist their cause.<sup>261</sup> Indeed, the Cardinal of New York, Timothy Dolan, warned against opening one-year window for sex abuse suits:

The perpetrators don’t suffer. There’s no burden on them. What suffers are the services and the ministries of the apostolates that we’re doing now. Because where does the money come from? So the bishops of 30 years ago that allegedly may have reassigned abusers, they don’t suffer. They’re dead. So the people that suffer are those who are being served right now by the church. We feel that’s a terribly unjust burden.<sup>262</sup>

Cardinal Dolan’s opposition to statute of limitations reform is, unfortunately, not the exception but appears to be the rule. In 2013, Church officials waged an extensive lobbying campaign in California against SB 131, a bill that would allow complainants extra time to file lawsuits for sexual abuse. The bill was ultimately vetoed by the governor of California.<sup>263</sup>

As discussed above, the Vatican responded swiftly and harshly against a bishop who broke ranks with other bishops and supported extending the statute of limitations for survivors and providing a one-year window for victims of past harm to access justice. The bishop was notified by the Vatican that he had violated canon law and was forced to resign from his post as pastor and asked to resign from his office of auxiliary bishop.<sup>264</sup> Although time limits have been lifted or significantly eased in over 30 U.S. jurisdictions (despite the church’s efforts to prevent these developments), the Catholic Church has successfully beaten back such proposals in many states.<sup>265</sup>

Further, Church lawyers have once again, and so far successfully, asserted freedom of religion as a defense to shield against judicial inquiries into whether archdiocesan officials committed bankruptcy fraud by failing to report the transfer off Church books of more than \$50 million.<sup>266</sup> This case also serves as a stark example of the significant challenges that victims face when seeking restitution from the Church. In July 2013, in the context of lengthy bankruptcy proceedings involving hundreds of victims of sexual violence by priests as potential creditors, the Archdiocese of Milwaukee, Wisconsin, released thousands of pages of documents under pressure from a federal judge which had previously been sealed in the proceedings and which the archdiocese had long resisted making public.<sup>267</sup> In addition to documents showing the frequent transfer of offending priests without warning to parishioners, and Vatican obstruction,

delay and at times refusal to remove or take other action against offending priests, the documents also revealed that then-Archbishop Timothy Dolan (now Cardinal in New York) sought authorization from the Vatican to move \$57 million off the archdiocese's books and into a "cemetery trust" to protect the funds from "any legal claim or liability."<sup>268</sup> The transfer was not reported to the bankruptcy court, leading to accusations of federal bankruptcy fraud.<sup>269</sup>

After the bankruptcy judge ruled that the archdiocese could not use the First Amendment of the U.S. Constitution's protection of the free exercise of religion to shield the court's scrutiny of the possibly fraudulent transfer of the funds, a federal district court judge reversed that ruling. On 29 July, Judge Rudolph Randa agreed with the Church's lawyers when he ruled that the right of the archbishop to free exercise of religion did in fact shield against any scrutiny of the transfer of funds and that canon law should be respected and not inquired into by a civil court.<sup>270</sup> In November, survivors of sexual violence along with an alliance of clergy, sent a formal request to the Vatican to rescind the transfer of the \$57 million so that it can be used for the benefit of victims.<sup>271</sup> So far, there has been no response.

The actual practice is that the Holy See will use the fact of its statehood and associated immunities to shield against efforts to hold it and its high-ranking officials accountable in national courts for their role in forming and implementing policies and practices that have enabled and facilitated acts of rape and sexual violence.<sup>272</sup> By the same token, Church authorities will use the fact of the Church's status as a religious entity to shield it from civil suits on the grounds that any inquiry by national courts into the church's handling of abuse cases constitutes an interference with religion. In one recent case in the United States, an appellate court agreed with Church authorities and the United States Supreme Court let the decision stand, ending any hope of redress for the victim in that case.<sup>273</sup>

At the same time that church authorities have fought to block efforts by victims at accountability and redress in national systems, its own internal policies and procedures provide no real protection or remedy for victims of sexual violence. The Holy See acknowledged in reporting to the Committee on the Rights of the Child that "the penal sanctions in the Church are medicinal penalties or censures" or "expiatory penalties" such as loss of the clerical state, loss of office, or order to reside.<sup>274</sup> It is the Vatican, not local bishops, that controls the decision as to whether offending clergy should be laicized, or defrocked, or subject to other canonical sanctions short of laicization.

Moreover, the process of reaching that decision can take many years while the priest or religious has often been allowed to serve in the community and potentially do harm to others, with the penalties amounting only to penance or laicization. Historically, the canonical proceedings identified by the Holy See in its Second Report under the CRC have worked against the interests of victims. Some investigators have concluded that Church authorities have intentionally prolonged internal investigations so as to outlast the statute of limitations period for offenses in the civil systems. As discussed above, *Crimen Sollicitationis*, a key document that exemplified the Vatican's procedure for dealing with sexual abuse allegations until the implementation of new norms, required all actors involved, including victims, their family members and witnesses, to maintain secrecy at the risk of excommunication.<sup>275</sup> This stands in stark contrast to the penalty for an accused if found guilty in the canonical process of having committed the actual rape or sexual violence as the possible repercussions do not include excommunication. In addition, even now, victims have no established rights to information during the proceedings, or means of asserting themselves in the process, which is also lacking in transparency and any form of accountability.

Thus, the entire “State” apparatus of the Church’s long and winding canonical and institutional response to cases of child rape amounts in the end to a personnel policy of a large corporation, i.e., the determination of whether someone found guilty of raping or sexually assaulting a child should be fired from the vocation or otherwise subject to discipline short of being fired. What is more striking is that in numerous cases of admitted violations the Vatican has refused to do even this.<sup>276</sup>

## Endnotes

<sup>1</sup> More information on CCR is available at [www.ccrjustice.org](http://www.ccrjustice.org) and more information on SNAP, including resources for support and assistance, is available at [www.snapnetwork.org](http://www.snapnetwork.org).

<sup>2</sup> Maziejuk was a 64-year-old farmer and one of a group of villagers who unsuccessfully asked church authorities to reassign an accused priest in Poland quoted in Beata Pasek, *Faithful in Pope's Homeland Press Church to Act on Sex Abuse*, Star Tribune (Poland), 28 Sept. 2003, available at [http://www.bishop-accountability.org/news2003\\_07\\_12/2003\\_09\\_28\\_Pasek\\_FaithfulIn.htm](http://www.bishop-accountability.org/news2003_07_12/2003_09_28_Pasek_FaithfulIn.htm).

<sup>3</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, Holy See, Reservations and Declarations, U.N. GA. Res. 39/46 Annex, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/708, Annex (1984), available at [http://www.bayefsky.com/pdf/holysee\\_t2\\_cat.pdf](http://www.bayefsky.com/pdf/holysee_t2_cat.pdf) (“Holy See Reservations”).

<sup>4</sup> Initial Report of the Holy See Under the Convention Against Torture, and Other Cruel, Inhuman, and Degrading Treatment and Punishment, CAT/C/VAT/1 (2012) (“Initial Report”). The report, dated 7 December 2012, was due in 2003.

<sup>5</sup> United Nations Committee Against Torture, General Comment 2, UN Doc: CAT/C/GC/2 (2008) (“CAT General Comment 2”), ¶11.

<sup>6</sup> David Marr, *Child abuse report reveals betrayal of trust 'beyond comprehension': 'Children were betrayed by trusted figures in organisations of high standing and suffered unimaginable harm,' says report*, The Guardian, 12 Nov. 2013, available at <http://www.theguardian.com/world/2013/nov/13/child-abuse-report-reveals-a-betrayal-of-trust-beyond-comprehension>.

<sup>7</sup> See Initial Report, *supra* note 4, ¶ 62 (stating that in ratifying the Convention, the Holy See “intends to manifest its moral authority and thereby encourage States to ratify the treaty and to accomplish their respective obligations...[t]he Holy See, for its part, is making every effort to advance moral principles and conditions for ensuring peace, justice and social progress in a context of ever more effective respect for and promotion of the human person and his or her rights”).

<sup>8</sup> See Holy See Reservations, *supra* note 3.

<sup>9</sup> See, Family and Community Development Committee, Parliament of Victoria, *Betrayal of Trust: Inquiry into the Handling of Child Abuse and Religious and Other Non-Government Organisations*, at 66, November 2013, available at [http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Report/Inquiry\\_into\\_Handling\\_of\\_Abuse\\_Volume\\_1\\_FINAL\\_web.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Report/Inquiry_into_Handling_of_Abuse_Volume_1_FINAL_web.pdf). (“Betrayal of Trust”).

<sup>10</sup> Question by Committee member Benyam Dawit Mezmur (Vice-Chairperson), Committee on the Rights of the Child, 65<sup>th</sup> Session, 16 Jan. 2014, Part III (CRC Answers and OPSC&OPAC Questions) available at <http://www.treatybodywebcast.org/category/webcast-archives/crc/>.

<sup>11</sup> Much of the information provided in this report is drawn from a factual and legal analysis submitted to the Prosecutor of the International Criminal Court in the submitting organizations surveyed and summarized much of the evidence compiled to date by different commissions of inquiry, grand juries and other investigative bodies. Thus, for a more detailed summary and analysis of that evidence and key reports in the sex abuse crisis in different countries, please see, *Victims' Communication pursuant to Article 15 of the Rome Statute Requesting Investigation and Prosecution of High-level Vatican Officials for Rape and Other Forms of Sexual Violence as Crimes Against Humanity and Torture as a Crime Against Humanity*, ICC File No. OTP-CR-159/11, 13 Sept. 2011, available at <http://s3.documentcloud.org/documents/243877/victims-communication.pdf> (“Victims' Communication”); *Information Supplementing ICC Communication*, ICC File No. OTP-CR-159/11, 11 April 2012, available at [http://ccrjustice.org/files/Supplemental%20SNAP%20Submission%20to%20ICC%20OTP%20\(11%20April%202012\).pdf](http://ccrjustice.org/files/Supplemental%20SNAP%20Submission%20to%20ICC%20OTP%20(11%20April%202012).pdf) (“Supplemental ICC Communication”). See also, Center for Constitutional Rights, *Fighting for the Future: Adult Survivors Work to Protect Children and End Culture of Clergy Sexual Abuse*, Report to the United Nations Committee on the Rights of the Child, Feb. 2013, available at <http://www.ccrjustice.org/files/SNAP%20Shadow%20Report%20to%20UN%20CRC.pdf> (“CCR/SNAP CRC Report”); Center for Constitutional Rights, *Supplemental Submission to the United Nations Committee on the Rights of the Child in Advance of its Review of the Holy See During Its 65<sup>th</sup> Session*, Dec. 2013, available at

---

<http://www.ccrjustice.org/pdf/CRC%20Supplemental%20SNAP%20Dec%202013.pdf> (“CCR/SNAP Supplemental CRC Report”).

<sup>12</sup> United Nations Committee Against Torture, General Comment, No. 3, CAT/C/CG/3 (13 Dec. 2012) (“General Comment3”), ¶ 42. *See also id.* at ¶ 18 (calling on States to “undertake measures to combat impunity”).

<sup>13</sup> The Committee on the Rights of the Child recently completed its second review of the Holy See. In its Concluding Observations, the Committee *inter alia* found “in dealing with allegations of child sexual abuse, the Holy See has consistently placed the preservation of the reputation of the Church and the protection of the perpetrators above children’s best interests,” and expressed “its deepest concern about child sexual abuse committed by members of the Catholic churches who operate under the authority of the Holy See [and] is gravely concerned that the Holy See has not acknowledged the extent of the crimes committed, has not taken the necessary measures to address cases of child sexual abuse and to protect children, and has adopted policies and practices which have led to the continuation of the abuse by and impunity of the perpetrators.” *See* CRC/C/VAT/CO/2 (31 Jan. 2014) (“CRC 2014 Concluding Observations”), ¶¶ 29, 43. *See also* Concluding Observations on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography CRC/C/OPSC/VAT/CO/1 (25 Feb. 2014). The CRC called on the Holy See to *inter alia*: immediately remove all known and suspected child abusers from assignment and refer the matters to relevant law enforcement authorities for investigation and prosecution; share all archives which can be used to hold abusers accountable as well as those who concealed their crimes and knowingly placed offenders in contact with children; amend Canon Law so as to recognize the gravity of the crime and repeal provisions which impose an obligation of silence, including on the victims; establish clear procedure for mandatory reporting of all suspected cases to law enforcement authorities; ensure that all personnel are aware of reporting obligations and that these prevail over Canon law; and develop programs and policies to prevent these crimes and for recovery and social reintegration of child victims. CRC 2014 Concluding Observations, ¶ 44. Notably, the CRC addressed the treatment of girls placed in the Magdalene Laundries, which this Committee addressed in the context of Ireland’s reporting (*see* CAT Committee, *Concluding Observations: Ireland*, CAT/C/IRL/CO/1 (2011) at ¶11), under the heading of “torture and other cruel or degrading treatment or punishment.” CRC 2014 Concluding Observations, ¶¶ 37-38.

<sup>14</sup> Remarks by Minister for Children and Youth Affairs (Frances Fitzgerald) on the occasion of the launch of *In Plain Sight: Responding to the Ferns, Ryan, Murphy and Cloyne Reports*, Amnesty International Ireland, (27 Sept. 2011), available at <http://www.amnesty.ie/news/abuse-children-irish-institutions-amounted-torture>. The report was commissioned to explore the conditions in which the widespread and systematic abuse was allowed to occur over so many years, among them the undue deference and privileges according to the Roman Catholic Church by state actors in Ireland, in addition to societal attitudes about poverty that rendered marginalized children more vulnerable to exploitation and violence. The report found that the abuse of children in Catholic-run institutions amounted to torture and cruel, inhuman and degrading treatment.

<sup>15</sup> As of 2012, the Committee had referred to the issue of rape in 46 cases it reviewed in the prior decade, and increasingly references rape in concluding observations. *See*, Felice D. Gaer, “Rape as a Form of Torture: The Experience of the Committee against Torture,” 15 N.Y. CITY. L. REV. 293, 301-302 (2012); *See also*, e.g., *C.T. and K.M. v. Sweden*, (CAT) Communication No. 279/2005, 17 Nov., 2006; *V.L. v. Switzerland*, CAT Communication No. CAT/C/37/D/262/2005, 20 Nov. 2006, ¶ 8.10; CAT General Comment 2, ¶ 22. The Committee has also provided some guidance as to the definition of the war crime of sexual violence, emphasizing that it does not require force or immediate threat of attack. CAT Committee, *Concluding Observations: Bosnia and Herzegovina*, ¶ 9, U.N. Doc. CAT/C/BIH/CO/2-5 (20 Jan. 2011) (recommending that the war crime of sexual violence should be defined “in accordance with international standards and jurisprudence,” which does not require “force or threat of immediate attack,” in their domestic law); available at <http://uhri.ohchr.org/document/index/214d6622-2e35-4af9-a2e1-56a1a5e9cfa9>.

<sup>16</sup> The Human Rights Committee has likewise recognized rape (and other forms of sexual violence) as torture. Human Rights Committee Concluding Observations on Russian Federation, UN Doc: CCPR/CO/79/RUS, 6 Nov. 2003, ¶ 13. General Recommendation 19 of the Committee to End Discrimination Against Women recognizes that violence against women is based on a number of long-standing human rights violations, including torture. United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation 19, Violence Against Women (Eleventh Session, 1992), UN Doc. A/47/38, ¶ 7. The Special Rapporteurs on Torture and Other Cruel, Inhuman or Degrading Treatment from 1988 to the present have recognized rape, and more recently, other forms of sexual violence constitute torture. *See* 1986 Report of Special Rapporteur on Torture and Cruel, Inhuman and Degrading Treatment, Pieter Kooijmans, UN Doc : E/CN.4/1986/15, pp. 29-30; 1992 Report of Special Rapporteur on Torture and Cruel Inhuman and Degrading Treatment, Pieter Kooijmans, UN Doc: E/CN.4/1992/SR.21, 21 February 1992, ¶ 35 :

“Since it was clear that rape or other forms of sexual assault against women held in detention were a particularly ignominious violation of the inherent dignity and right to physical integrity of the human being, they accordingly constituted an act of torture;” 1995 *Report of Special Rapporteur on Torture and Cruel, Inhuman and Degrading Treatment*, Nigel S Rodley, UN Doc: E/CN.4/1995/34, pp. 8-10; 2008 Manfred Nowak, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment: Promotion and Protection of All Human Rights, Civil Political, Economic, Social, and Cultural Rights, Including the Right to Development*, 7th Sess., ¶ 33, U.N. Doc. A/HRC/7/3 (2008), ¶ 26 (“Nowak Report 2008”). The European Court of Human Rights has recognized rape as torture. *Aydın v. Turkey*, Case 57/1996/676/866, Eur. Ct. H.R. ¶¶ 64, 186 and 189 (1997). The Inter-American Court of Human Rights has recognized rape as torture. *Miguel Castro-Castro Prison v. Peru*, Inter-Am Ct. H.R. (ser. C) No. 160, 25 November, 2006. The Inter-American Commission on Human Rights has recognized rape as torture. *Raquel Martin de Mejia v. Peru*, Case 10.970, Inter-Am. C.H.R. (1996).

<sup>17</sup> *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement (2 Sept. 1998); *Prosecutor v. Mucic, et al. (Čelebići Case)*, Case No. IT-96-21-T, Judgement (16 Nov. 1998); *Prosecutor v. Kunarac, et al. (Foča Case)*, Case No. IT-96-23/1, Judgement (12 June 2002); *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, Judgement (2 Nov. 2001); *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgement (10 Dec. 1998); *Prosecutor v. Brđjanin*, Case No. IT-99-36-A, Appeals Judgement (3 Apr. 2007).

<sup>18</sup> *Prosecutor v. Mucic, et al. (Čelebići Case)*, Case No. IT-96-21-T, Judgement, ¶ 495 (16 Nov. 1998).

<sup>19</sup> *Prosecutor v. Kunarac, et al.*, Case No. IT-96-23/1, ¶ 150 (12 June 2002) (“*Kunarac Appeal Judgement*”).

<sup>20</sup> See e.g. CAT Committee, *Concluding Observations: Guyana*, ¶ 19, U.N. Doc. CAT/C/GUY/CO/1 (2006) (expressing concern about reports of widespread sexual violence in places of detention); available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e85d0f2ab6499220c1257292004ef7d0?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e85d0f2ab6499220c1257292004ef7d0?Opendocument); CAT Committee, *Concluding Observations: Togo*, ¶¶ 12, 20, U.N. Doc. CAT/C/TGO/CO/1 (2006) (expressing concern over allegations of the “frequent” rape of women by military personnel and the widespread sexual violence against women in detention facilities); available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTGO%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTGO%2fCO%2f1&Lang=en); CAT Committee, *Concluding Observations: Burundi*, ¶¶ 11, 18, U.N. Doc. CAT/C/BDI/CO/1 (2007) (expressing alarm over “large-scale sexual violence” and “systemic use of rape”; expressing concern over widespread sexual violence against women and children in places of detention); available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3955de032fa0b65ac12572b300472caa?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3955de032fa0b65ac12572b300472caa?Opendocument); CAT Committee, *Concluding Observations: Chad*, ¶ 20, U.N. Doc. CAT/C/TCD/CO/1 (4 June 2009) (expressing concern about “sexual violence, including rape, against women and children” in and around displacement and refugee camps); available at <http://uhri.ohchr.org/document/index/9134fcfb-bfb9-497b-b633-969cfd097784>; CAT Committee, *Concluding Observations: Yemen*, ¶ 24, U.N. Doc. CAT/C/YEM/CO/2 (17 Dec. 2009) (expressing concerns about allegations of sexual violence, including rape against women in detention); available at <http://uhri.ohchr.org/document/index/061f9876-41aa-4292-9cfe-7ea3c1dc4472>. The Committee has expressed concern about molestation and threats of rape, (CAT Committee, *Concluding Observations: Mexico*, ¶ 19, U.N. Doc. CAT/C/MEX/CO/4 (2007) (expressing concern over women being raped, molested, and threatened with rape by police and security officers); available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/2e3ffd18d95b0739c12572b30042e140/\\$FILE/G0740331.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/2e3ffd18d95b0739c12572b30042e140/$FILE/G0740331.pdf); “virginity testing” (CAT Committee, *Concluding Observations: Turkey*, ¶ 20, U.N. Doc. CAT/C/TUR/CO/3 (20 Jan. 2011) (expressing concern regarding Turkish law, which allows judges and prosecutors to order a virginity test in rape cases against the will of the woman)); available at <http://uhri.ohchr.org/document/index/42383336-2984-4dde-ac74-115bd1eec2a3>) and strip searches. (CAT Committee, *Concluding Observations: Hong Kong Special Administrative Region*, ¶ 10, U.N. Doc. CAT/C/HKG/CO/4 (19 Jan. 2009) (expressing concern regarding strip searches of detainees)); available at <http://uhri.ohchr.org/document/index/47dc1f26-e138-41e9-a39f-01f734202039>.) The CAT committee has also recognized sexual humiliation as an interrogation technique (CAT Committee, *Concluding Observations: United States of America*, ¶ 24, U.N. Doc. CAT/C/USA/CO/2 (2005) (concluding that the State party should rescind any interrogation technique involving sexual humiliation); available at <http://uhri.ohchr.org/document/index/c7ebfc1d-d99b-430d-8944-1346cf6ea660>) and sexual harassment of under-age girls in detention facilities as torture and/or CIDT. See CAT Committee, *Concluding Observations: Egypt*, ¶ 5(d), U.N. Doc. CAT/C/CR/29/4 (2002) (expressing concern over reports of sexual harassment of under-aged detainees, particularly girls); available at <http://uhri.ohchr.org/document/index/4ede416d-a954-4af7-a44a-e4f2095c26f6>

<sup>21</sup> Rhonda Copelon, *Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law*, 46 MCGILL L. J. 217, 217-40 (2000).

22 Articles 7(1)(g)-1 and 6 of the ICC Elements of Crimes requires that the rape or sexual violence be “committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment...” or that it be “committed against a person incapable of giving genuine consent.” A footnote to both articles specifies that “it is understood that a person may be incapable of giving genuine consent if affected by natural, induced or *age-related incapacity*” (emphasis added). International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000).

23 See e.g., *Kunarac Appeal Judgement supra* note 19, ¶ 457 (“The basic principle which is truly common to these legal systems is that serious violations of sexual autonomy are to be penalised. Sexual autonomy is violated wherever the person subjected to the act has not freely agreed to it or is otherwise not a voluntary participant”).

24 The Special Rapporteur on Torture has also indicated that powerlessness on the part of the victim—who is under the complete physical or mental control of another party—can be a factor when determining whether the severity of the alleged abuse rises to the level of torture or CIDT. Manfred Nowak, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment: Civil and Political Rights, Including Questions of Torture and Detention*, 62<sup>nd</sup> Sess., U.N. Doc. E/CN.4/2006/6 (2005) (“Nowak Report 2005”), ¶ 39. This analysis requires consideration of subjective factors, such as “sex, *age* and physical and mental health,” and “in some cases also *religion*, which might render a specific person powerless in a given context.” *Report of the Special Rapporteur on Torture. A/HRC/7/3*, ¶ 29. (emphasis added).

25 Nowak Report 2008, *supra* note 16 at ¶¶ 28-29.

26 *Id.*

27 General Comment 2, ¶ 15. In its 2011 review of Ireland, the Committee expressed grave concern about the State’s failure to follow-up on the Ryan Report’s finding of “physical and emotional abuse and neglect” as well as “sexual abuse... particularly in boy’s institutions,” suggesting that the abuse in the Ryan report constituted torture or CIDT. CAT/C/IRL/CO/1, ¶ 20.

28 This is in contrast to the priests who are not subject to excommunication even when found to have committed violations. See *Crimen Sollicitationis, infra* note 110.

29 *Kunarac Appeal Judgement, supra* note 19, and *Čelebići Trial Judgement, supra* note 18, respectively.

30 Nowak Report 2008, *supra* note 16 at ¶ 30.

31 See CAT General Comment 2, ¶ 15. See also, Gaer, *supra* note 15 at 293, 301-302.

32 See CAT General Comment 3, ¶ 7. See also, CAT General Comment 2.

33 See CAT General Comment 2, ¶ 7. See also, *id.* at ¶ 9.

34 CRC 2014 Concluding Observations, *supra* note 13, ¶¶ 43, 44(b).

35 John Allen Jr., *Vatican Abuse Summit: \$2.2 billion and 100,000 Victims in U.S. Alone*, National Catholic Reporter, 8 Feb.2012, available at <http://ncronline.org/blogs/ncr-today/vatican-abuse-summit-22-billion-and-100000-victims-us-alone>.

36 Elisabetta Povoledo, *Vatican Urged to Give Priority to Abuse Victims*, New York Times, 7 Feb. 2012, available at <http://www.nytimes.com/2012/02/08/world/europe/vatican-urged-to-give-priority-to-abuse-victims.html? r=0>.

37 Samuel S.H. Hughes, *Royal Commission of Inquiry into the Response of the Newfoundland Criminal System to Complaints* (Newfoundland, Canada, 1989), at 490, available at [http://www.lewisday.ca/ldlf\\_files/pdf/Mt.Cashe%20vol%201.pdf](http://www.lewisday.ca/ldlf_files/pdf/Mt.Cashe%20vol%201.pdf) (“Hughes Report”); see also, Gordon A. Winter, *The Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy* (Archdiocese of St. John’s, Canada, 1990), at 137, available at [http://www.attorneygeneral.jus.gov.on.ca/inquiries/cornwall/en/hearings/exhibits/Tom\\_Doyle/pdf/06\\_Commission.pdf](http://www.attorneygeneral.jus.gov.on.ca/inquiries/cornwall/en/hearings/exhibits/Tom_Doyle/pdf/06_Commission.pdf) (“Winter Commission”).

38 *Cummins Report: Report of the Protecting Victoria’s Vulnerable Children Inquiry by Government of Victoria, Australia* (Feb. 2012), available at <http://www.childprotectioninquiry.vic.gov.au/images/stories/inquiry/consolidated%20%20protecting%20victorias%20vulnerable%20children%20inquiry%20report%2027%20january%202012.pdf>. Two commissions of inquiry were set up in 2012, a Royal Commission of Inquiry operating at the federal level and a Commission of Inquiry set up by the government of the state of Victoria. See e.g., Stuart

---

Rintoul, *Victoria Sex Abuse Inquiry Gets Extension*, *The Australian*, 15 Feb. 2013, available at <http://www.theaustralian.com.au/national-affairs/in-depth/victorian-sex-abuse-inquiry-granted-extension/story-fngburq5-1226578568897> and Alison Rourke, *Australia to Hold Wide-Ranging Inquiry Into Child Sex Abuse*, *The Guardian*, 12 Nov. 2012, available at <http://www.guardian.co.uk/world/2012/nov/12/australia-judicial-inquiry-child-abuse>.

<sup>39</sup> Although one recently undertaken study was cancelled by bishops who were accused by an investigator of trying to censor aspects of the report. See Reuters, *German Bishops Cancel Study Into Sexual Abuse by Priests*, 9 Jan. 2013, available at <http://www.nytimes.com/2013/01/10/world/europe/german-bishops-cancel-study-into-sexual-abuse-by-priests.html>.

<sup>40</sup> Francis D. Murphy, Helen Buckley, and Larain Joyce, *The Ferns Report, Diocese of Ferns*, presented to the Minister for Health and Children (Dublin: Government Publications, 2005), available at [http://www.bishop-accountability.org/reports/2005\\_10\\_Ferns/Complete\\_Ferns\\_Report\\_SO.pdf](http://www.bishop-accountability.org/reports/2005_10_Ferns/Complete_Ferns_Report_SO.pdf) (“Ferns Report”).

<sup>41</sup> The Ryan Report was issued by the Commission to Inquire Into Child Abuse and was the result of a 10-year inquiry into the extent and effects of abuse on children from 1914-2004 in Irish institutions for children. See *The Ryan Report on Irish Residential Institutions*, The Commission to Inquire into Child Abuse, Dublin, Ireland (20 May 2009), available at <http://www.childabusecommission.com/rpt/index.php> (“Ryan Report”). The five-volume report chronicles cases of tens of thousands of children who suffered systematic sexual, physical and mental abuse in the schools. The report describes in chilling detail how “[a] climate of fear, created by pervasive, excessive and arbitrary punishment, permeated most of the institutions and all those run for boys. Children lived with the daily terror of not knowing where the next beating was coming from.” The violence encompassed rape and other forms of sexual violence, which was particularly ‘endemic’ in boys’ institutions. The Ryan commission found a policy that protected perpetrators and exposed children to repeated acts of sexual violence.

<sup>42</sup> Judge Yvonne Murphy, Ms. Ita Mangan, and Mr. Hugh O’Neill, Commission of Investigation: Report into the Catholic Archdiocese of Dublin (26 Nov. 2009), at 11.1-11.2, available at <http://www.justice.ie/en/JELR/Pages/PB09000504> (finding *inter alia* “[t]here was little or no concern for the welfare of the abused child or for the welfare of other children who might come into contact with the priest.”).

<sup>43</sup> See Judge Yvonne Murphy, Ms. Ita Mangan, and Mr. Hugh O’Neill, Report into the Diocese of Cloyne, Commission of Investigation, dated 23 Dec. 2010, released 13 July 2011, available at [http://www.justice.ie/en/JELR/Cloyne\\_Rpt.pdf/Files/Cloyne\\_Rpt.pdf](http://www.justice.ie/en/JELR/Cloyne_Rpt.pdf/Files/Cloyne_Rpt.pdf) (“Cloyne Report”) and Report Into the Diocese of Cloyne Report, Chapter Nine, Commission of Investigation, 23 Dec. 2010, released Dec. 2011, available at [http://www.bishop-accountability.org/reports/2011\\_07\\_13\\_Cloyne\\_Report/Cloyne\\_further\\_portions\\_Dec\\_2011.pdf](http://www.bishop-accountability.org/reports/2011_07_13_Cloyne_Report/Cloyne_further_portions_Dec_2011.pdf).

<sup>44</sup> See Peter Adriaenssens, [Commissie voor de Behandeling van Klachten Wegens Seksueel Misbruik in Een Pastorale Relatie](#) (10 Sept. 2010) [Commission for Dealing with Complaints of Sexual Abuse in a Pastoral Relationship] (“Adriaenssens Report”).

<sup>45</sup> Commissioned by Church officials after scandals broke out in Germany, attorney Marion Westpfahl led an effort which involved examining approximately 13,000 documents spanning 1945 to 2009, with allegations brought against at least 159 priests. See Marion, Westpfahl, Central Points of Appraisal Report, *Sexual and Other Physical Assaults by Priests, Deacons and Other Pastoral Workers in the Field of Jurisdiction of the Archdiocese of Munich and Freising Between 1945 and 2009* (2010), at 2, available at [http://www.bishop-accountability.org/reports/2010\\_12\\_02\\_Westpfahl\\_Munich\\_and\\_Freising\\_Key\\_Points\\_English.pdf](http://www.bishop-accountability.org/reports/2010_12_02_Westpfahl_Munich_and_Freising_Key_Points_English.pdf) (“Westpfahl”).

<sup>46</sup> See Report of Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church (Netherlands), 16 Dec. 2011, available at [http://bishopaccountability.org/reports/2011\\_12\\_16\\_Deetman\\_Seksueel\\_Misbruik/](http://bishopaccountability.org/reports/2011_12_16_Deetman_Seksueel_Misbruik/) and Deetman Report, Executive Summary (English) at [http://bishopaccountability.org/reports/2011\\_12\\_16\\_Deetman\\_Seksueel\\_Misbruik/Deetman\\_Report\\_English\\_Summary.pdf](http://bishopaccountability.org/reports/2011_12_16_Deetman_Seksueel_Misbruik/Deetman_Report_English_Summary.pdf).

<sup>47</sup> See, e.g., CRC 2014 Concluding Observations, *supra* note 13, ¶ 43 (finding that the Holy See’s “policies and practices [...] have led to the continuation of the abuse by and impunity of the perpetrators”).



---

48 See *id.* at ¶¶ 43-44 (outlining the Churches practices that have enable sexual violence against children).

49 Report of the Philadelphia Grand Jury, In Re County Investigating Grand Jury, MISC. NO. 01-00-89444, Philadelphia, PA (2001), at 3, available at [http://www.bishop-accountability.org/reports/2003\\_09\\_25\\_First\\_Philadelphia\\_Grand\\_Jury\\_Report.pdf](http://www.bishop-accountability.org/reports/2003_09_25_First_Philadelphia_Grand_Jury_Report.pdf). (“Philadelphia Grand Jury Report I”). See also, Victims’ Communication, *supra* note 11 at pp. 22-29.

50 Ryan Report, *supra* note 41, Executive Summary, p. 21.

51 Cloyne Report, *supra* note 43, at 1.17.

52 *Id.* at 1.21.

53 Report of the Philadelphia Grand Jury, In Re County Investigating Grand Jury XXIII, MISC. No. 0009901-2008, at p. 9, Philadelphia PA. 23 Jan. 2011, available at [http://www.bishopaccountability.org/reports/2011\\_01\\_21\\_Philadelphia\\_Grand\\_Jury\\_Final\\_Report\\_Cleargy\\_Abuse\\_2.pdf](http://www.bishopaccountability.org/reports/2011_01_21_Philadelphia_Grand_Jury_Final_Report_Cleargy_Abuse_2.pdf) (“Philadelphia Grand Jury Report III”).

54 Betrayal of Trust, *supra* note 9 at 71.

55 See CAT General Comment 2, ¶ 11. See also General Comment 3, ¶ 37 (finding that a “clear acknowledgement” of a violation of the Convention, i.e., the commission of an act of torture or ill-treatment, to be a “crucial component” of redress).

56 See also CRC General Comment No. 13, CRC/GC/13 (2011), ¶ 4 (defining “violence”). Notably, the CRC recognizes both mental and physical violence. *Id.* at ¶¶ 21 and 22.

57 For a discussion of torture in the context of the CRC, see *id.* at ¶ 26. For a discussion of the international criminal law jurisprudence on rape and sexual violence as torture, see Victims’ Communication, *supra* note 11, p. 68.

58 See Stephen Prior, *Object Relations in Severe Trauma: Psychotherapy of the Sexually Abused Child*, Jason Aronson, Inc., (2004); Bassel Van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*, Viking Press (2012); Christine A. Courtois, Julian D. Ford, Judith L. Herman, *Treating Complex Traumatic Stress Disorders: An Evidence-Based Guide*, Guilford Press (2009); Bassel Van der Kolk, Alexander McFarlane, Lars Weisaeth, *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society*, The Guilford Press (2006); David Finkelhor and Angela Brown, “the Traumatic Impact of Childhood Sexual Abuse: A Conceptualization,” *Am. J. of Orthopsychiatry*, 55:4, 530-541 (1985).

59 Report of the Grand Jury, In Re County Investigating Grand Jury, MISC. NO. 03-00-239, (C. P. Philadelphia, 2003), available at [http://www.bishop-accountability.org/reports/2005\\_09\\_21\\_Philly\\_GrandJury/Grand\\_Jury\\_Report.pdf](http://www.bishop-accountability.org/reports/2005_09_21_Philly_GrandJury/Grand_Jury_Report.pdf) (“Philadelphia Grand Jury Report II”), at 2-3. See also, Westpfahl, *supra* note 45, at Exec. Summary, 3: “With regard to the misconduct in question, namely the sexual offences, it must be emphasized that euphemistic, trivialising language was used, which, from the point of view of the experts, often gave no more than an inkling of the complete extent of the offence and its effect on the victim.”

60 Westpfahl, *supra* note 45 at Exec. Summary, 3.

61 Karen Terry et al., *The Nature and Scope of the Problem of Sexual Abuse of Minors by Priests and Deacons*, prepared by John Jay College of Criminal Justice, United States Conference of Catholic Bishops (2004), available at [http://www.bishop-accountability.org/reports/2004\\_02\\_27\\_JohnJay\\_revised/2004\\_02\\_27\\_John\\_Jay\\_Main\\_Report\\_Optimized.pdf](http://www.bishop-accountability.org/reports/2004_02_27_JohnJay_revised/2004_02_27_John_Jay_Main_Report_Optimized.pdf).

62 Hughes Report, *supra* note 37.

63 Philadelphia Grand Jury Report I, *supra* note 49 at 3.

64 The Committee’s Concluding Observations in relation to Japan, although arising in the context of war, are instructive: “The survivors of the wartime abuses, acknowledged by the State party representative as having suffered ‘incurable wounds’, experience continuing abuse and re-traumatization as a result of the State party’s official denial of the facts, concealment or failure to disclose other facts, failure to prosecute those criminally responsible for acts of torture, and failure to provide adequate rehabilitation to the victims and survivors.” CAT/C/JPN/CO/1, ¶ 24.

65 *Id.*

66 Martin Teicher, *Scared Sick: The Role of Childhood Trauma in Adult Disease*, Basic Books (2012).

- 
- 67 Paul J. Isely, Peter Isely, Jim Freiburger, Robert McMackin, "In their Own Voices: A Qualitative Study of Men Abused as Children by Catholic Clergy: Survivor Perspectives on the Impact of Clergy Perpetrated Sexual Abuse," *Journal of Child Sexual Abuse*, Vol. 17 (3-4) (2008).
- 68 Betrayal of Trust, *supra* note 9 at 71 *citing* A. Lamont, *Effects of Child Abuse and Neglect for Adult Survivors*, NCPC Research Sheet (2010).
- 69 Nick McKenzie, Richard Baker and Jane Lee, *Church's Suicide Victims*, Canberra Times, 13 Apr. 2012, *available at* <http://www.canberratimes.com.au/victoria/churchs-suicide-victims-20120412-1wwox.html>.
- 70 *Id.*
- 71 *See, See, Betrayal of Trust, supra* note 9, at 66; *See also*, Marr, *supra* note 6.
- 72 Adriaenssens Report, *supra* note 44.
- 73 Thomas Farragher, *Through Kansas Parishes, a Trail of Suicide: Families Blame Deaths on Ex-priest*, Boston Globe, 18 July 2002, *available at* [http://www.boston.com/globe/spotlight/abuse/stories2/071802\\_kansas.htm](http://www.boston.com/globe/spotlight/abuse/stories2/071802_kansas.htm).
- 74 *Id.* *See also*, Stan Finger, In 5 Kansas Suicides, Families Blame Father Larson, The Wichita Eagle, 21 July 2002, *available at* [http://www.snapnetwork.org/news/otherstates/ks\\_5\\_suicides.htm](http://www.snapnetwork.org/news/otherstates/ks_5_suicides.htm).
- 75 Farragher, *supra* note 73.
- 76 Philadelphia Grand Jury II, *supra* note 59.
- 77 *See, e.g.*, Shanta R. Dube, et al., *Long-term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. OF PREVENTIVE MED. 430 (2005) ("A history of suicide attempt was more than twice as likely among both male and female victims as among nonvictims."); *See also*, *Boys, Too, Suffer Long-term Consequences of Childhood Sexual Abuse, supra* note 29, ("[s]exual abuse significantly increases the risk of developing health and social problems -- such as drug and alcohol abuse, mental illness, and marital strife -- in both men and women."); Nelson EC, Heath AC, Madden PA, et al, *Association between self-reported childhood sexual abuse and adverse psychosocial outcomes: results from a twin study*, ARCHIVES OF GENERAL PSYCHIATRY 59 (2): 139–45 (Feb. 2002); and Sabrina Rubin Erdely, *The Catholic Church's Secret Sex-Crime Files*, Rolling Stone, 15 Sept. 2011 at 67, detailing the impact of sexual assault by multiple priests and a teacher at a Catholic school on a ten-year old male victim: "He often gagged or vomited for no reason and became increasingly sullen and withdrawn. He stopped hanging out with his friends and playing sports. He started smoking pot at 11; by his late teens, he was addicted to heroin. Billy spent his adolescence cycling in and out of drug-treatment programs and psychiatric centers, once spending a week in a locked ward after a suicide attempt. His parents, who later took out a mortgage on their home to pay for Billy's care, were beside themselves, clueless as to what had sent their sunny child into such a downward spiral."
- 78 *See e.g.*, MH Teicher, *Scars that won't heal: the neurobiology of child abuse*, SCIENTIFIC AMERICAN 286 (3): 68-75; J. Kendall, *How Child Abuse and Neglect Damage the Brain*, The Boston Globe, 24 Sept. 2002, *available at* [http://www.snapnetwork.org/psych\\_effects/how\\_abuse\\_andneglect.htm](http://www.snapnetwork.org/psych_effects/how_abuse_andneglect.htm); Daniel J. Siegel, *The Developing Mind: How Relationships and the Brain Interact to Shape Who We Are*, Guilford Press (2001).
- 79 *See e.g.*, M.J. Brown, L.R. Thacker, and S.A. Cohen, *Association between adverse childhood experiences and diagnosis of cancer*, PLoS ONE 8(6): e65524.
- 80 BA Arnow, *Relationships between childhood maltreatment, adult health and psychiatric outcomes, and medical utilization*, The Journal of Clinical Psychiatry, 65 Supp. 12: 10-5.
- 81 *See, Betrayal of Trust, supra* note 9 at 66.
- 82 Philadelphia Grand Jury II, *supra* note 59 at p. 3.
- 83 *Id.* at 71.
- 84 *See* Patsy McGarry, *High Court Orders Christian Brothers to Pay €370,000 to Victim of Child Abuse*, The Irish Times, 19 Feb. 2014, *available at* <http://www.irishtimes.com/news/crime-and-law/courts/high-court-orders-christian-brothers-to-pay-370-000-to-victim-of-child-abuse-1.1696489#.Uz1-INuN9AM.facebook>.
- 85 *Id.*
- 86 Jane Lee, *Tragic Tale: Commission to Hear Bedside Testimony*, The Age, 7 Apr. 2014, *available at* <http://www.theage.com.au/victoria/tragic-tale-commission-to-hear-bedside-testimony-20140406-3670p.html#ixzz2yAqjxvjZ>.

- 
- 87 *Id.*
- 88 *See* Initial Report, *supra* note 4, ¶ 4.
- 89 *See* Geoffrey Robertson, *The Case Against Vatican Power*, NEWSTATESMAN, 8 Sept. 2010, available at <http://www.newstatesman.com/law-and-reform/2010/09/vatican-rights-state-italy>.
- 90 *See* Austen Ivereigh, *The Vatican is a Real State*, The Guardian, 8 Sept. 2010, available at <http://www.guardian.co.uk/commentisfree/belief/2010/sep/08/religion-vatican-statehood-immunity>.
- 91 The CRC addressed this issue in the context of the Holy See's recent reporting on the Child Rights Convention, and concluded: "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." CRC 2014 Concluding Observations, *supra* note 13, ¶ 8.
- 92 *See* Website of Vatican City State, State Departments, available at [http://www.vatican.va/EN/State\\_and\\_Government/StateDepartments/index.htm](http://www.vatican.va/EN/State_and_Government/StateDepartments/index.htm) ("Vatican City State is governed as an absolute monarchy. The Head of State is the Pope who holds full legislative, executive and judicial powers.").
- 93 *See* Expert Opinion of Thomas Doyle, Appendix C, ¶ 12 (d) ("The governmental system of the Catholic Church is defined officially as a *hierarchy*. [...] In practice the governmental system of the Catholic Church is *monarchical* in that power is vested in individual persons and not in groups or communal bodies. There is no separation of the three essential functions of government in the Catholic Church") and ¶ (e) ("The pope is the supreme judge, executive, legislator and teacher for the entire Catholic Church. His authority and power is absolute."). *Id.* at ¶¶ 21-27.
- 94 *See* 1983 Code c.331, available at [http://www.vatican.va/archive/ENG1104/\\_P16.HTM](http://www.vatican.va/archive/ENG1104/_P16.HTM).
- 95 1983 Code c. 333 §1.
- 96 *See* Doyle Expert Opinion, Appendix C, ¶ 12 (f).
- 97 *See Id.* at ¶ 22.
- 98 *See Id.* at ¶ 23.
- 99 Code of Canon Law, can. 349-359. *For more information*, see Vatican: Holy See Press Office, [http://www.vatican.va/news\\_services/press/documentazione/documents/cardinali\\_index\\_en.html](http://www.vatican.va/news_services/press/documentazione/documents/cardinali_index_en.html) (last visited 5 Sept. 2011).
- 100 *See* Doyle Expert Opinion, Appendix C, ¶¶ 25-26.
- 101 1983 Code c.334, available at [http://www.vatican.va/archive/ENG1104/\\_P16.HTM](http://www.vatican.va/archive/ENG1104/_P16.HTM).
- 102 Code of Canon Law, can. 360.
- 103 Doyle Expert Opinion, Appendix C, ¶ 34.
- 104 *Id.* *See also* Vatican web-site, "Secretariat of State": "The Secretariat of State is the dicastery of the Roman Curia which works most closely with the Supreme Pontiff in the exercise of his universal mission," citing to *Pastor Bonus*, Art. 39, available at [http://www.vatican.va/roman\\_curia/secretariat\\_state/](http://www.vatican.va/roman_curia/secretariat_state/).
- 105 Doyle Expert Opinion, Appendix C, ¶ 34.
- 106 Initial Report, *supra* note 4, ¶ 11.
- 107 *Id.* ¶ 49.
- 108 *See, e.g., Id.* ¶¶ 49-50.
- 109 *Id.* ¶ 87.
- 110 1962 Instruction - (*Crimen* or *Crimen Sollicitationis*), Instruction on the Manner of Proceeding in Cases of Solicitation, *The Decree Crimen Sollicitationis*, The Vatican Press, 16 Mar. 1962, (Exhibit B-5) available at [http://www.vatican.va/archive/ENG1104/\\_P16.HTM](http://www.vatican.va/archive/ENG1104/_P16.HTM).
- 111 *Id.*

---

112 'Excommunication' is defined in The Catholic Encyclopedia as a "spiritual penalty that deprives the guilty Christian of all participation in the common blessings of ecclesiastical society. Being a penalty, it supposes guilt; and being the *most serious penalty that the Church can inflict, it naturally supposes a very grave offence.*" (emphasis added) Excommunication's "object and its effect are loss of communion, i.e. of the spiritual benefits shared by all the members of Christian society" and constitutes "the privation of all rights resulting from the social status of the Christian as such." Additionally, the excommunicated person can "be considered as an exile from Christian society and as non-existent... in the sight of ecclesiastical authority" and his "status before the Church is that of a stranger. He may not participate in public worship nor receive the Body of Christ or any of the sacraments." Charles G. Haberman, et al., THE CATHOLIC ENCYCLOPEDIA (eds., The Encyclopedia Press, 1912), available at <http://oce.catholic.com/oce/browse-page-scans.php?id=1ac56a24100661e57532727ad0a22a03>.

113 Apostolic Letter Given *Motu Proprio re: Sacramentorum Sanctitatis Tutela*, Pope John Paul II, 30 April 2001, Exhibit B-7; *Sacramentorum Sanctitatis Tutela*, Congregation for the Doctrine of Faith (2001), Exhibit B-8 and 10. See also CNS and Staff, *Doctrinal Congregation Takes over Priestly Pedophilia Cases*, America: The National Catholic Weekly, 17 Dec. 2001, available at [http://www.americamagazine.org/content/article.cfm?article\\_id=1352](http://www.americamagazine.org/content/article.cfm?article_id=1352).

114 Specifically, the instruction states that all delicts against the Sixth commandment by a cleric when committed with a minor below the age of 18 must be "reserved" for the CDF. See *Letter from Congregation for the Doctrine of the Faith to Bishops of the Entire Catholic Church, et al, Regarding the More Serious Offenses reserved to the Congregation for the Doctrine of the Faith*, 18 May 2001.

115 *Id.*

116 *Id.*

117 *Sacramentorum Sanctitatis Tutela*, (2001 with 2003 changes), Congregation for the Doctrine of the Faith, 2003; See e.g., Jerry Filteau, *Pope Revises Vatican Norms on Clergy Sex Abuse, Confession*, Catholic News Service, 27 Feb. 2003, available at [http://www.bishop-accountability.org/news2003\\_01\\_06/2003\\_02\\_27\\_Filteau\\_VaticanNorms.htm](http://www.bishop-accountability.org/news2003_01_06/2003_02_27_Filteau_VaticanNorms.htm).

118 Congregation for the Doctrine of the Faith, *Substantive Norms*, available at [http://www.vatican.va/resources/resources\\_norme\\_en.html](http://www.vatican.va/resources/resources_norme_en.html).

119 Second Report of the Holy See under article 44 of the Convention to the Committee on the Rights of the Child, CRC/C/CAT/2, 22 Oct. 2012, ("CRC Second Report") ¶ 98(f).

120 See *Substantive and Procedural Norms, 2010*, available at [http://www.vatican.va/resources/resources\\_norme\\_en.html](http://www.vatican.va/resources/resources_norme_en.html); Rachel Donadio, *Vatican Revises Abuse Process, but Causes Stir*, New York Times, 15 Jul. 2010, available at <http://www.nytimes.com/2010/07/16/world/europe/16vatican.html>

121 Phil Stewart, *Vatican Says Will Excommunicate Women Priests*, Reuters, 29 May 2008, available at <http://www.reuters.com/article/2008/05/29/us-pope-women-idUSL2986418520080529>.

122 *Interview of Msgr. Charles Scicluna conducted by Gianni Cardinale on the Strictness of the Church in Cases of Paedophilia*, available at [http://www.vatican.va/resources/resources\\_mons-scicluna-2010\\_en.html](http://www.vatican.va/resources/resources_mons-scicluna-2010_en.html).

123 Vatican City State Law No. VIII, of 11 July 2013, containing *Supplementary Norms on Criminal Law Matters*, available at <http://www.vaticanstate.va/content/dam/vaticanstate/documenti/leggi-e-decreti/Normative-Penali-e-Amministrative/Law%20N.%20VIII%20-%20Supplementary%20Norms%20on%20Criminal%20Law.pdf>.

124 *Id.*

125 See Vatican's Guide to Understanding Basic CDF Procedures Concerning Sexual Abuse Allegations, available at [http://www.vatican.va/resources/resources\\_guide-CDF-procedures\\_en.html](http://www.vatican.va/resources/resources_guide-CDF-procedures_en.html).

126 See Website of Vatican City State, State Departments: [http://www.vaticanstate.va/EN/State\\_and\\_Government/StateDepartments/index.htm](http://www.vaticanstate.va/EN/State_and_Government/StateDepartments/index.htm) ("Vatican City State is governed as an absolute monarchy. The Head of State is the Pope who holds full legislative, executive and judicial powers."). See also See Expert Opinion of Thomas Doyle, Exhibit A-1, ¶ 12 (d) ("The governmental system of the Catholic Church is defined officially as a hierarchy. [...] In practice the governmental system of the Catholic Church is monarchical in that power is vested in individual persons and not in groups or communal bodies. There is no separation of the three essential functions of government in the Catholic Church") and ¶ 12 (e) ("The pope is the supreme judge, executive,

---

legislator and teacher for the entire Catholic Church. His authority and power is absolute.”). *Id.* at ¶¶ 21-27; and See 1983 Code c.331, available at [http://www.vatican.va/archive/ENG1104/\\_\\_\\_P16.HTM](http://www.vatican.va/archive/ENG1104/___P16.HTM).

<sup>127</sup> Letter from Cardinal Castrillón Hoyos to Bishop Pierre Pican, 8 Sept. 2001. French original available at <http://www.documentcloud.org/documents/243767-5-pican-hoyos-letter-8-sept-2001-original.html>. English Translation available at <http://www.documentcloud.org/documents/243768-5a-pican-letter-english-translation.html>.

<sup>128</sup> John Allen, ALL THE POPE’S MEN, 241 (2004).

<sup>129</sup> CRC Second Report, *supra* note 119, ¶ 99 (a).

<sup>130</sup> Bishop Accountability.Org, *Comparative Texts for November 2002 Meeting: Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, June 14, 2002 - October 29, 2002 (2003), <http://www.bishop-accountability.org/resources/resourcefiles/churchdocs/ComparativeText.htm>.

<sup>131</sup> Letter from Cardinal Giovanni Battista Re, Prefect of the Vatican's Congregation of Bishops, to Bishop Wilton Gregory, U.S. Conference of Catholic Bishops, 14 Oct. 2002, available at <http://www.bishop-accountability.org/resources/resource-files/churchdocs/Gregory.htm>.

<sup>132</sup> Charter for the Protection of Children and Young People, USCCB, available at <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-revised-2011.pdf>.

<sup>133</sup> See Victims Communication, *supra* note 11 at pp. 9-15.

<sup>134</sup> *Id.* at 14-15.

<sup>135</sup> *Id.*

<sup>136</sup> Kashmira Gander, *Italy's Bishops Pass Vatican-backed Rule that Child Molestation Does Not Have to Be Reported*, The Independent, 28 Mar. 2014, available at <http://www.independent.co.uk/news/world/europe/italys-bishops-pass-vaticanbacked-rule-stating-they-do-not-have-to-report-if-a-priest-has-molested-a-child-9222501.html>.

<sup>137</sup> *Id.*

<sup>138</sup> Philadelphia Grand Jury Report III, *supra* note 53.

<sup>139</sup> *Id.* at p. 9.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 1.

<sup>142</sup> *Id.* at 9-11.

<sup>143</sup> *Id.*

<sup>144</sup> Brendan J. Lyons, *Clergy-abuse Reporting Under Fire From DAs*, The Times Union, 5 Mar. 2012, available at <http://www.timesunion.com/local/article/Clergy-abuse-reporting-under-fire-from-DAs-3380015.php#ixzz1oHBBCRr3>. See also, Letter from District Attorneys to the Howard J. Hubbard, Bishop of Albany, 29 Feb. 2012, and Memorandum of Understanding, available here <http://www.documentcloud.org/documents/335960-2-29-12-hogan-1.html>. (“Letter and Memorandum”).

<sup>145</sup> Letter and Memorandum, *supra* note 145.

<sup>146</sup> Cloyne Report, *supra* note 43 at 1.77.

<sup>147</sup> Los Angeles Times, *The Archdiocese’s Cover-Up: The Release of Confidential Files on 1980s Clergy Sex Abuse in the Los Angeles Archdiocese is the Beginning of the End of a Long and Sordid Saga*, 23 Jan. 2013, available at <http://www.latimes.com/news/opinion/editorials/la-ed-mahony-clergy-abuse-files-20130123,0,1998210.story>.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

- 
- 150 Victoria Kim and Ashley Powers, *Vatican Impeded Mahony Attempts to Remove Priests, Files Show*, Los Angeles Times, 15 Feb. 2013, available at <http://articles.latimes.com/2013/feb/15/local/la-me-mahony-vatican-20130216>.
- 151 CRC 2014 Concluding Observations, *supra* note 13, ¶ 44(c).
- 152 Doyle Expert Opinion, Appendix C at ¶ 83.
- 153 Elizabeth Fernandez, *Burlingame Priest Sues S.F. Diocese: Clergyman Punished After Reporting Abuse*, San Francisco Chronicle, 24 Nov. 2000, available at [http://www.bishop-accountability.org/news3/2000\\_11\\_24\\_Fernandez\\_BurlingamePriest\\_James\\_Aylward\\_3.htm](http://www.bishop-accountability.org/news3/2000_11_24_Fernandez_BurlingamePriest_James_Aylward_3.htm).
- 154 *Id.*
- 155 *Id.*
- 156 Don Lattin, *Levada Takes Heat Over Abuse Inquiry: Panel Member Resigns, Says Church Suppressed Results*, San Francisco Chronicle, 12 Nov. 2004, available at [http://www.bishop-accountability.org/news3/2004\\_11\\_12\\_Lattin\\_LevadaTakes\\_John\\_Heaney\\_ETC\\_1.htm](http://www.bishop-accountability.org/news3/2004_11_12_Lattin_LevadaTakes_John_Heaney_ETC_1.htm).
- 157 Don Lattin, *Levada's Oregon History Surfaces: Lawyers Question S.F. Archbishop in Molest Cases*, San Francisco Chronicle, 10 July 2004, available at [http://www.bishop-accountability.org/news3/2004\\_07\\_10\\_Lattin\\_LevadasOregon\\_Joseph\\_A\\_Baccellieri\\_5.htm](http://www.bishop-accountability.org/news3/2004_07_10_Lattin_LevadasOregon_Joseph_A_Baccellieri_5.htm).
- 158 John P. Martin, *Court filing: Bevilacqua Ordered Shredding of Memo Identifying Suspected Abusers*, The Philadelphia Inquirer, 25 Feb. 2012, available at [http://articles.philly.com/2012-02-25/news/31098596\\_1\\_churchlawyers-abuse-complaints-priests/2](http://articles.philly.com/2012-02-25/news/31098596_1_churchlawyers-abuse-complaints-priests/2).
- 159 Tom Roberts, *A Deep Look Into Philly's Clerical Culture*, National Catholic Reporter, 28 Feb. 2012, available at <http://ncronline.org/blogs/ncr-today/deep-look-phillys-clerical-culture>.
- 160 Martin, *supra* note 158.
- 161 Philadelphia Grand Jury Report I, *supra* note 49 at 1-2.
- 162 Philadelphia Grand Jury Report II, *supra* note 59 at 5, 38.
- 163 After leaving from his position in Philadelphia, Rigali retired to live at the residence of the Archbishop in the Knoxville, Tennessee Diocese, maintaining his position on the Vatican's Congregation for Bishops until December 2013, as he approached the retirement age for that post of 80. *See Embattled Catholic Cardinal retiring to East Tennessee*, WBIR.COM, 19 Jul. 2011 available at <http://www.wbir.com/news/article/176734/2/Embattled-Catholic-Cardinal-retiring-to-East-Tennessee>, and Patricia Rice, *Vatican reorganizes Congregation For Bishops; Burke And Rigali Not Reappointed*, St. Louis Public Radio, 16 Dec. 2013, available at <http://news.stlpublicradio.org/post/vatican-reorganizes-congregation-bishops-burke-and-rigali-not-reappointed>.
- 164 Philadelphia Grand Jury Report III, *supra* note 53, at pp. 22-29.
- 165 *Id.* at p. 9.
- 166 *Id.*
- 167 *Id.* at 1, 76.
- 168 The Boston Globe, *Spotlight Investigation, Abuse in the Catholic Church*, <http://www.boston.com/globe/spotlight/abuse/>.
- 169 Office of the Att'y Gen., *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston* (2003), at p. 1-1 Appendix, available at <http://www.bishop-accountability.org/resources/resourcefiles/reports/ReillyReport.pdf>.
- 170 *Id.* at p. 31.
- 171 See Charlie Taylor and Gerry Moriarty, *Brady Says He Will Not Resign Over Handling of Abuse Case*, The Irish Times, 2 May 2012, available at [http://www.bishop-accountability.org/news2012/05\\_06/2012\\_05\\_02\\_Times\\_BradySays.htm](http://www.bishop-accountability.org/news2012/05_06/2012_05_02_Times_BradySays.htm). See also, BBC News, *Profile of Father Brendan Smyth*, last updated 15 March 2010, available at [http://news.bbc.co.uk/2/hi/uk\\_news/northern\\_ireland/8567868.stm](http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/8567868.stm).

- 
- 172 The Associated Press, *Belgium: Cardinal Apologizes for Suggesting Temporary Cover-up of Bishop's Abuse*, 30 Aug. 2010, available at [http://www.nytimes.com/2010/08/31/world/europe/31frnbriefs-BELGIUM.html?\\_r=2&](http://www.nytimes.com/2010/08/31/world/europe/31frnbriefs-BELGIUM.html?_r=2&).
- 173 *Id.*
- 174 See Victims Communication, *supra* note 11 at pp. 34-35.
- 175 BishopAccountability.org, *Submission to the United Nations Committee on the Rights of the Child*, 11 Jan. 2014, available at [http://www.bishop-accountability.org/UN/CRC/2014\\_01\\_11\\_BA\\_Submission\\_to\\_Committee.htm#Mueller](http://www.bishop-accountability.org/UN/CRC/2014_01_11_BA_Submission_to_Committee.htm#Mueller). (“BishopAccountability.org Report to CRC”).
- 176 *Id.*
- 177 *Id.*
- 178 *Id.*
- 179 *Id.*
- 180 *Id.*
- 181 *Id.*
- 182 *Id.*
- 183 See, e.g., Nick Miroff, *Pope Francis Was Often Quiet on Argentine Sex Abuse cases as Archbishop*, *The Washington Post*, 18 Mar. 2013, available at [http://www.washingtonpost.com/world/the\\_americas/pope-francis-was-often-quiet-on-argentine-sex-abuse-cases-as-archbishop/2013/03/18/26e7eca4-8ff6-11e2-9cfd-36d6c9b5d7ad\\_story.html](http://www.washingtonpost.com/world/the_americas/pope-francis-was-often-quiet-on-argentine-sex-abuse-cases-as-archbishop/2013/03/18/26e7eca4-8ff6-11e2-9cfd-36d6c9b5d7ad_story.html).
- 184 See, BishopAccountability.org Report to CRC, *supra* note 175; BishopAccountability.org, *Detailed Summary of Case of Rev. Juio Cesar Grassi, Drawn from Media Coverage and Legal Documents*, available at [http://www.bishop-accountability.org/Argentina/Detailed\\_Grassi\\_Summary.htm](http://www.bishop-accountability.org/Argentina/Detailed_Grassi_Summary.htm).
- 185 *Id.*
- 186 John Eligon and Laurie Goodstein, *Kansas City Bishop Convicted of Shielding Pedophile Priest*, *New York Times*, 6 Sept. 2012, available at <http://www.nytimes.com/2012/09/07/us/kansas-city-bishop-convicted-of-shielding-pedophile-priest.html>.
- 187 Joshua J. McElwee, *Lawsuit Alleges Finn, Kc Diocese, Placed Child in Harm's Way*, *National Catholic Reporter*, 16 Nov. 2011, available at [http://www.bishop-accountability.org/news/2011/11\\_12/2011\\_11\\_16\\_McElwee\\_LawsuitAlleges.htm](http://www.bishop-accountability.org/news/2011/11_12/2011_11_16_McElwee_LawsuitAlleges.htm).
- 188 Joshua J. McElwee, *Judge Orders Kansas City Bishop to Stand Trial in Abuse Case*, *National Catholic Reporter*, 5 Apr. 2012, available at <http://ncronline.org/news/accountability/judge-orders-kansas-city-bishop-stand-trial-abuse-case>.
- 189 Glenn E. Rice, Judy L. Thomas and Mark Morris, *Bishop Finn Avoids Indictment by Entering Diversion Program*, *The Kansas City Star*, 14 Nov. 2011, available at <http://www.kansascity.com/2011/11/15/3267619/bishop-finn-avoids-indictment.html>.
- 190 John L. Allen Jr., *Pope Francis Strikes Back at Church Critics on Sex Abuse*, *The Boston Globe*, 5 Mar. 2014, available at <http://www.bostonglobe.com/news/world/2014/03/05/pope-francis-strikes-back-church-critics-sex-abuse/1AV6WpnxgqVTLN1Cpj09MJ/story.html>
- 191 Philadelphia Report III, *supra* note 53.
- 192 CAT, Preamble.
- 193 CAT, Art. 1.
- 194 CAT, Art. 16.
- 195 Nowak Report 2005, *supra* note 24 at ¶ 35.
- 196 *Id.*
- 197 General Comment 2, ¶ 3.
- 198 CAT, Arts. 4-8.

---

<sup>199</sup> Vatican City State Law No. VIII, of 11 July 2013, containing *Supplementary Norms on Criminal Law Matters*, available at <http://www.vaticanstate.va/content/dam/vaticanstate/documenti/leggi-e-decreti/Normative-Penali-e-Amministrative/Law%20N.%20VIII%20-%20Supplementary%20Norms%20on%20Criminal%20Law.pdf>.

<sup>200</sup> Despite having long been a State Party to the Convention on the Rights of the Child and optional protocols, these offenses had not previously been criminalized by the Holy See. Sexual offenses existed under the Vatican's penal code only in a general form, as crimes against "good customs," carrying a maximum penalty of 3 to 10 years. Under the revision, the punishments range from 5 to 10 years in prison, with aggravating circumstances increasing the maximum sentence to 12 years with a fine of 250,000 euros. Again, these laws apply only to the territory of Vatican City State. *Id.*

<sup>201</sup> *Id.* at Art. 3(1).

<sup>202</sup> General Comment 2, ¶ 7. *See also, id.* at ¶ 9.

<sup>203</sup> *Id.* at ¶ 6.

<sup>204</sup> *Id.* at ¶ 26.

<sup>205</sup> *Id.*

<sup>206</sup> Philadelphia Grand Jury II, *supra* note 59 at 56-57, 269-279.

<sup>207</sup> *Id.*

<sup>208</sup> *See* Zoe Ryan, *Retired bishop asked to leave Detroit parish for testimony*, NATIONAL CATHOLIC REPORTER, 4 Nov. 2011, available at <http://ncronline.org/news/accountability/retired-bishop-asked-leave-detroit-parish-testimony>. *See also*, Testimony of Bishop Gumbleton to Ohio House of Representatives, 11 Jan. 2006, available at [http://www.bishop-accountability.org/news2006/01\\_02/2006\\_01\\_11\\_SNAP\\_TestimonyOf.htm](http://www.bishop-accountability.org/news2006/01_02/2006_01_11_SNAP_TestimonyOf.htm).

<sup>209</sup> Replies of Holy See to the List of Issues from the Committee on the Rights of the Child, CRC/C/VAT/Q/2/Add.1, 2 Dec. 2013, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=851&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=851&Lang=en)

<sup>210</sup> *See, Id.*

<sup>211</sup> General Comment 3, ¶ 22.

<sup>212</sup> *Id.*

<sup>213</sup> General Comment 2, ¶ 7.

<sup>214</sup> *Id.* at ¶ 16.

<sup>215</sup> United Nations Committee on the Rights of the Child, *General Comment No. 16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights*, ¶ 39, UN Doc. CRC/C/GC/16 (2013).

<sup>216</sup> *See*, Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 10, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004).

<sup>217</sup> *Victor Saldaño v. Argentina*, Inter-Am. Comm'n H.R., Report No. 38/99, OEA/Ser.L/V/II.95 doc. 7 rev. at 289 ¶ 17 (1998) (a State Party "may be responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken outside that state's own territory").

<sup>218</sup> *Ecuador ex rel. Molina v. Colombia*, Inter-State Petition IP-02, Inter-Am. Comm'n H.R. Report No. 112/10, OEA/Ser.L/V/II.140 doc. 10 (2010) (State liable for extraterritorial harm when there is a "causal nexus between the extraterritorial conduct of the State and the alleged violation of the rights and freedoms of an individual"). *See also*, U.N. Human Rights Comm., *Munaf v. Romania*, ¶ 14.2, 96th Sess., July 13–31, 2009, U.N. Doc. CCPR/C/96/D/1539/2006 (21 Aug. 2009) (extending state responsibility for human rights violations in situations beyond the state's control of either persons or places when (a) the State Party was a 'causal link' in the chain that led to a violation of the International Covenant on Civil and Political Rights and (b) if the state had knowledge that the rights violation was foreseeable); *Georgia v. Russian Federation*, International Court of Justice, Provisional Measure, 2008 I.C.J. 353, ¶ 109 (Oct. 15) (Articles 2 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination "generally appear to apply, like other provisions of instruments of that nature, to the actions of a State party when it acts beyond its territory"). The Inter-American Commission on Human Rights has likewise acknowledged the extraterritorial obligations of States. *See Armando Alejandro Jr. and Others v. Cuba*, Case 11.589, Report No. 86/99, [OAS/Ser.L/V/II.104 doc. 10 rev.



---

at] ¶ 23 (1999) (“the exercise of [the Commission’s] jurisdiction over extraterritorial events is not only consistent with but required by the applicable rules”).

219 See e.g., CCR/SNAP CRC Report, *supra* note 11 at 10-15.

220 Report of the Westchester County (New York) Grand Jury Concerning Complaints of Sexual Abuse and Misconduct Against Minors by members of the Clergy, at p. 2. June 2002, *available at* <http://www.bishop-accountability.org/resources/resource-files/reports/WestchesterGrandJuryReport.pdf> (“Westchester Grand Jury Report”).

221 Ferns Report, *supra* note 40.

222 See, e.g., *Untouchable Accused Of Molesting Children, They Hop Borders and Start Anew, Often Aided By Guardian Angels - Their Catholic Leaders*, DALLAS MORNING NEWS, 20 June 2004, page 1A.

223 Westchester Grand Jury Report, *supra* note 220 at p. 7.

224 Philadelphia Report III, *supra* note 53 at p. 1.

225 Martin, *supra* note 158. See also, Appendix A, pp. 20-29.

226 Tom Roberts, *A Deep Look Into Philly's Clerical Culture*, National Catholic Reporter, 28 Feb. 2012, <http://ncronline.org/blogs/ncr-today/deep-look-phillys-clerical-culture>.

227 Westpfahl, *supra* note 45 at Exec. Summary p. 3.

228 Bruce Vielmetti, *Weakland Shredded Copies Of Sex Abuse Reports, Documents Say*, Milwaukee Wisc. J. Sentinel, 3 Dec. 2009, *available at* <http://www.jsonline.com/news/milwaukee/78431087.html>.

229 *Id.*; See also, Victims’ Communication *supra* note 11 at 51-55; and Supplemental ICC Communication, *supra* note 11.

230 CCR/SNAP CRC Report, *supra* note 11 at 11-15. See also, Survivors Network of those Abused by Priests, *SNAP’s ‘Dirty Dozen’ list – the ‘papabile’ who would be the worst choice for children*, 5 Mar. 2013, *available at* [http://www.snapnetwork.org/snap\\_s\\_dirty\\_dozen\\_list\\_the\\_papabile\\_who\\_would\\_be\\_the\\_worst\\_choice\\_for\\_children](http://www.snapnetwork.org/snap_s_dirty_dozen_list_the_papabile_who_would_be_the_worst_choice_for_children).

231 Manfred Nowak and Elizabeth McArthur, *THE UNITED NATIONS CONVENTION AGAINST TORTURE - A COMMENTARY*, (Oxford University Press 2008) (“Nowak and McArthur Commentary”) 369.

232 See, CAT, Art. 8(1) and (2). See also General Comment 3, ¶ 22.

233 *Vatican: Former Ambassador to Dominican Republic Covered by Diplomatic Immunity in Abuse Investigation*, Fox News Latino, 11 Jan. 2014, *available at* <http://latino.foxnews.com/latino/news/2014/01/11/vatican-former-ambassador-to-dominican-republic-covered-by-diplomatic-immunity/>.

234 *Vatican refuses to extradite Polish archbishop accused of child sex abuse*, PAP/TVN, 10 Jan, 2014, *available at* <http://www.thenews.pl/1/10/Artykul/158234,Vatican-refuses-to-extradite-Polish-archbishop-accused-of-child-sex-abuse>.

235 General Comment 3, ¶ 3.

236 Nowak and McArthur Commentary, *supra* note 231 at 461.

237 General Comment 3, ¶ 2. Notably, rehabilitation “should be holistic and include medical and psychological care as well as legal and social services.” *Id.* at ¶ 11.

238 *Id.* at 3, ¶ 6. (finding reparations must be “adequate, effective and comprehensive”).

239 *Id.* at ¶ 8.

240 *Id.* at ¶ 29.

241 *Id.*

242 General Comment 3, ¶¶ 12 and 13.

243 *Id.* at ¶ 13.

---

<sup>244</sup> See CRC 2014 Concluding Observations, *supra* note 13 at ¶ 29 (“in dealing with allegations of child sexual abuse, the Holy See has consistently placed the preservation of the reputation of the Church and the protection of the perpetrators above the child’s best interests”).

<sup>245</sup> See General Comment 3, ¶ 16.

<sup>246</sup> Notably, the Committee's General Comment 3 calls upon parties to “include in their reports...data disaggregated by age, gender, nationality, and other key factors regarding redress measures afforded to victims.” *Id.* at ¶ 45. See also General Comment 2, ¶ 23. No such information was provided to this Committee; likewise, despite repeated requests by the Committee on the Rights of the Child, no data was provided by the Holy See.

<sup>247</sup> General Comment 3, ¶ 30.

<sup>248</sup> The response of Cardinal Egan, former head of the Diocese of Bridgeport and the Archdiocese of New York, is illustrative. Cardinal Egan wrote to his parishioners in 2002, at the height of the scandal in the U.S.: “If in hindsight we also discover that mistakes *may* have been made as regards prompt removal of priests and assistance to victims, I am deeply sorry.” Clyde Haberman, *The Fight to Reveal Abuses by Catholic Priests*, New York Times, 30 Mar. 2014 (emphasis added) available at [http://www.nytimes.com/2014/03/31/us/the-fight-to-reveal-abuses-by-catholic-priests.html?\\_r=0](http://www.nytimes.com/2014/03/31/us/the-fight-to-reveal-abuses-by-catholic-priests.html?_r=0). A decade later, after retirement, Egan backtracked, saying “I never should have said that...I did say if we did anything wrong, I’m sorry, but I don’t think we did anything wrong.” *Id.*

<sup>249</sup> Westchester Grand Jury Report, *supra* note 220 at pp. 8-9.

<sup>250</sup> Ryan Report, *supra* note 41, Executive Summary . p 22.

<sup>251</sup> Winter Commission, *supra* note 37 at 137.

<sup>252</sup> General Comment 3, ¶ 21.

<sup>253</sup> *Id.* at ¶ 7; see also General Comment 2.

<sup>254</sup> General Comment 3, ¶ 23. See also Nowak and McArthur Commentary , *supra* note 231 at 453.

<sup>255</sup> General Comment 3, ¶ 17.

<sup>256</sup> General Comment 3, ¶ 20.

<sup>257</sup> It should be noted that the Holy See apparently misrepresented the compensation paid to the victims of the Magdalene Laundries to the CRC. Contrary to the Vatican’s claims, the four religious congregations that ran the Laundries have *not* committed to paying compensation to the victims. Paddy Agnew & Patsy McGarry, *Vatican misled UN committee on compensation to Magdalene women*, The Irish Times, 1 Apr. 2014, available at: <http://www.irishtimes.com/news/social-affairs/religion-and-beliefs/vatican-misled-un-committee-on-compensation-to-magdalene-women-1.1746416>.

<sup>258</sup> General Comment 3, ¶ 29.

<sup>259</sup> *Id.* at ¶ 40.

<sup>260</sup> See General Comment, ¶ 38 (identifying statutes of limitations and immunities among impediments to enjoyment of the right to redress).

<sup>261</sup> See, e.g., Laurie Goodstein and Erik Eckholm, *Church Battles Efforts to Ease Sex Abuse Suits*, New York Times, 14 June 2012, at [http://www.nytimes.com/2012/06/14/us/sex-abuse-statutes-of-limitation-stir-battle.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/06/14/us/sex-abuse-statutes-of-limitation-stir-battle.html?pagewanted=all&_r=0); and Tara Murtha, *Catholic Church Fights to Kill PA’s Statute of Limitation Reform*, Philadelphia Weekly, 8 Feb. 2012, at <http://www.philadelphiaweekly.com/news-and-opinion/cover-story/138884039.html?page=2&comments=1&showAll>. This is particularly troubling and problematic in light of the fact that rape and other forms of sexual violence constitute torture and, when committed on a widespread or systematic basis, crimes against humanity for which there should be no statute of limitations under international law.

<sup>262</sup> AP, *New York’s Catholic bishops, cardinal lobby in Albany against abortion*, 12 Mar. 2012, available at: [http://www.syracuse.com/news/index.ssf/2012/03/new\\_yorks\\_catholic\\_bishops\\_lob.html](http://www.syracuse.com/news/index.ssf/2012/03/new_yorks_catholic_bishops_lob.html).

<sup>263</sup> See Ashley Powers, *Catholic Church lobbies to avert sex abuse lawsuits*, Los Angeles Times, 15 July 2013, available at <http://articles.latimes.com/2013/jul/15/local/la-me-church-bill-20130715>; Al Donner, *Jerry Brown Vetoes Calif. Statute of Limitations Bill*, National Catholic Register, 14 Oct. 2013, available at <http://www.ncregister.com/daily-news/jerry-brown-vetoes-calif.-statute-of-limitations-bill/>; Marci Hamilton, *Gov. Jerry Brown’s Recent Veto of Child Abuse Legislation and What It Tells Us About the Civil Rights*

---

*Movement for Children*, Verdict, 17 Oct. 2013, available at <http://verdict.justia.com/2013/10/17/gov-jerry-browns-recent-veto-child-abuse-legislation-tells-us-civil-rights-movement-children>.

<sup>264</sup> See Zoe Ryan, *Retired bishop asked to leave Detroit parish for testimony*, NATIONAL CATHOLIC REPORTER, 4 Nov. 2011, available at <http://ncronline.org/news/accountability/retired-bishop-asked-leave-detroit-parish-testimony>. See also, Testimony of Bishop Gumbleton to Ohio House of Representatives, 11 Jan. 2006, available at [http://www.bishop-accountability.org/news2006/01\\_02/2006\\_01\\_11\\_SNAP\\_TestimonyOf.htm](http://www.bishop-accountability.org/news2006/01_02/2006_01_11_SNAP_TestimonyOf.htm).

<sup>265</sup> Goodstein & Eckholm, *Church Battles Efforts to Ease Sex Abuse Suits*, *supra* note 261; Margaret Hartmann, *Catholic Church Lobbies Against Allowing More Sex Abuse Suits*, New York Magazine, 14 Jun. 2012, <http://nymag.com/daily/intelligencer/2012/06/church-lobbies-against-allowing-more-abuse-suits.html>.

<sup>266</sup> See, e.g., James Robertson, *Archbishop Used Immunity in Civil Suit*, Sidney Morning Herald, 9 July 2012, <http://www.smh.com.au/world/archbishop-used-immunity-in-civil-suit-20120708-21pkh.html>. See also, *John V. Doe v. Holy See*, No. 06-35563, Decision of the United States Court of Appeals for the Ninth Circuit on Appeal from the United States District Court for the District of Oregon, 3 March 2009, *cert. denied*, *Holy See v. John V. Doe*, 09-1 (U.S. June 28, 2010) (denying *certiorari* and letting stand a case that denied the Holy See immunity under the Foreign Sovereign Immunities Act) available at <http://cdn.ca9.uscourts.gov/datastore/opinions/2009/03/03/0635563.pdf>; See also, *Doe v. Roman Catholic Archdiocese of St. Louis*, Decision of the Missouri Court of Appeals, Eastern District, No. ED94720, 5 July 2011, *cert. denied*, *John Doe AP v. Roman Catholic Archdiocese of St. Louis*, 11-840 (U.S. Mar. 19, 2012). Available at <http://www.courts.mo.gov/file.jsp?id=4762>.

<sup>267</sup> Annysa Johnson and Ellen Gabler, *Then-Archbishop Timothy Dolan tried to protect money from claims, records show*, Journal Sentinel, 2 July 2013, <http://www.jsonline.com/news/religion/Cardinal-Dolan-sought-to-protect-money-from-claims-struggled-with-Vatican-to-defrock-abusers-b9943953z1-213832541.html>.

<sup>268</sup> *Id.*

<sup>269</sup> SNAP Wisconsin, *Dolan 2007 letter to Vatican is “smoking gun” proving he committed federal bankruptcy fraud, victims say*, July 2013, <http://03409bc.netsolhost.com/snapwisconsin/2013/07/01/dolan-2007-letter-to-vatican-is-smoking-gun-proving-he-committed-federal-bankruptcy-fraud-victims-say/>.

<sup>270</sup> SNAP Wisconsin, *Milwaukee Federal Appeals Judge, in stunning and dangerous reversal, rules that Catholic Canon law trumps US Federal Law*, July 2013, <http://03409bc.netsolhost.com/snapwisconsin/2013/07/31/milwaukee-federal-appeals-judge-in-stunning-and-dangerous-reversal-rules-that-catholic-canon-law-trumps-us-federal-law/>; See also, Annysa Johnson and Gina Barton, *In win for Milwaukee Archdiocese, judge shields funds from creditors*, the Journal Sentinel, 30 July 2013, <http://www.jsonline.com/news/religion/in-victory-for-milwaukee-archdiocese-judge-shields-cemetery-funds-from-creditors-b9965070z1-217602891.html>. See also, *In re Archdiocese of Milwaukee*, United States District Court, Eastern District of Wisconsin, Bankruptcy Case No. 11-20059, Decision and Order of 29 July 2013, available at [http://03409bc.netsolhost.com/snapwisconsin/wp-content/uploads/2013/07/Randa\\_Order\\_7-29-13.pdf](http://03409bc.netsolhost.com/snapwisconsin/wp-content/uploads/2013/07/Randa_Order_7-29-13.pdf).

<sup>271</sup> Annysa Johnson, *Abuse victims ask Vatican to reconsider archdiocese cemetery funds*, the Journal Sentinel, 26 Nov. 2013, <http://www.jsonline.com/news/religion/milwaukee-priest-abuse-victims-ask-vatican-to-rescind-cemetery-letter-b99150936z1-233491791.html>.

<sup>272</sup> See, e.g., James Robertson, *Archbishop Used Immunity in Civil Suit*, Sidney Morning Herald, 9 July 2012, <http://www.smh.com.au/world/archbishop-used-immunity-in-civil-suit-20120708-21pkh.html>. See also, *John V. Doe v. Holy See*, No. 06-35563, Decision of the United States Court of Appeals for the Ninth Circuit on Appeal from the United States District Court for the District of Oregon, 3 March 2009, *cert. denied*, *Holy See v. John v. Doe*, 09-1 (U.S. June 28, 2010) (denying *certiorari* and letting stand a case that denied the Holy See immunity under the Foreign Sovereign Immunities Act). Available at: <http://cdn.ca9.uscourts.gov/datastore/opinions/2009/03/03/0635563.pdf>

<sup>273</sup> See, e, *Doe v. Roman Catholic Archdiocese of St. Louis*, Decision of the Missouri Court of Appeals, Eastern District, No. ED94720, 5 July 2011, *cert. denied*, *John Doe AP v. Roman Catholic Archdiocese of St. Louis*, 11-840 (U.S. Mar. 19, 2012). available at <http://www.courts.mo.gov/file.jsp?id=47627> . The court held:

...questions of hiring, ordaining, and retaining clergy, necessarily involve interpretation of religious doctrine, policy, and administration, and such excessive

---

entanglement between church and state has the effect of inhibiting religion, in violation of the First Amendment, U.S. Const. Amend. I. Further, adjudicating the reasonableness of a church's supervision of a cleric--what the church 'should know'--requires inquiry into religious doctrine.

<sup>274</sup> CRC Second Report, *supra* note 119, ¶ 78(e).

<sup>275</sup> See Center for Constitutional Rights, Communication to Prosecutor of the International Criminal Court, 11 May 2011, pp. 9-10, *available at*:  
[http://ccrjustice.org/files/Survivors%20Network%20Art%20%2015%20Communication%20to%20ICC%20OTP%20\(3\).pdf](http://ccrjustice.org/files/Survivors%20Network%20Art%20%2015%20Communication%20to%20ICC%20OTP%20(3).pdf).

<sup>276</sup> See Doyle Expert Opinion, Appendix C, ¶¶ 90-93.

# **Annex**

# Appendix A

## Appendix A

# Summaries and Findings of Key Commissions and Investigations into Sexual Violence by Catholic Clergy

### A. GOVERNMENT AND INTER-GOVERNMENTAL COMMISSIONS, INQUIRIES, GRAND JURIES, AND INVESTIGATIONS

The following is a summary and overview of key findings of governmental and inter-governmental commissions, Grand Juries and other bodies.

#### Australia **Protecting Victoria’s Vulnerable Children Inquiry (“Cummins Inquiry”)**<sup>1</sup>

The Cummins Inquiry was established by the Parliament of Victoria, Australia, in January 2011 to investigate systemic problems in Victoria’s child protection systems and make recommendations to strengthen and improve the protection and support of vulnerable children. The inquiry tabled its report to the Parliament of Victoria in February 2012.<sup>2</sup> While the report addressed a broad range of actors and concerns, it particularly called for changes in way that religious organizations deal with abuse, including extending the requirement of mandatory reporting to religious personnel. The Report noted that Catholic Bishops specifically opposed the requirement of mandatory reporting.<sup>3</sup> The Report also recommended a formal investigation be conducted into the processes used by religious organizations to respond to allegations of sexual violence by children.

#### **Inquiry Into the Handling of Child Abuse by Religious and Other Organizations – Parliament of Victoria**<sup>4</sup> (“Victoria Inquiry”)

The Victoria Inquiry was established subsequent to the Cummins Report findings and recommendations and amid controversy in the wake of a police investigation detailing the suicides of 40 people who were reported to have been sexually abused by catholic clergy.<sup>5</sup> The police investigation suggested that church officials had known about a shockingly high rate of suicides and premature deaths but had “chosen to remain silent.”<sup>6</sup> On 12

---

<sup>1</sup> More information can be found here: <http://www.childprotectioninquiry.vic.gov.au/>

<sup>2</sup> Report of the Protecting Vulnerable Children Inquiry, Feb. 2012, available here: <http://www.childprotectioninquiry.vic.gov.au/report-pvvc-inquiry.html>.

<sup>3</sup> *Id.* at 350-352.

<sup>4</sup> More information can be found here: <http://www.parliament.vic.gov.au/fcdc/article/1788>

<sup>5</sup> Nick McKenzie, Richard Baker and Jane Lee, *Church’s Suicide Victims*, Canberra Times, 13 April 2012, available at <http://www.canberratimes.com.au/victoria/churchs-suicide-victims-20120412-1wwox.html>.

<sup>6</sup> *Id.*

November 2013, the Victorian commission tabled its report in the State Parliament.<sup>7</sup> Upon tabling the report, a member of the inquiry told the Legislative Council:

The Catholic church minimized and trivialized the problem; contributed to abuse not being disclosed, or not being responded to... ensured that the Victorian community remained uninformed of the abuse; and ensured that perpetrators were not held accountable with the tragic result being that children continued to be abused. We found that today's church leaders view the current question of abuse of children as a 'short term embarrassment', which should be handled as quickly as possible to cause the least damage to the church's standing. They do not see the problems as raising questions about the church's own culture.<sup>8</sup>

The inquiry further concluded that those at the "highest levels of... [the Catholic] Church would know a great deal about what has been happening, not only in Australia but worldwide."<sup>9</sup> The Victorian inquiry has recommended that the criminal law be amended to criminalize concealment of child abuse even where it is of no benefit to the concealer, and removal of the civil statute of limitations.

### **Royal Commission into Institutional Responses to Child Sexual Abuse ("Royal Commission")<sup>10</sup>**

In January 2013, the Governor-General of the Commonwealth of Australia appointed a six-member Royal Commission to investigate institutional responses to child sex abuse. The Commission is to prepare an interim report by 30 June 2014 with final reporting scheduled for the end of 2015.<sup>11</sup> However, on 9 December 2013, the Commission heard testimony that revealed that \$43 million had been paid to victims through its "Towards

---

<sup>7</sup> See, Family and Community Development Committee, Parliament of Victoria, *Betrayal of Trust: Inquiry into the Handling of Child Abuse and Religious and Other Non-Government Organisations*, November 2013, (hereinafter "Betrayal of Trust"), available at [http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Report/Inquiry\\_into\\_Handling\\_of\\_Abuse\\_Volume\\_1\\_FINAL\\_web.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Report/Inquiry_into_Handling_of_Abuse_Volume_1_FINAL_web.pdf); See also, David Marr, *Child abuse report reveals betrayal of trust 'beyond comprehension': 'Children were betrayed by trusted figures in organisations of high standing and suffered unimaginable harm,' says report*, The Guardian, 12 Nov. 2013, available at <http://www.theguardian.com/world/2013/nov/13/child-abuse-report-reveals-a-betrayal-of-trust-beyond-comprehension>.

<sup>8</sup> Marr, *supra* note 7.

<sup>9</sup> Betrayal of Trust, *supra* note 7 at 10.

<sup>10</sup> More information can be found at the Website of the Royal Commission into Institutional Responses to Child Sexual Abuse, <http://www.childabuseroyalcommission.gov.au/>.

<sup>11</sup> See *id.*



Healing” program but that the money often required secrecy, reportedly even requiring victims to keep the settlements secret from family members.<sup>12</sup>

**Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle<sup>13</sup>**

In November 2012, an inquiry was established in the state of New South Wales to investigate police handling of cases of rape and sexual violence by Catholic clergy in Hunter Valley, after a senior detective brought forward claims of a cover-up. The Commission’s report is due on or before 31 May 2014.

Canada **Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints (“Hughes Commission”)**

*and*

**Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy (“Winter Commission”)**

In 1989, the Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints was formed to investigate the systemic physical and sexual violence committed against young boys at the Mount Cashel Orphanage operated by the Christian Brothers in St. John’s Newfoundland. The Hughes Commission report noted that the evidence of the sexual violence adduced at the hearings “was of such a nature as to shock profoundly the conscience and susceptibilities of the people of Newfoundland and Labrador.”<sup>14</sup> The Hughes Commission concluded that officials had covered up the sexual abuse at Mount Cashel and routinely transferred offenders.

The Archdiocese in Newfoundland also set up a Commission of Enquiry to address the “sexual abuse of children by members of the clergy” at Mount Cashel (Winter Commission). Like the Hughes Commission, the Winter

---

<sup>12</sup> Janet Fife-Yeomans, *Hush fund: Catholic Church paid \$43 million to keep abuse secret*, The Daily Telegraph, 10 Dec. 2013, available at <http://www.dailytelegraph.com.au/news/nsw/hush-fund-catholic-church-paid-43-million-to-keep-abuse-secret/story-fni0cx12-1226779292848>. See also, Royal Commission into Institutional Responses to Child Sexual Abuse, Transcript from Public Hearing – Case Study 4, Dec. 2013, available at <http://www.childabuseroyalcommission.gov.au/public-hearings/transcripts/>.

<sup>13</sup> See Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle, Terms of Reference, November 2012, available at [http://www.lawlink.nsw.gov.au/lawlink/Special\\_Projects/ll\\_splprojects.nsf/pages/sisa\\_index](http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/pages/sisa_index). See also, ABC News, *NSW announces commission into police handling of abuse claims*, 9 Nov. 2012, available at <http://www.abc.net.au/news/2012-11-09/nsw-announces-commission-into-police-handling-of-abuse-claims/4363454>.

<sup>14</sup> Samuel S.H. Hughes, *Royal Commission of Inquiry into the Response of the Newfoundland Criminal System to Complaints* (Newfoundland, Canada, 1989), at 490, available at <http://www.documentcloud.org/documents/243710-1-hughes-report-entire-canada.html>.

Commission determined that:

[b]etween 1975 and 1989 the Archdiocesan administration had heard rumours, reports or formal accusations of sexual misconduct between priests and children on many occasions. Nevertheless, neither the current nor the previous Archdiocesan administration took decisive or effective steps to investigate further, to halt the abuse, or to inform parishioners of the risk to their children.<sup>15</sup>

The Winter Commission concluded as early as 1990 that:

[t]he events which occurred in the Archdiocese cannot be passed off as the manifestation of a disease: both the offenders and the Church management must be held accountable. The Church administration in the Archdiocese chose to deny the abuses and discount the victims' disclosures of criminal activity. Rather than reporting the allegations to civil authorities, the Archdiocesan administration chose to accept repeated denials of the allegations and allowed the abuses to continue.<sup>16</sup>

The Catholic Church was also implicated in widespread physical and sexual abuse in Canada's residential schools, beyond the Mount Cashel scandal, where more than 100,000 aboriginal children were forced to attend state-funded Christian boarding schools as part of Canada's process of assimilation.<sup>17</sup> The Catholic Church was responsible for more than three-quarters of Canada's residential schools.<sup>18</sup> In 2006, a settlement agreement was reached in the class action litigation that was brought to address the abuses and violations that took place which called for the establishment of a Truth and Reconciliation Commission.<sup>19</sup> There have been serious concerns about the Church's commitment to following through on the provisions of

---

<sup>15</sup> Gordon A. Winter, *The Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy* (Archdiocese of St. John's, Canada, 1990), at 137, available at [http://www.attorneygeneral.jus.gov.on.ca/inquiries/cornwall/en/hearings/exhibits/Tom\\_Doyle/pdf/06\\_Commission.pdf](http://www.attorneygeneral.jus.gov.on.ca/inquiries/cornwall/en/hearings/exhibits/Tom_Doyle/pdf/06_Commission.pdf).

<sup>16</sup> *Id.* at 140.

<sup>17</sup> See Sarah Shenker, *Legacy of Canada's Residential Schools*, BBC News, 11 June 2008, available at <http://news.bbc.co.uk/2/hi/7438079.stm> (last visited 8 Apr. 2014).

<sup>18</sup> *A History of Residential Schools in Canada*, Canadian Broadcasting Corporation News, 14 June 2010, available at <http://www.cbc.ca/news/canada/story/2008/05/16/f-faqs-residential-schools.html>.

<sup>19</sup> See, Settlement Agreement in *In re Residential Schools Class Action Litigation*, 8 May 2006, available at [http://www.residentialschoolsettlement.ca/english\\_index.html](http://www.residentialschoolsettlement.ca/english_index.html).

the settlement.<sup>20</sup>

## Ireland      **The Ferns Report (2005).**

The Ferns Commission was the first commission established by Ireland's Minister for Health and Children in the wake of numerous allegations of sexual violence that emerged in 2002. The Ferns report addressed approximately 100 allegations of sexual violence against 21 priests in the Ferns Diocese of County Wexford between 1962 and 2002.<sup>21</sup> At the time of the report, only 11 of the accused priests were still alive. Among the most notorious of cases studied by the Commission was that of Father Fortune who had been charged with more than 60 counts of rape and sexual assault. The reports detail violent and repeated rape as well as knowledge on the part of higher officials in the diocese who left him with access to children.<sup>22</sup>

As with the Canadian commissions, the Ferns Commission found that offending priests were moved from parish to parish with no warning to parishioners and others with whom they would come into contact; that victims' complaints were not handled in a sensitive or supportive manner, "which led to further hurt and alienation for the complainant" and that other children suffered further sexual violence as a result of these actions and inactions.<sup>23</sup>

The report also noted that:

[P]riests identified the hierarchical structure of the Church as an impediment to dealing effectively with the problem of clerical child sexual abuse. Priests are answerable to their Bishop who in turn is answerable only to the Pope. There is no prescribed middle management as would be found in most other organisations.<sup>24</sup>

The Commission further noted that one of the bishops "informed the Inquiry that he was very conscious that many Bishops had been overruled by Rome and priests reinstated" and that "he believed that such an outcome would have deeply affected both his credibility and standing in the Diocese and his ability to deliver effective ministry."<sup>25</sup>

---

<sup>20</sup> Bill Curry, *Catholic Church Reluctant to Release Residential School Records*, *Globe and Mail*, 6 Apr. 2010, available at <http://www.theglobeandmail.com/news/politics/catholic-church-reluctant-to-release-residential-schools-records/article1524204/>.

<sup>21</sup> Francis D. Murphy, Helen Buckley, and Larain Joyce, *The Ferns Report, Diocese of Ferns*, presented to the Minister for Health and Children (Dublin: Government Publications, 2005), available at [http://www.bishop-accountability.org/reports/2005\\_10\\_Ferns/Complete\\_Ferns\\_Report\\_SO.pdf](http://www.bishop-accountability.org/reports/2005_10_Ferns/Complete_Ferns_Report_SO.pdf).

<sup>22</sup> *Id.* at 86.

<sup>23</sup> *Id.* at 30.

<sup>24</sup> *Id.* at 25.

<sup>25</sup> *Id.* at 45.

## The Ryan Report (2009)

The Ryan Report was issued by the Commission to Inquire Into Child Abuse and was the result of a 10-year inquiry into the extent and effects of abuse on children from 1914-2004 in Irish institutions for children. The majority of allegations related to the system of 60 residential reformatory and industrial schools operated by Catholic Church orders with funding and supervision by the Irish Department of Education.<sup>26</sup>

The five-volume report chronicles cases of tens of thousands of children who suffered systematic sexual, physical and mental abuse in the schools. A large section of the report pertains to institutions owned and managed by the Congregation of the Christian Brothers, which was the largest provider of residential care for boys in the country. More allegations were made against the Christian Brothers than all of the other orders combined.

The report describes in chilling detail how “[a] climate of fear, created by pervasive, excessive and arbitrary punishment, permeated most of the institutions and all those run for boys. Children lived with the daily terror of not knowing where the next beating was coming from.”<sup>27</sup> The violence encompassed rape and other forms of sexual violence, which was particularly ‘endemic’ in boys’ institutions:<sup>28</sup>

Witnesses reported sexual assaults in the forms of vaginal and anal rape, oral/genital contact, digital penetration, penetration by an object, masturbation and other forms of inappropriate contact, including molestation and kissing. Witnesses also reported several forms of non-contact sexual abuse including indecent exposure, inappropriate sexual talk, voyeurism and forced public nudity.<sup>29</sup>

As with the Hughes and Winter Commissions in Canada and the Ferns Commission, the Ryan Commission found a policy that protected perpetrators and exposed children to repeated acts of sexual violence. The Ryan Commission, though, noted a clear and damning distinction between the ways that such offenses were handled when committed by lay persons versus members of the clergy:

Cases of sexual abuse were managed with a view to minimizing the risk of public disclosure and consequent damage to the institution and the Congregation. This policy

---

<sup>26</sup> *The Ryan Report on Irish Residential Institutions*, The Commission to Inquire into Child Abuse, Dublin, Ireland (20 May 2009), available at <http://www.childabusecommission.com/rpt/index.php>.

<sup>27</sup> *Id.* at Vol. IV, Ch. 6, 6.1.1.

<sup>28</sup> *Id.* at Vol. IV, Ch. 6, 6.18.

<sup>29</sup> *Id.* at Vol. III, Chapter 9, 9.76.

resulted in the protection of the perpetrator. When lay people were discovered to have sexually abused, they were generally reported to the Gardai. When a member of a Congregation was found to be abusing, it was dealt with internally and was not reported to the Gardai. The damage to the children affected and the danger to others were disregarded. The difference in treatment of lay and religious abusers points to an awareness on the part of Congregational authorities of the seriousness of the offence, yet there was a reluctance to confront religious who offended in this way. The desire to protect the reputation of the Congregation and institution was paramount. Congregations asserted that knowledge of sexual abuse was not available in society at the time and that it was seen as a moral failing on the part of the Brother or priest. This assertion, however, ignores the fact that sexual abuse of children was a criminal offence.<sup>30</sup>

In July, 2011, the UN Committee Against Torture issued its Concluding Observations on Ireland's report to the Committee in accordance with its obligations under the Convention Against Torture.<sup>31</sup> Two aspects of the Committee's observations were relevant to the Ryan report. First, the Committee called on Ireland to "indicate how it proposes to implement all the recommendations of the Commission to Inquire into Child Abuse and indicate a timeframe for achieving them;" to institute prompt, independent and thorough investigations into all cases of abuse as found by the report, and if appropriate, prosecute and punish perpetrators; and ensure that all victims of abuse obtain redress, and have an enforceable right to compensation including the means for as full rehabilitation as possible.

### **The Murphy Report (2009)**

The Report into the Catholic Archdiocese of Dublin was released by the Commission of Investigation, or the Murphy Commission, in July 2009, shortly after the release of the Ryan Report. The Murphy Report focused on the institutional response to sexual abuse within the Archdiocese of Dublin. The report traces the responses in the archdiocese between the years 1974 and 2004 and reviewed 320 cases against 172 priests, and how they were handled by the Church. The commission determined that 102 of the cases had the potential for further action and created a representative sample of

---

<sup>30</sup> *Id.* at Executive Summary, p. 21.

<sup>31</sup> United Nations, Concluding Observations of the Committee against Torture: Ireland, 56<sup>th</sup> Sess., ¶ 20, U.N. Doc., 2CAT/C/IRL/CO/ (7 June 2011).

46.<sup>32</sup> Of the cases investigated by the Commission, “one priest admitted to sexually abusing over 100 children, while another accepted that he had abused on a fortnightly basis during the currency of his ministry which lasted for over 25 years.”<sup>33</sup> Yet the Commission only had approximately 70 complaints before it involving those two priests.<sup>34</sup> A couple of complaints signaled even further concern inasmuch as they involved allegations of abuse by more than one priest. Again, as with the reports of the Hughes, Winter, Ferns, and Ryan Commissions, the Murphy report concluded that the sole concern of the church was to protect against scandal and its policies placed children and others at risk of rape and other forms of sexual violence:

[T]here is no doubt that the reaction of Church authorities to reports of clerical child sexual abuse in the early years of the Commission’s remit was to ensure that as few people as possible knew of the individual priest’s problem. There was little or no concern for the welfare of the abused child or for the welfare of other children who might come into contact with the priest. Complainants were often met with denial, arrogance and cover-up and with incompetence and incomprehension in some cases. Suspicions were rarely acted on. Typically complainants were not told that other instances of child sexual abuse by their abuser had been proved or admitted. The attitude to individual complainants was overbearing and in some cases underhanded.<sup>35</sup>

It should be noted that Archbishop Diarmuid Martin called for the resignation of four bishops implicated in the scandal described by the Murphy Report. Three of the bishops answer the call and offered their resignations while one bishop refused. Subsequently, Pope Benedict XVI refused to accept the resignations of two of the bishops, overruling Archbishop Martin’s attempts to clean house.<sup>36</sup>

---

<sup>32</sup> Judge Yvonne Murphy, Ita Mangan, and Hugh O’Neill, Commission of Investigation: Report into the Catholic Archdiocese of Dublin (26 Nov. 2009), at 11.1-11.2, *available at* <http://www.justice.ie/en/JELR/Pages/PB09000504>.

<sup>33</sup> *Id.* at 2.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 10.

<sup>36</sup> *Victims Criticize Pope’s Decision*, RTE News, 11 Aug. 2011, *available at* <http://www.rte.ie/news/2010/0811/abuse.html>.

<sup>36</sup> Judge Yvonne Murphy, Ms. Ita Mangan, and Mr. Hugh O’Neill, Report into the Diocese of Cloyne, Commission of Investigation, dated 23 Dec. 2010, released 13 July 2011, *available at* [http://www.justice.ie/en/JELR/Cloyne\\_Rpt.pdf/Files/Cloyne\\_Rpt.pdf](http://www.justice.ie/en/JELR/Cloyne_Rpt.pdf/Files/Cloyne_Rpt.pdf) [hereinafter Cloyne Report].

## The Cloyne Report (2011)

The Cloyne Report was issued in July 2011 by the Commission of Investigation, Dublin Archdiocese, Catholic Diocese of Cloyne, (“Cloyne Commission”) which was comprised of the same commissioners who oversaw the Murphy Commission inquiry.<sup>37</sup> The Cloyne Commission focused on allegations of abuse against 19 members, or 7.6%, of the Cloyne clergy lodged between 1996 and 2009. This time period is significant in that it coincides with the issuance of detailed procedures for dealing with child sexual abuse promulgated in 1996 by the Catholic Church in Ireland entitled *Child Sexual Abuse: Framework for a Church Response*, (which included a requirement to report such allegations to the civil authorities. By letter, the Cloyne bishop, John Magee, notified all priests in the diocese that he had adopted the procedures in 1996.

However, the Cloyne Commissioners found that despite his stated position, “the reality is that the guidelines set out in that document were not fully or consistently implemented” during the period between 1996 and 2009.<sup>38</sup> The Commissioners noted that Magee paid little attention to the procedures until 2008, which incidentally also coincided with media exposure of a looming scandal.

The Cloyne Commission found that Magee failed to report nine of 15 cases which clearly should have been reported to the civil authorities under the Framework Document. The Commission also found that the diocese failed to report any complaints to the health authorities between 1996 and 2008, failed to appoint support people for complainants and failed to operate an independent advisory panel as required by the Framework Document.<sup>39</sup>

The Commissioners also noted that the Vatican’s reaction to and position on the Framework Document was ‘entirely unhelpful’ to any bishop who wanted to implement the agreed procedures:<sup>40</sup>

The Congregation for the Clergy told the bishops of Ireland that the document was “not an official document of the Episcopal Conference but merely a study document”. The Congregation further stated that it contained: “procedures and dispositions which appear contrary to canonical discipline and which, if applied, could invalidate the acts of the same Bishops who are attempting to put a stop to these problems. If such procedures were to be followed by the Bishops and there were cases of eventual hierarchical recourse lodged at the Holy See, the results could be highly embarrassing and detrimental to those

---

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1.17.

<sup>39</sup> *Id.* at 1.21.

<sup>40</sup> *Id.* at 1.18.

same Diocesan authorities. In particular, the situation of ‘mandatory reporting’ gives rise to serious reservations of both a moral and a canonical nature.”<sup>41</sup>

According to the Cloyne Commission, this communication, combined with the Vatican’s refusal to recognize the Framework and thereby give it the status of canon law, effectively gave individual Irish bishops the freedom to ignore the procedures to which they had agreed and gave comfort and support to those who dissented from the stated official Irish Church policy of reporting to civil authorities.<sup>42</sup> While the Vatican’s reaction and views were entirely unhelpful, they were also entirely consistent with its views and positions it had taken in the past with respect to similar efforts in the United States.

The time period covered by this report is additionally significant because it came after Ireland had been rocked by sex abuse scandal and after the new procedures were to be in place which meant that “the so-called ‘learning curve’ which [the Catholic Church] claimed excused very poor handling of complaints in other dioceses in the past could not have had any basis or relevance’ in the current inquiry in Cloyne.”<sup>43</sup> Still, as with the Hughes, Winter, Ferns, Ryan and Murphy commissions, the Cloyne Commission found that not only did the diocese fail, or refuse, to report new cases to the civil authorities and fail to provide support to victims and establish an independent review panel pursuant to new policies it claimed to have implemented, the diocese also failed to follow its own canonical procedures for dealing with allegations of sexual abuse.<sup>44</sup> In addition, it found that Bishop Magee intentionally mislead the Irish Minister for Children to believe “that the Framework Document guidelines were fully in place and were being fully complied with.”<sup>45</sup>

Upon release of the report, Irish Prime Minister Enda Kenney noted the significance of the revelations in the Cloyne Report:

Because for the first time in Ireland, a report into child sexual-abuse exposes an attempt by the Holy See, to frustrate an Inquiry in a sovereign, democratic republic...as little as three years ago, not three decades ago. And in doing so, the Cloyne Report excavates the dysfunction, disconnection, elitism, the narcissism, that dominate the culture of the

---

<sup>41</sup> *Id.* at 1.18. *See also*, Letter from Luciano Storero, Papal Nuncio to Members of the Irish Episcopal Conference, 31 Jan. 1997, available at <http://www.documentcloud.org/documents/243684-6a-wyb-nuncio-letter.html>. [hereinafter “Storero Letter”]

<sup>42</sup> *Id.*

<sup>43</sup> Cloyne Report, *supra* note 36, at 1-2.

<sup>44</sup> *Id.* at 1.77.

<sup>45</sup> *Id.*



Vatican to this day. The rape and torture of children were downplayed or 'managed' to uphold instead, the primacy of the institution, its power, standing and 'reputation'.<sup>46</sup>

In September 2011, Amnesty International Ireland issued *In Plain Sight*, a report which found that the abuse of children in Catholic-run institutions in Ireland amounted to torture and cruel, inhuman and degrading treatment.<sup>47</sup> The report was commissioned to explore the conditions in which the widespread and systematic abuse was allowed to occur over so many years, key among them the undue deference and privileges accorded to the Roman Catholic Church by state actors in Ireland, in addition to societal attitudes about poverty that rendered marginalized children vulnerable to exploitation and violence. In this regard, the report notes that when the "extent of the abuse and subsequent cover-up" in one diocese first became known in 2002, the then-Prime Minister stated, "It's really a matter for the church; it's not a matter for politicians. I'm not going to cross politics and religion."<sup>48</sup> As a result of this undue deference accorded to the Church, the State failed in its obligation to hold agents of the Church to account for the direct harm as well as for the cover-ups and turned its back on and condemned countless children to brutal horrors.

The Amnesty report rightly framed the abuses documented through four major reports into church-run institutions as grave human rights abuses, regardless of the fact that they were committed behind the veil of religious authority. Among the key findings of the report was the lack of accountability for those who covered up the crimes:

Despite the severity of the crimes revealed in the Ferns, Ryan, Murphy and Cloyne Reports which range from physical assault to rape, very few perpetrators have been convicted. Furthermore, no criminal charge has been laid against those in positions of authority in the Catholic Church who concealed crimes against children and allowed known sex abusers to continue to have access to children and to continue to abuse with near impunity.<sup>49</sup>

---

<sup>46</sup> Statement by the Taoiseach (Enda Kenny) on the Dáil Motion on the report of the Commission of Investigation into the Catholic Diocese of Cloyne, in Dáil Éireann (20 July 2011), available at [http://www.taoiseach.gov.ie/eng/Government\\_Press\\_Office/Taoiseach's\\_Speeches\\_2011/Statement\\_by\\_the\\_Taoiseach\\_on\\_the\\_D%C3%A1il\\_Motion\\_on\\_the\\_report\\_of\\_the\\_Commission\\_of\\_Investigation\\_into\\_the\\_Catholic\\_Diocese\\_of\\_Cloyne\\_in\\_D%C3%A1il\\_%C3%89ireann\\_.html?print=1](http://www.taoiseach.gov.ie/eng/Government_Press_Office/Taoiseach's_Speeches_2011/Statement_by_the_Taoiseach_on_the_D%C3%A1il_Motion_on_the_report_of_the_Commission_of_Investigation_into_the_Catholic_Diocese_of_Cloyne_in_D%C3%A1il_%C3%89ireann_.html?print=1).

<sup>47</sup> Carole Holohan, *In Plain Sight: Responding to the Ferns, Ryan, Murphy and Cloyne Reports*, Amnesty International Ireland (2011), available at [http://www.amnesty.ie/sites/default/files/INPLAINLIGHT\\_FINAL.pdf](http://www.amnesty.ie/sites/default/files/INPLAINLIGHT_FINAL.pdf).

<sup>48</sup> *Id.* at p. 307.

<sup>49</sup> Amnesty International Ireland, *Key Findings of In Plain Sight* (2011), available at <http://www.amnesty.ie/news/abuse-children-irish-institutions-amounted-torture>.

In December 2011, a previously withheld portion of the Cloyne Report was released.<sup>50</sup> Chapter Nine of Cloyne deals exclusively with allegations against 'Fr. Ronat,' who is identified by a pseudonym as are all of the thirteen victims. The report documents a deplorable response by Church officials to the allegations against Ronat. Once again, and as has been the case in virtually all of the reports of independent commissions of inquiry and grand juries, the Cloyne Commission found that "[i]n effect, the committee was more concerned about causing scandal than about protecting children."<sup>51</sup>

The Commission also noted instances where diocesan officials "blamed the victim," in one instance referring to a teenage complainant as "besetting" the priest and referred to her as the "Ophelia of Hamlet." The Commission indicates that the church's record-keeping on the allegations was not impartial and was concerned more about appearances of consensual sex and age of consent. As an example, the church's records reflected that the aforementioned victim was 17 when the priest assaulted her when in fact she was 14 and 15 at the time of the assaults.

The Commission also noted that the diocese failed to report to the health department and law enforcement authorities which, unlike the Vatican, it reviews as being required by the Framework Document adopted by the Irish bishops in 1996.<sup>52</sup> Another complainant felt that the Commission understated her abuse at the hands of Ronat when they described it as "serious sexual assault." She commented later:

That man anally raped me, and no one can imagine how degrading that is and there is no point in shying away from it – describing it as 'a serious sexual assault' does not convey the devastating impact that being assaulted like that can have on someone's confidence.<sup>53</sup>

The report also noted that Ronat continued to have access to children after restrictions were placed on him and he was knowingly allowed to serve as the master of ceremonies at confirmation ceremonies. Moreover, the report noted that Diocesan officials worked to keep the allegations against Ronat

---

<sup>50</sup> Report Into the Diocese of Cloyne Report, Chapter Nine, Commission of Investigation, 23 Dec. 2010, released Dec. 2011, available at [http://www.bishop-accountability.org/reports/2011\\_07\\_13\\_Cloyne\\_Report/Cloyne\\_further\\_portions\\_Dec\\_2011.pdf](http://www.bishop-accountability.org/reports/2011_07_13_Cloyne_Report/Cloyne_further_portions_Dec_2011.pdf).

<sup>51</sup> *Id.* at p. 135.

<sup>52</sup> See *Child Sexual Abuse: Framework for a Church Response, Report of the Irish Catholic Bishops' Advisory Committee on Child Sexual Abuse by Priests and Religious*, Veritas Publications (Dublin, 1996), available at <http://www.documentcloud.org/documents/243683-6-csaframework-ireland-1996.html>. See also, Storero Letter, *supra* note 41.

<sup>53</sup> See Cloyne Report, Chapter Nine, *supra* note 36, at p. 165; *Victims Speak of Anger at Church Response*, Irish Times, 20 Dec. 2011, [http://www.bishop-accountability.org/news2011/11\\_12/2011\\_12\\_20\\_Roche\\_VictimsSpeak.htm](http://www.bishop-accountability.org/news2011/11_12/2011_12_20_Roche_VictimsSpeak.htm); see also Barry Roche and Eoin Burke-Kennedy, *Mixed Reaction from Cloyne Victims to Meeting Proposal*, Irish Times, 21 Dec. 2011, [http://www.bishop-accountability.org/news2011/11\\_12/2011\\_12\\_21\\_BurkeKennedy\\_MixedReaction.htm](http://www.bishop-accountability.org/news2011/11_12/2011_12_21_BurkeKennedy_MixedReaction.htm).

quiet, noting that no public announcement was ever made, that he was allowed to continue to present himself to the general public as a priest in good standing, and that he was allowed to present himself as having retired on health grounds and continue to wear clerical dress.

United  
States

**New York: Report of the Grand Jury, Westchester County (2002) (“Westchester Report”).** In April of 2002, a Grand Jury in Westchester County, New York, was convened in connection with complaints of sexual abuse and misconduct against minors by members of the local clergy. The Grand Jury met on 15 occasions and received testimony from 21 witnesses, including eight victims of sexual violence and reviewed 31 exhibits consisting of thousands of pages of documents. The Grand Jury report noted that “the specific types of abuse varied, including instances when the abusing clergy member masturbated the child victim to climax; engaged in oral sex; fondled the victim’s penis and buttocks; forced the victim’s hand onto the offender’s penis; and engaged in mutual masturbation to climax by force” and further that the “overwhelming evidence demonstrated that sexual abuse and/or misconduct by a member of the clergy had shattering psychological effects on the victim-child.”<sup>54</sup>

As is the case in the preceding reports, the Westchester Grand Jury also found that when it became aware of the abuse, the religious institution “rather than seeking to alleviate the trauma to the victim, increased it,”<sup>55</sup> and that it uniformly failed to report the offenses to civil law enforcement authorities.<sup>56</sup> Likewise, the Grand Jury also found that the religious institution “consistently shuttled the abuser from place to place each time an allegation came to light”<sup>57</sup> and purposefully kept the new congregation in the dark which served to “put more children at risk”<sup>58</sup> and further that the institution’s “internal investigation of the allegations was primarily geared to delay, with the hope that the victim and his family would not persist in pursuing their claim” and to protect the institution from adverse publicity and its economic welfare.<sup>59</sup>

Among the more insidious aspects of the church’s practice were the lengths to which it would go to discredit the victims. The practice was summarized by the Grand Jury in this way:

The Grand Jury also heard testimony and viewed evidence that, after an allegation of abuse became public by the filing of a lawsuit or otherwise, there was a concerted effort on

---

<sup>54</sup> Report of the Westchester County (New York) Grand Jury Concerning Complaints of Sexual Abuse and Misconduct Against Minors by members of the Clergy, at 2-3, 19 June 2002, *available at* <http://www.bishop-accountability.org/resources/resource-files/reports/WestchesterGrandJuryReport.pdf>.

<sup>55</sup> *Id.* at 5.

<sup>56</sup> *Id.* at 6.

<sup>57</sup> *Id.* at 8.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 7.

the part of the religious institution to mislead the community: defending the abuser while simultaneously attempting to humiliate the victims and their families – even in the face of mounting credible evidence against a particular abuser. Congregants where the abuser was employed were lied to during religious services in their house of worship. Articles in newspapers sponsored by the religious institution questioned the victim and his family’s motives; further, the religious institution used the media to lie about the past record of certain clergy members, thereby willfully misleading the public. In one case in particular, the religious institution sent a high level religious official to the congregation to vouch publicly for an abuser against whom multiple claims had been lodged by separate victims.<sup>60</sup>

**New York: Report of the Grand Jury, Suffolk County (2003) (“Suffolk Report”).** In May 2002, a special Grand Jury was empanelled to investigate the Rockville Center Diocese in New York. After interviewing 97 witnesses and reviewing the secret files of 43 priests, the Suffolk Grand Jury issued its report in January 2003. According to the report, the cases reviewed involved rape, sodomy, sexual abuse, endangering the welfare of a child, and use of a child in a sexual performance. The report described the cases as follows:

- One priest who raped and fondled 4 teenage girls was sent to psychological treatment where it was found he should not be sent back to his parish. This advice was ignored and he was returned to the parish, which was attached to a school, only to reoffend.
- One priest repeatedly raped a 15 year old girl until she was 19, and started a pattern of continuous fondling and masturbation of her sister when she was 12.
- Another priest assaulted four brothers. The first was only 9 when this began, with the Priest performing oral sex on him while he was sleeping, and continued with touching and oral sodomy until the age of 16. One of the brothers committed suicide.
- One priest would supply boys with drinks and

---

<sup>60</sup> *Id.* at 8-9.

when they passed out they would awaken to him masturbating them or performing oral sex.

- Another Priest sexually abused a minimum of six boys who ranged in age from 10 to 17, engaging in oral and anal sex with them.

As in all of the reports outlined above, the Suffolk Grand Jury concluded that the Rockville Diocese shifted predator priests from one parish to the next, deceived victims and prioritized protecting the diocese from scandal. The Grand Jury observed:

Abusive priests were transferred from parish to parish and between Dioceses. Abusive priests were protected under the guise of confidentiality; their histories mired in secrecy. . . Aggressive legal strategies were employed to defeat and discourage lawsuits even though Diocesan officials knew they were meritorious. Victims were deceived; priests who were civil attorneys portrayed themselves as interested in the concerns of victims and pretended to be acting for their benefit while they acted only to protect the Diocese. These officials boldly bragged about their success and arrogantly outlined in writing mechanisms devised to shield them from discovery. These themes framed a system that left thousands of children in the Diocese exposed to predatory, serial, child molesters working as priests.<sup>61</sup>

The Grand Jury further concluded that while “the protection of children was the written policy of the Diocese of Rockville Centre it was not the practice”<sup>62</sup> and, further, that this was no accident:

The Grand Jury concludes that this was more than simple incompetence. The evidence before the Grand Jury clearly demonstrates that Diocesan officials agreed to engage in conduct that resulted in the prevention, hindrance and delay in the discovery of criminal conduct by priests. *They conceived and agreed to a plan using deception and intimidation to prevent victims from seeking*

---

<sup>61</sup> Grand Jury Report, Suffolk County (New York) Supreme Court, Special Grand Jury Term 1D, 6 May 2002, foreperson Rosanne Bonventre, at 107, dated 17 Jan. 2003, *available at* <http://www.bishop-accountability.org/resources/resource-files/reports/SuffolkGrandJuryReport.pdf>.

<sup>62</sup> *Id.* at 131.

*legal solutions to their problems.*<sup>63</sup> (emphasis added)

Finally, the Grand Jury concluded that while that the history of the diocese “demonstrates that as an institution they are incapable of properly handling issues relating to the sexual abuse of children by priests.”<sup>64</sup>

**New York: Albany Diocese, 14 District Attorneys and a Memorandum of Understanding (2012).** In February 2012, fourteen district attorneys whose counties are encompassed by the Albany diocese joined together to communicate their concerns about the diocese’s handling of sexual abuse allegations.<sup>65</sup> This was the second time in ten years that the district attorneys of those counties have jointly raised concerns about these matters with the diocese. In 2002, the district attorneys issued recommendations with which the diocese agreed to comply. In the 29 February 2012 letter, the prosecutors disagreed with the diocesan counsel’s claim that the diocese was fully in compliance with the 2002 recommendations made by prosecutors.<sup>66</sup> The prosecutors also faulted the diocese with failing to “promptly” report “all” allegations to the appropriate district attorneys’ office.<sup>67</sup>

The D.A.s’ letter followed on the heels of a notable trial last year of a priest who had worked in the Albany diocese and against whom complaints were made to diocesan officials in 2000 and 2008. The diocese never reported the allegations to appropriate authorities. When one of the now-adult victims learned that the priest was still working at a church affiliated with a school, he contacted the appropriate district attorney and recounted years of abuse by the priest. While the New York statute of limitations barred any charges against the priest, Massachusetts authorities were able to prosecute him as the offenses were not time-barred there.<sup>68</sup>

The fourteen prosecutors proposed a strongly worded new Memorandum of Understanding that requires the diocese to “immediately notify” the appropriate District Attorney’s Office with jurisdiction over the matter and even defines what is meant by “immediate notification,” i.e. “the same day or next business day.” The memorandum also prohibits the diocese from transferring or re-assigning the accused member of the clergy during the pendency of the state’s investigation. The memorandum further prohibits the diocesan officials from investigating the matter themselves, including “screening” of cases for truth or falsity.<sup>69</sup>

---

<sup>63</sup> *Id.* at 173.

<sup>64</sup> *Id.*

<sup>65</sup> Brendan J. Lyons, *Clergy-abuse Reporting Under Fire From DAs*, The Times Union, 5 Mar. 2012, available at <http://www.timesunion.com/local/article/Clergy-abuse-reporting-under-fire-from-DAs-3380015.php#ixzz1oHBBCRr3>. See also, Letter from District Attorneys to the Howard J. Hubbard, Bishop of Albany, 29 Feb. 2012, and Memorandum of Understanding, available here <http://www.documentcloud.org/documents/335960-2-29-12-hogan-1.html>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

**New Hampshire: Report of the Office of the Attorney General on the Investigation of the Diocese of Manchester (2003) (“Manchester Report”).** The office of the New Hampshire Attorney General launched an investigation in February 2002 “into the manner in which the Roman Catholic Diocese of Manchester handled allegations that priests committed sexual assaults against minors – an investigation that established that the Diocese endangered the welfare of children.”<sup>70</sup> The report stated that the Attorney General’s office was prepared to present indictments to the Hillsborough County Grand Jury in December 2002 charging the Diocese with multiple counts of endangering the welfare of a minor but that the Bishop negotiated with prosecutors and agreed and acknowledged that the “State had evidence likely to sustain a conviction against the Diocese for child endangerment.”<sup>71</sup>

- One victim described his most painful memory was of taking a road trip with the offending priest and three other boys to Indiana for four to six weeks. He described the trip as a “rape fest” – Father Aube engaged in sexual contact with one boy after the other, in the same “session.” Aube was accused of assaulting 17 victims, and was also reported as using physical pain and violence to get victims to agree to various sex acts.
- Another Priest, Gordon MacRae, who had 39 allegations against him, videotaped some of his sexual activity with his victims. Other victims of this priest reported being raped by McRae as well as two of his associates and being threatened by McRae.
- Although Roger Fortier was not convicted until 1998, the Diocese first learned that Fortier was a sexual threat to minors in 1984. He was indicted on 16 counts of sexual assault. One of his 14 yr. old victims was subject to fellatio one to three times per a month for a year.

As with the Hughes, Winter, Ferns, Ryan, Murphy, and Cloyne Commissions and the Westchester and Suffolk Grand Jury reports, the Manchester Report concluded that the Diocese knowingly exposed children to sexual violence, engaged in deception and misdirection and prioritized

---

<sup>70</sup> Report on the Investigation of the Diocese of Manchester, New Hampshire. Attorney General of the State of New Hampshire, Jan. 2003, at 1, *available at* <http://www.bishop-accountability.org/resources/resource-files/reports/NewHampshireAGReport.pdf>.

<sup>71</sup> *Id.*

avoidance of scandal and protection of church officials over the protection of children. Among the significant findings of the report:

The specific facts supporting a conclusion that the Diocese acted “knowingly” will be addressed in subsequent memoranda in the context of each case. However, at this juncture it is appropriate to address some generally applicable principles that will apply across the board to each of the charges. In some instances the Diocese took some steps to address complaints that a priest had molested children, including referring the priest to counseling. The State was prepared to prove that the steps taken by the Diocese were so ineffective that they did not *negate the fact that the Diocese “knowingly” endangered the welfare of a minor.*<sup>72</sup> (emphasis added)

As discussed in the factual section of this report, the investigation uncovered instances where Diocesan officials made apparently false statements in the context of civil lawsuits and in the course of a presentencing investigation conducted by the Department of Corrections for the purpose of the sentencing of a Diocesan priest. *This conduct may have constituted perjury, false swearing, or unsworn falsification.*<sup>73</sup> (emphasis added)

The Task Force obtained information that Diocesan officials may have secured confidentiality agreements from victims of sexual assaults in return for civil settlements and other benefits such as providing counseling to victims. This evidence demonstrates that the Diocese required confidentiality in return for remuneration. *In at least one instance, the investigation revealed that one of the reasons for the Diocese’s insistence on a confidentiality agreement was to prevent the victim from speaking with law enforcement about the sexual offenses of the priest. Such conduct would support a charge that the Diocese engaged in compounding.*<sup>74</sup> (emphasis added)

In exchange for not proceeding with the indictments, the Attorney General’s

---

<sup>72</sup> *Id.* at 6.

<sup>73</sup> *Id.* at 13.

<sup>74</sup> *Id.*



office obtained an admission of guilt from church officials who acknowledged “that certain decisions made by it about the assignment to ministry of priests who had abused minors in the past resulted in other minors being victimized.”<sup>75</sup> The agreement also required that the Diocese participate in a system of accountability and State oversight to ensure transparency and protection of children.

The Attorney General hired an independent firm to monitor the Diocese’s compliance with the agreement. In its report released in 2007, the firm determined that the Diocese of Manchester still was not meeting abuse-prevention requirements negotiated with the attorney general’s office four years before and further that there were ‘critical gaps’ in programs to protect children from sexual abuse and that church leaders were reticent in complying.<sup>76</sup>

**Massachusetts: Attorney General Report Regarding the Archdiocese of Boston (2003) (“Boston Report”).** As a result of media exposure of widespread and shocking accounts of sexual violence by priests and cover-ups in the Boston Archdiocese, the Massachusetts Attorney General office headed by Thomas F. Reilly launched an investigation which took 18 months and ultimately “revealed a dark side to the Church’s relationship with its children.”<sup>77</sup>

The Massachusetts Attorney General’s report revealed that 250 priests and church workers stood accused of acts of rape and sexual assault of children and concluded that sexual mistreatment of children was “so massive and so prolonged that it borders on the unbelievable.”<sup>78</sup> As with the aforementioned reports of the Hughes, Winter, Ferns, Ryan, Murphy, and Cloyne Commissions, and Westchester, Suffolk, and New Hampshire Reports, the Boston Report concluded that “perhaps most tragic of all, much of the harm could have been prevented.”<sup>79</sup> Additionally, despite the knowledge and awareness of top officials in the archdiocese of the extent of “widespread sexual abuse of children,” they “regularly addressed and supported the perceived needs of offending priests more than the needs of children who had been or were at risk of being, abused.”<sup>80</sup>

Like findings of the previous reports, the Boston Report concluded that “[f]or decades, Cardinals, Bishops and others in positions of authority within the Archdiocese chose to protect the image and reputation of their

---

<sup>75</sup> *Id.* at 3.

<sup>76</sup> Associated Press, *Audit Says Diocese Flouts Abuse Guides*, 5 May 2007, available at [http://articles.boston.com/2007-05-05/news/29234397\\_1\\_diocese-sexual-abuse-audit](http://articles.boston.com/2007-05-05/news/29234397_1_diocese-sexual-abuse-audit) (last visited 10 April 2014).

<sup>77</sup> Office of the Att’y Gen., *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston (2003)*, at 1-1, Appendix, available at <http://www.bishop-accountability.org/downloads/archdiocese.pdf>.

<sup>78</sup> *Id.* at 2-3.

<sup>79</sup> *Id.* at 1-2.

<sup>80</sup> *Id.* at 30.

institution rather than the safety and well-being of children.”<sup>81</sup>

The Attorney General’s report also served to dispel claims of ignorance of the abuse which had been made by high-ranking church officials, including Cardinal Bernard Law, as the scandal unfolded in the media. In particular, according to the report:

Cardinal Law and his senior managers had direct, actual knowledge that substantial numbers of children in the Archdiocese had been sexually abused by substantial numbers of its priests.<sup>82</sup>

And further that:

Law had direct knowledge of the scope, duration and severity of the crisis experienced by children in the Archdiocese; he participated directly in crucial decisions concerning the assignment of abusive priests, decisions that typically increased the risk to children.<sup>83</sup>

Subsequent to the scandal, Law submitted his resignation as Archbishop of Boston which was accepted by Pope John Paul II in December 2002. Law left Boston at that time and relocated to Rome. In May 2004, he was appointed to a privileged position in Rome as archpriest of St. Mary Major Basilica, a church under direct Vatican jurisdiction described by one Vatican official as “one of the four most important basilicas” in Rome where he “will be in charge of the administration of the priests and anything related to the basilica.”<sup>84</sup>

**Pennsylvania: Three Philadelphia Grand Juries (2003-2011).** The comprehensive and painstaking work of three separate Philadelphia, Pennsylvania, grand juries over the past decade has yielded perhaps some of the most telling and striking insights into the practices, policies, and priorities of the Church with regard to the problem of sexual violence by clergy. Rather than showing an improvement in the situation in Philadelphia, the findings of the latest grand jury demonstrate that the same dynamics continue to exist including the cover-ups, lack of concern for victims, and exposing children to risk of sexual abuse, and obstruction. The findings suggest that the so-called reforms implemented by U.S. bishops with the consent of the Vatican are largely cosmetic and leave plenty of room for the same maneuvers utilized historically by bishops and cardinals as documented in all of the aforementioned reports.

---

<sup>81</sup> *Id.* at 2-3.

<sup>82</sup> *Id.* at 25.

<sup>83</sup> *Id.* at 31.

<sup>84</sup> Al Baker, Laurie Goodstein, & Daniel J. Walkin, *Cardinal Law Given Post in Rome*, New York Times, 28 May 2004, available at <http://www.nytimes.com/2004/05/28/us/cardinal-law-given-post-in-rome.html>.

Philadelphia Grand Jury I (2003) (“Philadelphia Grand Jury Report I”). In April 2002, the first Philadelphia grand jury was convened to investigate allegations of sexual abuse by priests and others in the Archdiocese of Philadelphia. Prior to the formation of the grand jury, and as noted in the Philadelphia Grand Jury’s report (Grand Jury I Report), the Philadelphia archdiocese issued a statement suggesting that it had only received credible allegations of sexual abuse against 35 priests over the course of 52 years.<sup>85</sup> Soon afterward, Cardinal Anthony J. Bevilacqua assured the public in a television interview that he had a “zero tolerance” policy and had never transferred any priest who had abused a child to another assignment where he would have access to children.

The investigation of the grand jury encountered a much different and darker scenario. The investigation found that over the past 35 years more than 120 priests serving in the Philadelphia archdiocese had been accused of sexually abusing hundreds of adolescents and younger children and of conduct ranging from fondling to oral, vaginal, and anal rape. The evidence established that Cardinal Bevilacqua and his predecessor knowingly transferred priests who had been credibly accused of molesting children to new assignments where they retained access to and control over children:<sup>86</sup>

We find that despite those identified risks, these Archdiocesan managers continued and/or established policies that made the protection of the Church from "scandal" more important than the protection of children from sexual predators. These policies were followed, even at the cost of giving priests who had not only been accused of, but in many cases admitted to, sexually assaulting children, access to untold thousands of additional innocent children. We find that Archdiocesan managers as a whole acted not to prevent the sexual abuse of children by priests but to prevent the discovery that such abuse had occurred.<sup>87</sup>

The first Grand Jury observed that “the human toll of the Archdiocesan policies is staggering. Children suffered the horror of being sexual assaulted by priests” and “were then victimized a second time by an Archdiocesan administration that in many cases ignored, minimized, or attempted to

---

<sup>85</sup> See Report of the Philadelphia Grand Jury, *In Re County Investigating Grand Jury*, MISC. NO. 01-00-89444, Philadelphia, PA (2001), at 1-2, available here <http://www.documentcloud.org/documents/243721-14-2003-09-25-first-philadelphia-grand-jury.html> [hereinafter “Grand Jury I”]. See also, Statement by Anthony Cardinal Bevilacqua, Archbishop of Philadelphia, on Restoring Trust: An Apology and a Commitment (26 Feb. 2002), available at <http://archphila.org/press%20releases/pr000565.php>; see also, Bishopaccountability.org, Examination of the Philadelphia Archdiocese’s Response to the Grand Jury Report (21 Sept. 2005), available at [http://www.bishop-accountability.org/reports/2005\\_09\\_21\\_Phillly\\_GrandJury/da\\_response.pdf](http://www.bishop-accountability.org/reports/2005_09_21_Phillly_GrandJury/da_response.pdf).

<sup>86</sup> Grand Jury Report I, *supra*.

<sup>87</sup> *Id.* at 3.

conceal their abuse.”<sup>88</sup>

Philadelphia Grand Jury II (2005). Because the first Grand Jury could not complete its investigation before its term ended, a second Grand Jury was impaneled in 2003 to continue with the investigation. On 15 September 2011, Grand Jury II issued its 423-page report detailing its findings about the “careful methods by which the Archdiocese accomplished its concealment of ... crimes.”<sup>89</sup>

The Grand Jury was able to document child sexual abuse by at least *63 different priests* in the Archdiocese of Philadelphia. We have no doubt that there were many more. The evidence also revealed *hundreds of child victims* of these sexual offenders. Again, we have no doubt that there were many more.<sup>90</sup>

The report also summarized what the evidence confirmed about some of the cases reviewed by the Grand Jury:

- A girl, 11 years old, was raped by her priest and became pregnant. The priest took her in for an abortion.
- A 5th-grader was molested by her priest inside the confessional booth.
- A teenage girl was groped by her priest while she lay immobilized in traction in a hospital bed. The priest stopped only when the girl was able to ring for a nurse.
- A boy was repeatedly molested in his own school auditorium, where his priest/teacher bent the boy over and rubbed his genitals against the boy until the priest ejaculated.
- A priest, no longer satisfied with mere pederasty, regularly began forcing sex on two boys at once in his bed.
- A boy woke up intoxicated in a priest’s bed to find the Father sucking on his penis while three other priests watched and masturbated

---

<sup>88</sup> *Id.* at 5.

<sup>89</sup> Report of the Grand Jury, *In Re County Investigating Grand Jury*, MISC. NO. 03-00-239, at 2 (C. P. Philadelphia, 2003), available at [http://www.bishop-accountability.org/reports/2005\\_09\\_21\\_Philly\\_GrandJury/Grand\\_Jury\\_Report.pdf](http://www.bishop-accountability.org/reports/2005_09_21_Philly_GrandJury/Grand_Jury_Report.pdf) [hereinafter Grand Jury II].

<sup>90</sup> *Id.* at 2.

themselves.

- A priest offered money to boys in exchange for sadomasochism – directing them to place him in bondage, to “break” him, to make him their “slave,” and to defecate so that he could lick excrement from them.
- A 12-year-old, who was raped and sodomized by his priest, tried to commit suicide, and remains institutionalized in a mental hospital as an adult.
- A priest told a 12-year-old boy that his mother knew of and had agreed to the priest’s repeated rape of her son.
- A boy who told his father about the abuse his younger brother was suffering was beaten to the point of unconsciousness. “Priests don’t do that,” said the father as he punished his son for what he thought was a vicious lie against the clergy.<sup>91</sup>

According to the Grand Jury, the “archdiocese leaders employed deliberate strategies to conceal known abuse” and even conducted ‘non-investigations’ designed to avoid establishing priests’ guilt, and “bullied, intimidated, lied to and even investigated” victims of sexual assault.<sup>92</sup> The Grand Jury Report also described in detail the evidence which showed that Cardinal Bevilacqua engaged in priest shifting and ‘reciprocity’ in harboring priests from other diocesan communities. One abusive priest was transferred so many times, according to the report, that the Archdiocese’s own records note, “they were running out of places to send him where he would not already be known.”<sup>93</sup> In terms of harboring priests from other dioceses, the report noted that:

Cardinal Bevilacqua also reciprocated with other dioceses, as part of what an aide referred to as the “tradition of bishops helping bishops.” For five years, beginning in 1988, Cardinal Bevilacqua secretly harbored a New Jersey priest, Fr. John Connor, at Saint Matthew parish in Conshohocken so that the bishop in Camden could avoid scandal there. Cardinal Bevilacqua, despite an earlier acknowledgement that Fr. Connor could

---

<sup>91</sup> *Id.* at 3.

<sup>92</sup> *Id.* at 29, 31, & 50.

<sup>93</sup> *Id.* at 5.

present a “serious risk,” did not inform Saint Matthew’s pastor of the danger. In fact, he told the pastor that Fr. Connor had come to the parish from another diocese because his mother was sick and he wanted to be near her. The pastor never knew, until he read it years later in a newspaper, that Fr. Connor had been arrested in his home diocese of Camden for sexually abusing a 14-year-old. As a result of his ignorance, the pastor did not worry, as he should have, when Fr. Connor showered attention and gifts on a boy in the parish grade school.<sup>94</sup>

After reviewing all of the evidence and testimony presented, the Grand Jurors observed:

In concealing the crimes of sexually abusive priests while keeping them in ministry, the Cardinal and his aides did not merely fail to protect children from terrible danger. *They greatly increased the danger and the harm to Archdiocese children. When Cardinals Krol and Bevilacqua promoted and celebrated known abusers – rapists and molesters of children – and left them in positions as pastors, parish priests, and teachers, they in effect vouched for their holiness and trustworthiness and encouraged parents to entrust their children to them.* When Church leaders hid allegations against priest child molesters and deliberately placed them in parishes where unsuspecting families were kept in the dark, they minimized parents’ ability to protect their children. When they transferred the priests to new parishes to avoid scandal, they greatly increased the numbers of potential victims. When they withheld from parents knowledge of their child’s abuse, they sentenced that child to years of lonely suffering. By not reporting the crimes to law enforcement, they frustrated safeguards designed to protect children in society at large.

What makes these actions all the worse, the Grand Jurors believe, is that the abuses that Cardinal Bevilacqua and his aides allowed

---

<sup>94</sup> *Id.* at 38.

children to suffer – the molestations, the rapes, the lifelong shame and despair – did not result from failures or lapses, except of the moral variety. *They were made possible by purposeful decisions, carefully implemented policies, and calculated indifference.*<sup>95</sup> (emphasis added)

Philadelphia grand Jury III (2011). Like the Cloyne Report concerning the diocese in Dublin, the third set of Grand Jurors impaneled to look into the handling of allegations of sexual assault in the Philadelphia archdiocese had the opportunity to see what effect new reforms were having on the handling of allegations of sexual assault. In Cloyne, the new reforms were embodied in the Framework Document adopted by Irish bishops in 1996. In Philadelphia, the reforms were those introduced by the U.S. bishops in 2002.

Unfortunately, the report demonstrates that even the policy that the church now holds out as a model for dealing with allegations of 'child sexual abuse' was, at least in Philadelphia, a sham. As discussed more, the United States Conference of Catholic Bishops adopted what it called a 'zero tolerance policy' in the wake of the scandal in Boston, according to which accused priests are to be removed from ministry upon allegations of abuse pending investigation. Yet the Philadelphia archdiocese, which had been certified as functioning properly and in accordance with the model policy, was shown to have 37 credibly accused predator priests still freely serving in ministry with access to congregants as recently as February 2011.<sup>96</sup>

Most disheartening to the grand jury was what we learned about the current practice toward accused abusers in the Philadelphia Archdiocese. We would have assumed, by the year 2011, after all the revelations both here and around the world, that the church would not risk its youth by leaving them in the presence of priests subject to substantial evidence of abuse. That is not the case. In fact, we discovered that there have been at least 37 such priests who have been kept in assignments that expose them to children. Ten of these priests have been in place since before 2005 – over six years ago.<sup>97</sup>

---

<sup>95</sup> *Id.* at 55.

<sup>96</sup> Gloria Campisi, *Rigali Puts another Two on Leave - But Doesn't Name Them*, Philadelphia Daily News, 31 Mar. 2011, available at <http://www.philly.com/philly/news/pennsylvania/118954554.html>.

<sup>97</sup> Report of the Philadelphia Grand Jury, *In Re County Investigating Grand Jury XXIII*, MISC. No. 0009901-2008, at 9, Philadelphia PA. 23 Jan. 2011, available at

In fact, the jurors concluded that the Archdiocese:

...continues to engage in practices that mislead victims, that violate their trust, that hinder prosecution of their abusers and that leave large numbers of credibly accused priests in ministry... [t]he procedures implemented by the Archdiocese to help victims are in fact designed to help the abusers, and the Archdiocese itself.<sup>98</sup>

The third Grand Jury investigation began because two survivors came forward to report more recent abuse. During the course of the investigation, it became clear to the Grand Jury that dozens of credibly accused priests were still in active ministry.

The report described the case of “Billy,” who at 10-years-old, was raped orally by one priest and then “passed around” to two of the priest’s colleagues, also priests, who also orally and anally raped him. He reported that afterward he stopped talking with friends and began doing drugs and “would often gag and vomit for reasons that doctors could not discern.”<sup>99</sup> The other case investigated by the Grand Jury involved another priest who was accused of sexually assaulting “Mark” from the age of 10 until finally anally raping him at the age of 14.<sup>100</sup>

According to the report:

The present grand jury, however, is frustrated to report that much has not changed. The rapist priests we accuse were well known to the Secretary of Clergy, but he cloaked their conduct and put them in place to do it again. The procedures implemented by the Archdiocese to help victims are in fact designed to help the abusers, and the Archdiocese itself. Worst of all, apparent abusers – dozens of them, we believe – remain on duty in the Archdiocese, today, with open access to new young prey.<sup>101</sup>

The grand jurors also noted problems with the way that the Archdiocese’s review board, also mandated by the 2002 reforms, has functioned in these cases and found that when it has taken action, “the results have often been

---

[http://www.bishop-accountability.org/reports/2011\\_01\\_21\\_Philadelphia\\_Grand\\_Jury\\_Final\\_Report\\_Clergy\\_Abuse\\_2.pdf](http://www.bishop-accountability.org/reports/2011_01_21_Philadelphia_Grand_Jury_Final_Report_Clergy_Abuse_2.pdf) [hereinafter “Grand Jury Report III”].

<sup>98</sup> *Id.* at 1.

<sup>99</sup> *Id.* at 31-41.

<sup>100</sup> *Id.* at 3.

<sup>101</sup> *Id.* at 1.



even worse than no decision at all.”<sup>102</sup>

In one case, a 44-year-old man said he had been abused by a priest while in second grade. The board calculated that the man would have been in the second grade in 1969. The priest in question did not arrive in the parish until 1970. Therefore, ruled the board, the man must not be telling the truth. Apparently there was no possibility that, after almost four decades, the victim could have been off by a few months about the date, but still right about the conduct. A year after this “incredible” report, the same priest was the subject of an independent allegation by another victim. Despite a wealth of corroborating evidence, the board also declared this second man incredible. The man killed himself shortly after the board’s decision.

In another case, the accused priest submitted to a lie detector test. He was asked whether he had shown pornographic movies to minors, whether he had fondled himself in front of children, and whether he had touched boys’ genitals. He flunked every question. The board nonetheless declared the victim’s accusations “unsubstantiated.” The same thing happened to a woman who came forward to report that two priests had fondled her when she was a teenager. One of the priests admitted the report was true. The other denied it, but then flunked his polygraph test. The review board initially found the report about him credible, but then took a re-vote two months later, on the ground that some of the board’s members had been absent the first time due to “inclement weather.” This time, on the same evidence as the original vote, the board gave the second priest a clean bill of health – as if the victim had some reason to tell the truth about the first priest, who admitted it, but was lying about the second priest, who just happened to flunk the lie detector for no reason. That priest remains in good standing, still “ministering” to men,

---

<sup>102</sup>

*Id* at 9.

women, boys, and teenage girls.

The jurors concluded that even with the so-called reforms in place, such as the review board, “[t]hese are simply not the actions of an institution that is serious about ending sexual abuse of its children. There is no other conclusion.”<sup>103</sup>

One of the more shocking revelations about cover-up and obstruction of justice on the part of diocesan officials came to light in 2012 through a court filing in a criminal case involving priests and an official from the Philadelphia archdiocese. On 24 February 2012, attorneys for Monsignor William Lynn filed a motion to dismiss the charges of child endangerment against him on the basis of newly discovered evidence, which consisted of documentary proof of an order given by Cardinal Anthony Bevilacqua to destroy a list of thirty-five priests credibly accused of sexual violence that Lynn had submitted to Bevilacqua in 1994.<sup>104</sup>

The order was recorded in a hand-written note made by the person who was ordered to destroy all existing copies of the document, Monsignor James Malloy, and was witnessed by Rev. Joseph Cistone.<sup>105</sup> Malloy secretly stored the memo of a meeting and the shredding of the document in a safe which was not opened until after his death in 2006 when archdiocesan officials found it and hired a locksmith to open it. It is unclear why the documents were only turned over to Lynn's attorneys and prosecutors years later, though the hand-over appears to have happened after the Bevilacqua's death on 31 January 2012.

Malloy, the priest who destroyed the list on Bevilacqua's orders, died in 2006 but prior to his death expressed his reasons for documenting the destruction of the evidence:

I couldn't be sure that I could trust my superiors to do the right thing. I wanted my memos to be there if the archdiocese's decisions were eventually put on the judicial scales. This way, anyone could come along in the future and say, this was right or this wrong. But they could never say it wasn't all written down.<sup>106</sup>

Bevilacqua appeared at least ten times before the grand jury and denied knowing the details or playing a significant role in the handling of allegations of sexual violence by priests, even testifying at one point that he

---

<sup>103</sup> *Id* at 9-11.

<sup>104</sup> John P. Martin, *Court filing: Bevilacqua Ordered Shredding of Memo Identifying Suspected Abusers*, *The Philadelphia Inquirer*, 25 Feb. 2012, [http://articles.philly.com/2012-02-25/news/31098596\\_1\\_church-lawyers-abuse-complaints-priests/2](http://articles.philly.com/2012-02-25/news/31098596_1_church-lawyers-abuse-complaints-priests/2).

<sup>105</sup> *Id.*

<sup>106</sup> Tom Roberts, *A deep look into Philly's clerical culture*, *National Catholic Reporter*, 28 Feb. 2012, <http://ncronline.org/blogs/ncr-today/deep-look-phillys-clerical-culture>.

"saw no evidence at any time that we did any cover-up"<sup>107</sup> and had publicly declared in 2002 that he had a "zero tolerance" policy and never transferred any priest who had abused a child to another assignment where he would have access to children.

That Grand Jury found otherwise:

We find that despite those identified risks, these Archdiocesan managers continued and/or established policies that made the protection of the Church from "scandal" more important than the protection of children from sexual predators. These policies were followed, even at the cost of giving priests who had not only been accused of, but in many cases admitted to, sexually assaulting children, access to untold thousands of additional innocent children. We find that Archdiocesan managers as a whole acted not to prevent the sexual abuse of children by priests but to prevent the discovery that such abuse had occurred.<sup>108</sup>

**Arizona: Agreement Between Maricopa County District Attorney and Bishop Thomas O'Brien.** In June of 2003, a prosecutor in Maricopa County, Arizona, announced an agreement with the Bishop of Phoenix which required that the bishop acknowledge his criminal actions and agree to cooperate with state officials to work to ensure the safety of children in exchange for not being prosecuted for obstruction of justice. The text of the agreement confirmed that a Grand Jury had been investigating and considering information relating to the criminal sexual misconduct by diocesan personnel and "whether Bishop Thomas J. O'Brien or the diocese placed or transferred priests or other Diocesan personnel in or to a position to commit additional criminal conduct after becoming aware of prior criminal conduct."<sup>109</sup>

The agreement also noted that while no credible evidence had been received that would establish that O'Brien himself personally engaged in criminal sexual misconduct, the investigation did develop evidence that he "failed to protect the victims of criminal sexual misconduct of others associated with the Roman Catholic Diocese of Phoenix."<sup>110</sup>

---

<sup>107</sup> Martin, *supra* note 104.

<sup>108</sup> Grand Jury I, *supra* note 85, at 1-2.

<sup>109</sup> See, Agreement between the State of Arizona, Maricopa County Attorney, and the Bishop of the Roman Catholic Diocese of Phoenix, 3 May 2003, at 1, *available at*

<http://www.bishop-accountability.org/az-phoenix/phoenix-agreement-resignation.htm>.

<sup>110</sup> *Id.* at 2.

In the agreement, Bishop Thomas J. O'Brien stated:

I acknowledge that I allowed Roman Catholic priests under my supervision to work with minors after becoming aware of allegations of sexual misconduct. I further acknowledge that priests who had allegations of sexual misconduct made against them were transferred to ministries without full disclosure to their supervisor or to the community in which they were assigned. I apologize and express regret for any misconduct, hardship or harm caused to the victims of sexual misconduct by Roman Catholic priests assigned to the Diocese.<sup>111</sup>

In addition to acknowledging the criminality of his conduct, O'Brien was required to agree to a series of conditions aimed at ensuring the diocese's compliance with all applicable laws relating to criminal sexual conduct by its priests and others associated with the diocese. The conditions included, *inter alia*, the appointment of a Youth Protection Advocate responsible for implementation and enforcement of policy on sexual misconduct by Diocesan personnel. The policy was to be reviewed and modified with input of the Maricopa County Attorney's Office.<sup>112</sup>

**Ohio.** In Cincinnati, prosecutors worked out a plea deal which actually required Archbishop Daniel E. Pilarczyk to plead to five counts of "failure to report a crime" as part of a settlement agreement after an 18-month long investigation into allegations of sexual violence by priests and cover-ups in the archdiocese. When Pilarczyk entered the guilty pleas to the charges, Judge Richard Niehaus observed that the church officials covered up the crimes "at the expense of the victims" and further stated:

I believe that this case today is an extremely tragic event... I believe that a religious organization that not only should follow the civil law but also the moral law lost its way... I am disappointed as a citizen that any religious organization would be involved in criminal activity... such that I believe self-preservation exceeded their moral duty to minister to those people and to prevent future abuse.<sup>113</sup>

As in Maricopa County, the Cincinnati Archdiocese had to agree to a number of conditions and reforms in exchange for the plea to the

---

<sup>111</sup> *Id.* at Tab A.

<sup>112</sup> *Id.* at ¶¶ 1-14.

<sup>113</sup> See, Kimball Perry, *Archdiocese Guilty of Coverup*, Cincinnati Post, 21 Nov. 2003, available at <http://www.bishop-accountability.org/resources/resource-files/timeline/2003-11-21-Perry-Coverup.htm>.

misdemeanor offenses, including establishing a victim's compensation fund and establishing reporting procedures and transparency.<sup>114</sup>

## B. INTER-GOVERNMENTAL AND TREATY BODIES

UN  
Committee  
on the  
Rights of  
the Child

**Concluding Observations on the Review of the Holy See (2014).** The Committee on the Rights of the Child recently completed its second review of the Holy See. In its Concluding Observations, the Committee *inter alia* found “in dealing with allegations of child sexual abuse, the Holy See has consistently placed the preservation of the reputation of the Church and the protection of the perpetrators above children’s best interests,” and expressed “its deepest concern about child sexual abuse committed by members of the Catholic churches who operate under the authority of the Holy See [and] is gravely concerned that the Holy See has not acknowledged the extent of the crimes committed, has not taken the necessary measures to address cases of child sexual abuse and to protect children, and has adopted policies and practices which have led to the continuation of the abuse by and impunity of the perpetrators.”<sup>115</sup>

The CRC called on the Holy See to *inter alia*: immediately remove all known and suspected child abusers from assignment and refer the matters to relevant law enforcement authorities for investigation and prosecution; share all archives which can be used to hold abusers accountable as well as those who concealed their crimes and knowingly placed offenders in contact with children; amend Canon Law so as to recognize the gravity of the crime and repeal provisions which impose an obligation of silence, including on the victims; establish clear procedure for mandatory reporting of all suspected cases to law enforcement authorities; ensure that all personnel are aware of reporting obligations and that these prevail over Canon law; and develop programs and policies to prevent these crimes and for recovery and social reintegration of child victims.<sup>116</sup> Notably, the CRC addressed the treatment of girls placed in the Magdalene Laundries, which this Committee addressed in the context of Ireland’s reporting under the heading of “torture and other cruel or degrading treatment or punishment.”<sup>117</sup>

---

<sup>114</sup> Settlement Agreement between Archdiocese of Cincinnati and the Hamilton County Prosecuting Attorney, 20 Nov. 2003, *available at*

<http://www.bishop-accountability.org/resources/resource-files/courtdocs/2003-11-20-Pilarczyk-Agreement.pdf>.

<sup>115</sup> See United Nations, Concluding Observations of the Committee on the Rights of the Child on the Second Period Report of the Holy See, CRC/C/VAT/CO/2 (31 Jan. 2014) (“CRC 2014 Concluding Observations”), ¶¶ 29, 43. See also United Nations, Concluding Observations of the Committee on the Rights of the Child of the Report Submitted by the Holy See on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, CRC/C/OPSC/VAT/CO/1 (25 Feb. 2014).

<sup>116</sup> *Id.* at ¶ 44.

<sup>117</sup> *Id.* at ¶¶ 37-38.

Social, Health  
and Family  
Affairs  
Committee  
of the  
Parliamentary  
Assembly of  
the Council  
of Europe

**Report to Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe.** In September 2010, Ms. Marlene Ruprecht, presented a report of the Social, health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe entitled, “Child Abuse in Institutions: Ensuring Full Protection of the Victims.”<sup>118</sup> The report notes the prevalence of cases concerning institutions affiliated with the Catholic Church:

with allegations and suspicions of covering up and protecting members of their clergy, where priests having committed child abuse were simply transferred to other dioceses or functions where they could commit similar crimes. Msgr Charles J. Scicluna, “Promotor of Justice” of the Congregation for the Doctrine of the Faith, recently indirectly confirmed such an approach of the Catholic Church to the issue of child abuse by stating that only in about 20% of cases concerning priests suspected of paedophilia, have penal or administrative processes taken place in the diocese in question. In a further 60% of cases, mainly due to the advanced age of the accused priests, only disciplinary measures have been taken against them, leading to them being forbidden to celebrate mass in public or to the obligation to retire. In the 20% of worst cases, based on watertight evidence, the Pope himself has taken the responsibility to defrock priests from their religious status and functions. Despite an understanding for Catholic institutions with regard to their particular function and sensitive position in our societies, the rapporteur recalls that church institutions have to respect and should rigorously apply the same national legislation as all other public and private organisations.<sup>119</sup>

The report contained a number of recommendations for future action including the introduction of regulations in member states providing for ex officio prosecution of all abuse cases involving minors and addressing legal hurdles such as prescriptive periods.

---

<sup>118</sup> *Child Abuse in Institutions: Ensuring Full Protection of the Victims*, Report by Ms. Marlene Ruprecht, Special Rapporteur to the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, Doc. 12358, ¶ 29, 20 Sept. 2010, available at <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileId=12527&Language=en>

<sup>119</sup> *Id.* at ¶ 29.

United Nations Committee Against Torture

In its review of Ireland, this Committee also noted the failure of Ireland to “protect girls and women who were involuntarily confined between 1922 and 1996 in the Magdalene Laundries, by failing to regulate their operations and inspect them, where it is alleged that physical, emotional abuses and other ill-treatment were committed amount to breaches of the Convention.”<sup>120</sup> The Magdalene Laundries were operated by four Roman Catholic religious orders in Ireland in ten separate locations during that time period. The Committee made similar recommendations to the government of Ireland with respect to the victims and survivors of the Laundries as it did with regard to the institutions named in the Ryan Report, including that it,

...should institute prompt, independent, and thorough investigations into all allegations of torture, and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries, and, in appropriate cases, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed, and ensure that all victims obtain redress and have an enforceable right to compensation including the means for as full rehabilitation as possible.<sup>121</sup>

While the state of Ireland should be held accountable for its failure to respect, protect and fulfill the rights set out in the Convention, the Holy See should also be held to account as it shares responsibility for the violations of the Convention.

### C. FINDINGS OF CHURCH-APPOINTED COMMISSIONS AND EXPERTS

Belgium

**The Adriaenssens Inquiry and Report (2010).** After a series of scandals in recent years in Belgium, Catholic Church officials appointed Dr. Peter Adriaenssens to head up an independent inquiry into cases of sexual assault in the church from the 1960's - 1990's. One of the goals of the commission was to address older cases for which there would be no legal recourse due to the statute of limitations. The report detailed evidence pertaining to 476 cases and included anonymous testimony by victims to ensure their voices could be heard.<sup>122</sup>

The report found that 13 people were believed to have committed suicide as a result of the sexual assault by clerics and that six others were reported to

<sup>120</sup> CAT Concluding Observations, *supra* note 31, at ¶ 21.

<sup>121</sup> *Id.*

<sup>122</sup> Ian Traynor, *Belgian Child Abuse Report Exposes Catholic Clergy*, Guardian, 10 Sep. 2010, available at <http://www.guardian.co.uk/world/2010/sep/10/belgium-child-abuse-catholic-church>.

have attempted suicide as a result. The report also noted that the youngest reported victim was two-years-old at the time of the assault. The reported stated that "the law of silence reigns throughout society... often a church official was informed but decided to protect his family, the church."<sup>123</sup> The report further suggests that "many consider there to be an organised system of concealment."<sup>124</sup>

Germany **Munich/Freising Report (2010).** After similar scandals broke out in Germany, church officials under pressure commissioned an inquiry to look at structural deficiencies that contributed to the offenses and inadequate responses by church leaders. Attorney Marion Westphal was appointed to lead the effort which involved examining approximately 13,000 documents spanning from 1945 to 2009. Upon the release of the report, Westphal noted that there were allegations of abuse against 159 priests but emphasized that "we must assume the real number is much higher" given that countless documents that are believed to have served as evidence of wrongdoing were missing or appeared to have been purposely destroyed.<sup>125</sup>

Wherever the experts encountered limits to the clarification of individual events in the past, these were imposed, not by any restriction on what was made available, but rather by the regrettable state of what was available. And this, by the way, is one of the reasons why the already mentioned, considerable number of undetected cases must be assumed. All the more so because, according to the findings of the experts, destruction of documents took place in considerable measure, and wide-ranging collections of documents were stored outside the Palace in private dwellings, and thus made susceptible to manipulation. In addition, the documents were not secured against unauthorised access even on the Palace premises. For these reasons, there were in many cases obvious gaps in the documentation. It was repeatedly impossible to reconstruct events. Vital documentation, affecting for example former activities of the person under investigation or the reasons for a change of diocese in the case of incardinated priests, was missing in most cases. There was

---

<sup>123</sup> Thomas J. Lowe, *Open Wounds of the Catholic Church*, *ThomasJLowe.com* (26 Sept. 2010, 16:03), <http://www.thomasjlowe.com/2010/09/26/open-wounds-of-the-catholic-church/>.

<sup>124</sup> *Id.*

<sup>125</sup> Marion Westpfahl, Central Points of Appraisal Report, *Sexual and Other Physical Assaults by Priests, Deacons and Other Pastoral Workers in the Field of Jurisdiction of the Archdiocese of Munich and Freising Between 1945 and 2009* (2010), at 2, available at [http://www.bishop-accountability.org/reports/2010\\_12\\_02\\_Westpfahl\\_Munich\\_and\\_Freising\\_Key\\_Points\\_English.pdf](http://www.bishop-accountability.org/reports/2010_12_02_Westpfahl_Munich_and_Freising_Key_Points_English.pdf).



no reliable, central registration of the documentation, so that, again and again in the course of investigation, documents or parts thereof appeared surprisingly at the most varied places.<sup>126</sup> (executive summary p 3)

The report also concluded that the Church used the fact of cultural and societal taboos on sexual topics to its advantage in its cover-ups, which further alienated and isolated child victims of abuse:

Instead of following its own mission and abiding by its moral precepts by stemming itself against attitudes that assign victims – and in particular victims of sexual offences – a joint responsibility, and place sexual topics under taboo, the Church has used this long-standing, prevalent social context to promote non-detection of misconduct. To the same extent, it has not stood up for the rights of the children entrusted to it, and thus shares the responsibility for the fact that the victimised children, through the attitude adopted towards them, have often been exposed to the stress of childhood isolation in addition to that of the offence itself.<sup>127</sup>

As with all of the aforementioned reports, the Munich/Freising report also confirmed the practice of transferring offending priests from one place to another to avoid scandal and detection, a fact which illustrated contempt for the victims and future victims. The report also noted the inconsistency in this regard and in the treatment of offenders for such serious acts as sexual violence versus the type of sanctions threatened against lay people for even slight offences.

#### Ireland

On 30 November 2011, the National Board for Safeguarding Children in the Catholic Church ("NBSCCC") issued the Diocesan audit reports on the status of implementation of safeguarding practices in six Irish dioceses.<sup>128</sup> The NBSCCC was established by Irish bishops and religious orders to provide monitoring of church practice in child protection. The reports are based upon case material made available by the dioceses and the board does not have power to compel the dioceses to produce materials. Indeed, the reports may be published only with the consent of the bishops or church authorities.

The report addressed allegations during the period 1975-2010. While the

---

<sup>126</sup> *Id.* at 3.

<sup>127</sup> *Id.* at 3-4.

<sup>128</sup> *Safeguarding Review of Six Dioceses*, National Board for Safeguarding Children in the Catholic Church, Nov. 2011, available at <http://www.safeguarding.ie/reviews-nov-2011/> [hereinafter "NBSCCC Report"].

reports mostly lauded efforts at compliance with the safeguarding practice in the dioceses of Ardagh and Clonmacnois, Derry, Dromore, Kilmore, Raphoe and Tuam, there were still areas for grave concern identified by advocates that were included in the reports. In particular, advocates in Northern Ireland expressed concern that the "pattern of reports of abuse being ignored or priests suspected of abusing children being moved out of dioceses, even to other parts of the world, is replicated throughout the six reports, that include Tuam in the west of Ireland and Dromore in Northern Ireland..."<sup>129</sup> A number of advocates and survivors called for a fully independent public inquiry into clerical abuse in Northern Ireland. Additionally, a former police investigator and some victims have accused bishops of "whitewashing their own records and turning a blind eye to unresolved cases."<sup>130</sup> Others expressed concern at the number of accused priests who are still in ministry.<sup>131</sup>

With respect to the Derry Diocese, the report noted:

Priests about whom there were clear concerns were not robustly challenged or adequately managed and problems were often "handled" by moving them to postings elsewhere. There is evidence that abusive behaviour continued to be exhibited by priests who were moved on in this manner.<sup>132</sup>

With respect to the diocese of Dromore, the report found that the practice of the diocese "placed too much emphasis on maintaining the good name of the accused priest rather than ensuring the safety of children."<sup>133</sup> A number of concerns were identified with respect to the Raphoe Diocese, including, that as in Dromore, "too much emphasis was placed on the situation of the accused priest and too little on the needs of their complainants."<sup>134</sup> One advocate expressed particular concern about the Raphoe report because "[i]t highlights concerns over the approach adopted to child protection complaints by three bishops, including Bishop Dr. Philip Boyce, and concerns about the system for protecting children as late as 2009."<sup>135</sup>

---

<sup>129</sup> Henry McDonald, *Amnesty Calls for Inquiry Into Child Sex Abuse by Clergy in Northern Ireland*, The Guardian, 30 Nov. 2011, available at <http://www.guardian.co.uk/world/2011/nov/30/amnesty-child-sex-clergy-northern-ireland>.

<sup>130</sup> See, *85 Priests Were Accused of Abuse - Catholic Church Reviews*, BBC News, 30 Nov. 2011, <http://www.bbc.co.uk/news/uk-northern-ireland-15960621> and Shawn Pogachink, *Probe: 6 Irish Dioceses No Longer Hide Child Abuse*, Associated Press, 30 Nov. 2011, available at <http://www.huffingtonpost.com/huffwires/20111130/eu-ireland-Catholic-abuse/>.

<sup>131</sup> *85 Priests Were Accused of Abuse - Catholic Church Reviews*, BBC News, 30 Nov. 2011, <http://www.bbc.co.uk/news/uk-northern-ireland-15960621>.

<sup>132</sup> NBSCCC Report, Derry, at p. 9.

<sup>133</sup> NBSCCC Report, Dromore, at p. 4.

<sup>134</sup> NBSCCC Report, Raphoe, at p. 5.

<sup>135</sup> Irish Times, *Groups Respond to Diocese Audits*, 30 Nov. 2011, [http://www.bishop-accountability.org/news2011/11\\_12/2011\\_11\\_30\\_IrishTimes\\_GroupsRespond.htm](http://www.bishop-accountability.org/news2011/11_12/2011_11_30_IrishTimes_GroupsRespond.htm).

The Netherlands On 16 December 2011, a Commission of Inquiry established by the Conference of Bishops and Dutch Religious Conference issued a report entitled "The Sexual Abuse of Minors Within the Roman Catholic Church" ("Deetman Report"). The report, authored by Commission chair Wim Deetman, looked at the nature and extent of sexual abuse of minors in the Netherlands between the years 1945-2010 and found that "tens of thousands" of children had been sexually abused during that period.<sup>136</sup>

The Commission noted that while it received 1,795 reports of sexual abuse between March and December 2010, it undertook a more "scientifically sound" method of estimating the scale and nature of the sexual abuse, involving a selection of those who notified the commission of abuse as well as a sample population of 34,234 Dutch nationals aged 40 or older. As a result, the Commission estimated that the "number of victims that grew up as Roman Catholic, spent part of their youth in a Roman Catholic institution and reported being sexually abused by an offender working in the Roman Catholic Church before the age of 18 during the period between 1945 and 1981 is approximately 10,000 to 20,000." The study further found that the rate of "unwanted sexual contact with children" in institutions was approximately twenty percent, or twice that of the national average of Dutch persons subjected against their will to sexual advances from an adult who was not a member of their family before they were 18.<sup>137</sup>

The Deetman Report noted that "bishops and others were not ignorant of the problem of sexual abuse" and that they "failed to take adequate action and paid too little attention to victims."<sup>138</sup> The Commission also noted that in the past, "the confessional was sometimes used to warn victims to remain silent."<sup>139</sup>

While the Commission's findings were eye-opening in terms of the "cautious" estimates of the scale of sexual abuse in the Netherlands, what the Commission left out of the report was equally shocking: reports of the castration of at least 10 boys in retaliation for reporting sexual assault in the 1950s. The first known victim of this offense was an 18-year-old student at a Catholic boarding school when he attempted to report to police that he had been sexually assaulted by the brother superior of the school. He was taken to a Roman Catholic psychiatric ward, declared a homosexual and castrated. It is reported that this procedure was forced onto at least ten other students at the school who attempted to report sexual assaults.<sup>140</sup>

---

<sup>136</sup> Report of Commission of Inquiry into Sexual Abuse of Minors in the Roman Catholic Church (Netherlands), 16 Dec. 2011, *available at* [http://bishopaccountability.org/reports/2011\\_12\\_16\\_Deetman\\_Seksueel\\_Misbruik/](http://bishopaccountability.org/reports/2011_12_16_Deetman_Seksueel_Misbruik/).

<sup>137</sup> *Id.*, Executive Summary (English) at 8-9. [http://bishopaccountability.org/reports/2011\\_12\\_16\\_Deetman\\_Seksueel\\_Misbruik/Deetman\\_Report\\_English\\_Summary.pdf](http://bishopaccountability.org/reports/2011_12_16_Deetman_Seksueel_Misbruik/Deetman_Report_English_Summary.pdf).

<sup>138</sup> *Id.* at p. 20.

<sup>139</sup> *Id.* at p. 18.

<sup>140</sup> Robert Chesal, *Time for the Truth about Catholic Sex Abuse in the Netherlands*, Radio Netherlands Worldwide, 19 Mar. 2012, <http://www.rnw.nl/english/article/time-truth-about-Catholic-sex-abuse-netherlands>;

United  
States

**The John Jay Report.** The United States Conference of Catholic Bishops (USCCB) commissioned a study entitled, *The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States*. The study, conducted by the John Jay College of Criminal Justice, is widely viewed as a conservative estimate of the rates of sexual violence given that it is based on self-reported data supplied by dioceses and church entities. The survey concluded that, based on the available numbers, between 3%-6% of priests in the United States were alleged to have 'sexually abused' minors under the age of 18 between 1950 and 2002 and that this range did not vary greatly from one region to another.<sup>141</sup> The survey showed that there were 4,392 credibly accused priests serving in the U.S. during that time period.<sup>142</sup>

Since the survey, the USCCB has supplemented the numbers with what it considers credible allegations received since the study, with the exception of the year 2003, and acknowledges a total of 5,948 credibly accused priests.<sup>143</sup> According to the study, there were 10,667 individuals reporting 'child sexual abuse' by priests during that time period and that 17.2% of those reporting abuse also had siblings who had also been sexually abused.<sup>144</sup> Notably, the study only included allegations of 'abuse' against priests which were never withdrawn nor shown to be false and did not encompass unreported allegations or allegations made by adult victims or reports involving allegations against those other than priests. A prominent watchdog group in the U.S. has reported that the percentages of accused priests are "markedly higher" in U.S. dioceses that are compelled to release their internal files to law enforcement or the public, with rates ranging from 7.7% to more than 10%.<sup>145</sup>

---

See also Dutch Roman Catholic Church 'Castrated' Boys in 1950s, BBC News, 20 Mar. 2012, <http://www.bbc.co.uk/news/world-europe-17453849>.

<sup>141</sup> John Jay College of Criminal Justice, *The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States* (2004), Executive Summary at 4, available at <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/The-Nature-and-Scope-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-and-Deacons-in-the-United-States-1950-2002.pdf>.

<sup>142</sup> *Id.*

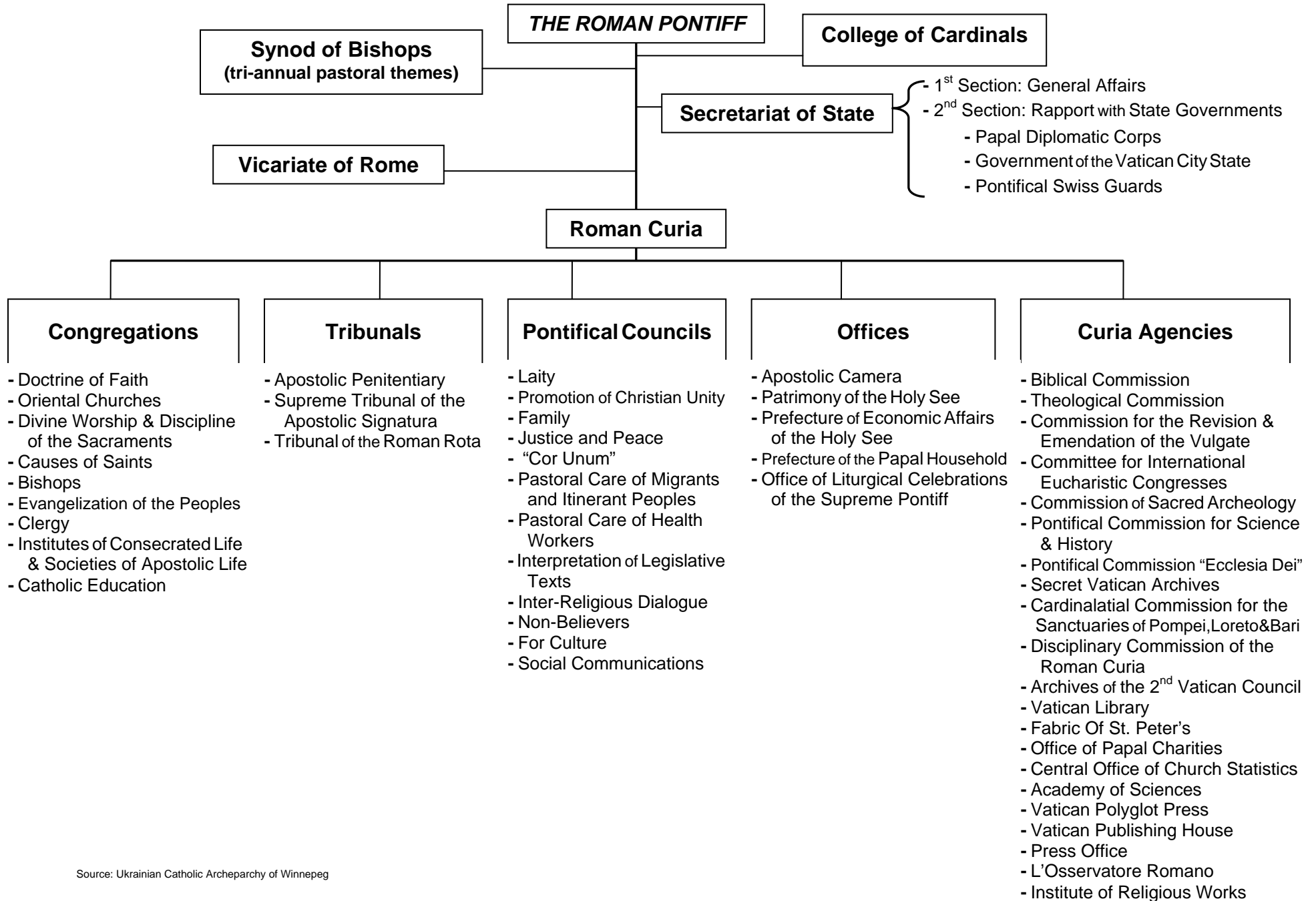
<sup>143</sup> Bishopaccountability.org, *Number of Priests Accused of Sexually Abusing Children as Reported by the U.S. Conference of Catholic Bishops with Numbers of Persons Alleging Abuse*, May 2011, updated May 9, 2013, [http://www.bishop-accountability.org/AtAGlance/USCCB\\_Yearly\\_Data\\_on\\_Accused\\_Priests.htm](http://www.bishop-accountability.org/AtAGlance/USCCB_Yearly_Data_on_Accused_Priests.htm).

<sup>144</sup> *Id.*

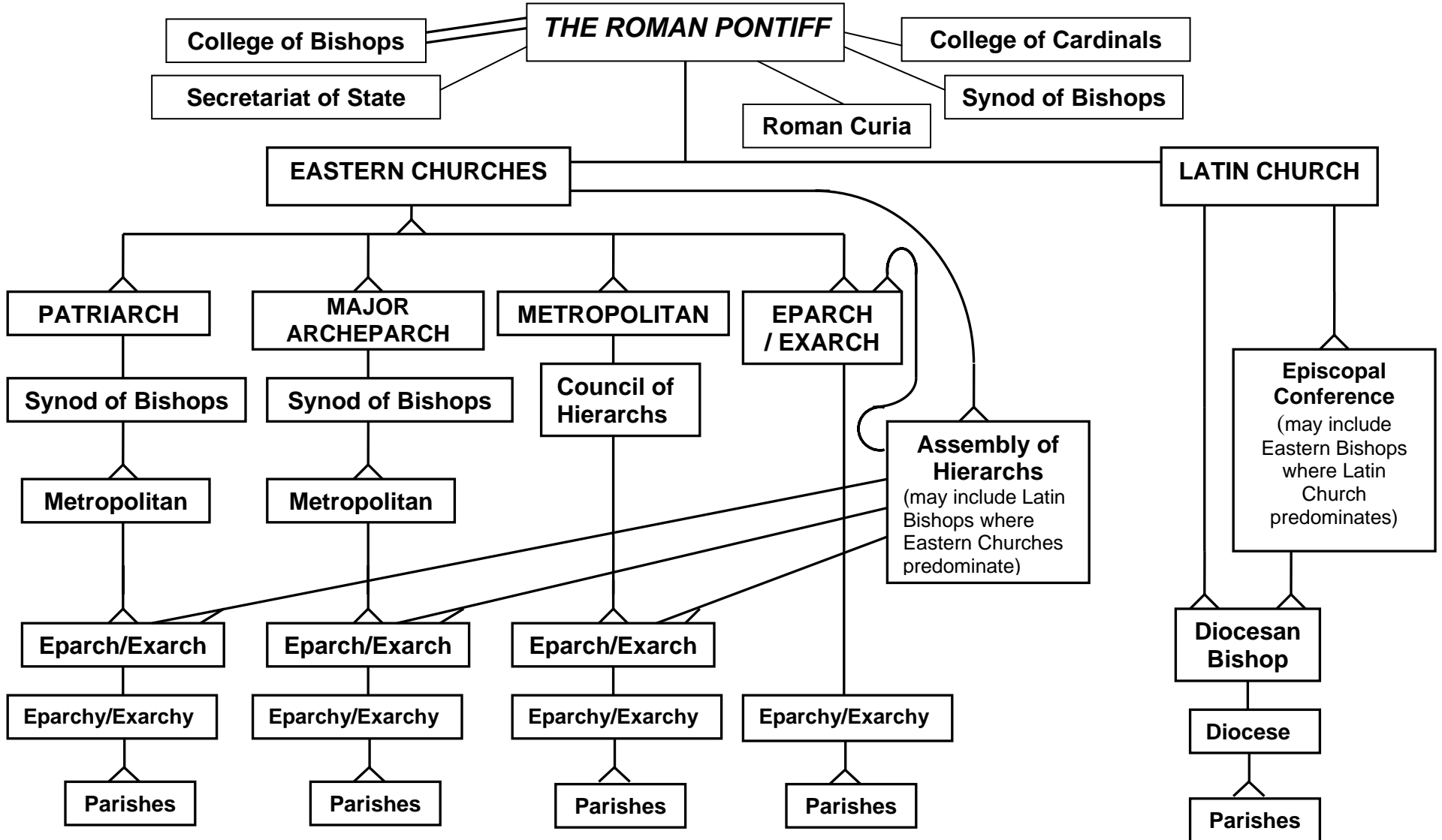
<sup>145</sup> Bishopaccountability.org, *What percent of priests were accused*, [http://www.bishop-accountability.org/AtAGlance/data\\_priests.htm#fuller\\_disclosure](http://www.bishop-accountability.org/AtAGlance/data_priests.htm#fuller_disclosure) (last visited 10 April 2014).

# Appendix B

# ORGANIZATION OF THE HOLY SEE



# ORGANIZATION OF THE CATHOLIC CHURCH



- Coptic Church
- Syrian Church
- Melkite Church
- Maronite Church
- Armenian Church
- Chaldean Church

- Ukrainian Church
- Syro-Malabar Church
- Syro-Malankara Church

- Ethiopian Church
- Romanian Church
- Ruthenian Church

- Albanian Church
- Belarussian Church
- Bulgarian Church
- Greek Church
- Hungarian Church
- Italo-Albanian Church
- Russian Church
- Slovak Church
- Yugoslav Church

# Appendix C



EXPERT OPINION OF  
THOMAS P. DOYLE, J.C.D., C.A.D.C.

Submitted in Support of  
Victims' Communication  
Pursuant to Article 15 of the Rome Statute  
Requesting Investigation and Prosecution of  
High-level Vatican Officials for Rape and  
Other Forms of Sexual Violence as Crimes Against Humanity  
and Torture as a Crime Against Humanity

File No. OTP-CR-159/11

1. My name is Thomas Patrick Doyle. I was ordained a Catholic priest in the Dominican Order on May 16, 1970. I also served as an officer in the United States Air Force from 1986 until 2004. I currently reside in Vienna, Virginia. My *curriculum vitae* is attached.
2. I have earned the following degrees: B.A. in Philosophy, Aquinas Institute of Philosophy, River Forest, Illinois granted in 1966; M.A. in Philosophy, Aquinas Institute of Philosophy, 1968; M.A. in political science, University of Wisconsin, 1971; M.A. in theology, Aquinas Institute of Theology, Dubuque, Iowa, 1971; M.Ch.A., Catholic University of America, Washington, D.C., 1976; M.A. in Canon Law, University of Ottawa, Ottawa, Ontario, 1977; J.C.L. (Pontifical Licentiate in Canon Law), St. Paul University in Ottawa, Canada, 1977; and a J.C.D. (Pontifical Doctorate in Canon Law), Catholic University of America, 1978. I am also a fully certified addictions counselor, having trained at the Naval School of Health Sciences in San Diego, California, and the University of Oklahoma at Norman, Oklahoma.
3. I have held several part-time academic positions from 1974 through 1995. These have included: Visiting Lecturer in Canon Law, Catholic Theological Union in Chicago, Illinois, 1979-1981; Visiting Lecturer in Canon Law, Catholic University of America, Washington, D.C., 1981-1986; and Faculty Member, Midwestern Tribunal Institute, Mundelein Seminary, Mundelein, Illinois, 1979-1986. In addition, I have served as a part-time Tribunal Judge for: the Diocese of Scranton, Pennsylvania, 1986-1990; the

Diocese of Pensacola/Tallahassee and the Archdiocese of Military Services, 1993-1995; and the Diocese of Lafayette in Indiana, 1991-1993.

4. I have extensive experience serving in various administrative and judicial positions in the Catholic Church in the United States. These have included appointments as an advocate and later as a judge in the Tribunal of the Archdiocese of Chicago and appointments as a judge in the tribunals of the dioceses of Scranton, PA, Pensacola, FL, and Lafayette, IN. I have also carried out various administrative duties in the Archdiocese of Chicago due to my training as a canon lawyer.
5. In addition to teaching and administrative work, I have also written several books and articles on a variety of subjects related to theology and Canon Law, including one book, several articles and contributions to books on subjects directly related to clergy sexual molestation of minors and vulnerable adults. A complete list of my publications can be found in my curriculum vitae.
6. I continued to do parish work on weekends until I entered the military in 1986. I served as a reserve chaplain with several active duty assignments until 1990 when I became a full-time active duty officer and chaplain. I have held the following permanent assignments: Grissom Air Force Base, Indiana, 1990-1993; Hurlburt Field, Florida, 1993-1995; Lajes Field, Azores, 1995-1997; Tinker Air Force Base, Oklahoma, 1997-2001; Ramstein Air Base, Germany, 2001-2003; and Seymour Johnson Air Force Base, North Carolina, 2003-2004. I have also been deployed to Operation Joint Forge, Operation Southern Watch and Operation Iraqi Freedom.
7. From the fall of 1981-1986, I served as secretary and Canon Lawyer on the staff of the Vatican Embassy in Washington, D.C. During my tenure at the Vatican Embassy, accusations of child abuse by Catholic priests and bishops as well as members of religious communities of men and women were made against specific individuals and reported to the Vatican Embassy by the local bishops. In these cases, I was given responsibility for preparing files, following correspondence and preparing responses to letters received by the Vatican Ambassador. I first became involved with sexual abuse by Catholic clergy in 1982 in the course of fulfilling my duties at the embassy. Since that time, I have been consistently involved in this issue in a variety of ways throughout the United States and in other countries as well.
8. I have testified as an expert witness and consultant in clergy sexual abuse cases since 1988 and have studied documentation in cases from approximately 190 of the 195 Catholic dioceses in the United States. In the course of this work, I have reviewed more than 1,500 priest personnel files. I have been qualified as an expert witness and/or consultant on clergy sex abuse cases since 1989 involving several hundred separate cases in the United States, Canada, the U.K., Ireland, New Zealand, Australia and Israel. I have appeared before the legislatures of the States of Pennsylvania, Ohio, Colorado, California, Delaware, Maryland and the District of Columbia to testify relative to child protective legislation, including matters related to child abuse, clergy reporting statutes and statutes of limitations. I have also appeared before or consulted with several grand juries in the United States. In addition, I have appeared as an expert witness and served as a consultant to the Ferns Commission and the Dublin Commission in Dublin, Ireland, and to the Cornwall Public Inquiry,

Cornwall, Ontario, Canada. In February, 2011, I addressed a special commission of the Parliament of Belgium at their request.

9. The most important part of my involvement has been my direct contact with victims and their families. From 1984 on I have worked extensively with clergy sexual abuse victims of both sexes, ranging in age from nine years old to 92 years of age. I have provided pastoral care to their families, including parents, spouses and children.
10. I have also worked as a canonical consultant with Dioceses and Religious Orders, giving presentations and lectures and developing policies and procedures in this area, as well as assisting numerous dioceses in the United States and abroad in compiling similar policies and procedures. I have given workshops to various dioceses around the country on the issue of clerical sexual misconduct against minors. I have lectured extensively and published articles on issues related to sexual abuse by clerics and religious brothers. In addition to working with victims of sex abuse I have also worked since 1984 with accused clerics as a canonical advocate and advisor and as a pastoral support person.
11. I have been asked to offer expert opinions concerning several aspects of the case which fall within my area of expertise. This expertise encompasses a number of subject areas which include, among others, the following:
  - a. The structure and organization of the Catholic Church and the various sub-parts of the institutional Church, including archdioceses, dioceses and religious communities of men and women
  - b. The obligations and responsibilities of the various authority figures and office-holders in the Catholic Church.
  - c. The obligations of bishops and religious superiors in response to various kinds of abuse committed by clerics or members of religious orders.
  - d. The response of the institutional Church to alleged and confirmed reports of sexual violations by the clergy in the present era, that is, from the mid-forties to the present.
  - e. The penal system included in the Code of Canon Law and its application in cases of sexual abuse of minors, children or adults by the hierarchy of the Catholic Church.
12. I am willing to testify and offer expert opinions about this case based on my education, professional training and experience.

#### The Nature of the Roman Catholic Church

13. The Roman Catholic Church is commonly understood to be a world-wide religious denomination with governmental headquarters in Vatican City. The Church's own

self-definition is more complex. The Catholic Church is a religious way of life. It is also a socio-political reality that exists within secular society as a structured institution. Unlike other religious denominations, the Catholic Church is also recognized as a political entity or a country by the community of nations.

14. There are several names or descriptors by which the Church is known. The most common name for the world-wide body is the *Roman Catholic Church*. The seat of the Church's government and the residence of its head is a geographic entity known as *Vatican City*, which exists as a separate country within the boundaries of Rome, Italy. As a socio-political entity with membership in the community of nations the Church is known as the *Holy See*.
15. The Catholic Church is divided into several fundamental divisions known as *rites*. A *rite* is a division of the Church based on ethnic background and history. The exception is the *Roman Rite*, which is the most populous rite and is made up of people of varied backgrounds and ethnic origins. The other rites have centuries-old historical roots and differ primarily in their liturgical rituals, liturgical language and other traditions or customs. All rites are under the authority of the pope, and all profess the same core beliefs and discipline.
16. The governmental system of the Catholic Church is defined officially as a *hierarchy*. Traditionally, a hierarchical government was one that was directed by "holy" men. In practice, the governmental system of the Catholic Church is *monarchical* in that power is vested in individual persons and not in groups or communal bodies. There is no separation of the three essential functions of government in the Catholic Church. The three powers, *legislative*, *executive* and *judicial* are vested in individual leaders. Those who carry out the actual duties or assist in their execution do so acting on delegated power from the incumbent.
17. The *papacy* is the highest governmental and religious office in the Catholic Church. The incumbent is known as the *pope* and commonly addressed as the *Holy Father*." The pope is the supreme judge, executive, legislator and teacher for the entire Catholic Church. His authority and power is absolute. The pope answers to no human power. He is elected by the College of Cardinals, but once he accepts the election, he is the pope from that moment on. There is no collegiate or communal body in the Church that has absolute, definitive power.
18. The basic governmental office in the Catholic Church is the office of *bishop*. A bishop is the head of a diocese, and in that diocese, he has nearly absolute power, subject only to the limitations in the Code of Canon Law or limitations sent by the pope. Every bishop answers only to the pope. The papal office did not always have the power, stature and respect it now possesses. The pope was originally the bishop of the diocese of Rome. He still is known as the Bishop of Rome; however, his duties as bishop are carried out by an appointed representative.
19. All bishops are appointed by the pope. Only the pope can appoint, remove or re-assign a bishop. A bishop's resignation or retirement must be accepted by the pope.

20. In judicial matters, although lay people and priests are subject to the jurisdiction of the local tribunals on the diocesan levels, bishops cannot be summoned before a level of authority below the pope. If a bishop is charged with a canonical crime, only the pope can act as judge. In practice, this does not happen. Over the past ten years, a number of bishops in the United States, Canada and Europe have been credibly accused of sexual abuse of minors. This crime applies to bishops as well as anyone else. Although the Holy See has been made aware of each and every case, no bishop has ever been subjected to a canonical investigation much less a canonical prosecution. It is the pope alone who can initiate a process against a bishop and over the past several decades, the only disciplinary action taken against bishops has been the forced removal of two for what the Vatican called doctrinal irregularities and two others because they attempted marriage. Over the years, several bishops have left the ministry to marry and none has been subjected to any penal action. The two exceptions have been former archbishop Milengo and the bishop who is now President of Paraguay. Also, the protection of priests who are known to be child sexual abusers and the failure to take decisive action against them is itself a canonical crime. No bishop has ever been prosecuted or even charged with such a crime.

#### The Church has its own legal system

21. The Catholic Church has its own internal regulatory system, known as *Canon Law*. The word “canon” is derived from the Greek word *kanon*, which meant a rule or a straight line. Canon Law is the oldest continuously functioning legal system in the world. Its roots reach back to the 4<sup>th</sup> century when a group of bishops in Spain met to enact rules in response to various problems encountered by Church communities in their region. The first recorded legislation dates from 309 and was enacted at the Synod of Elvira. From that time and for several ensuing centuries Canon Law consisted of laws or decrees issued by individual bishops, by synods or councils of bishops, by general councils of the Church and by the popes. Scholars began compiling collections of known laws as early as the fifth century. By the twelfth century, there were numerous collections from all areas of the Christian world. None of the collections ever achieved any official approbation. These were collections of laws and not attempts at a systematic codification of the canon laws existing at the time.
22. The vast tangle of rules found in the numerous collections and in other sources was first systematized in 1140 by the monk Gratian, working at the University of Bologna. Though not official, his massive work, commonly called *Gratian’s Decree*, remains the single most important historical source for Canon Law. His efforts and those of other scholars at the time were greatly influenced by the re-discovery of the main works of ancient Roman Law which had been lost since the fall of the empire. Thus Canon Law took on many of the attributes of Roman Law in terms of concepts, structure and legal philosophy. The Church’s laws, regulations, norms and guidelines remained un-codified until the beginning of the 20<sup>th</sup> century. Pope Pius X initiated the process of codification in 1903. The first *Code* as such was officially published or promulgated in 1917. This Code remained the basic collection of Church laws until 1983 when its successor, the revised *Code of Canon Law*, replaced it.

23. The Church's internal regulatory system is not a theological document nor is it an article of faith that is part of the body of doctrine that Catholics are expected to believe. It is a collection of internal rules, regulations and norms that give concrete shape to the institutional Church. It is true that certain of the individual laws or "canons" are directly or indirectly related to theological or religious concepts. This is not unusual since the constitutions of several secular states refer in some way to a higher power. This does not mean that the legal system itself is a catalogue of the religious beliefs of Catholics. The Code describes the various offices, bodies and internal political structures of the Catholic Church. It presents the duties, responsibilities and qualifications for the various offices and positions in the Church. It contains a section on procedural laws for settling disputes and providing due process. It contains a section of criminal behavior which lists certain actions that are considered church crimes.
24. The Code of Canon Law is not a substitute for the civil law systems of the various countries where the Church is established. It does not "trump" civil law. In fact, there are canons that stipulate that the civil laws are to be obeyed in all things that are not immoral or contrary to God's law. Canon Law is used in civil cases to explain and clarify the various aspects about the Catholic Church. When it is presented in civil court, the purpose is not to expect the civil judges to interpret, apply, critique or explain civil law. Rather, the purpose is to assist in understanding how the institutional Church works. For example, Canon Law contains specific mandatory procedures for the investigation of reports of possible canonical crimes such as sexual abuse of minors by clergy. It also contains the basic requirements that bishops should look for in assigning priests to various posts. When the facts of a case are examined in civil court, Canon Law can be helpful to determine what the Church's own internal expectations were of an office-holder in a given situation. The separation of Church and State, which is a constitutional fact in the United States and other countries, does not prevent a civil court from asking questions about the Church's internal regulations any more than it prevents a civil court from asking questions about the internal norms for a secular corporation. If a civil court expresses interest in how the internal working of a Church impacts the behavior of clerics, including bishops, such an interest, though often erroneously labeled an *intrusion* into Church doctrinal or authority matters by some, is nothing more than a justifiable inquiry.
25. The Catholic Church does not have a legislative body. Rather, the pope is the sole law-giver. The process of organizing the mass of legal documents and putting together a Code first began in 1903 and was completed in 1917. The work was done by a committee that changed membership as the years passed. The final product, with 2414 separate canons, many with several sub-parts, became the official law of the Catholic Church when Pope Benedict XV issued the decree of promulgation in 1917. The Code did not take effect, however, until May, 1918; the intervening year was known as a *vacatio legis* or a "vacation of the law." This is a period determined by the lawgiver during which the church could become accustomed to the new legislation.
26. On January 25, 1959, Pope John XXIII revealed to a gathering of Cardinals that he intended to call an ecumenical or general council of the Church. He also announced that the Code of Canon Law would be revised. Although the process of revision theoretically began with that announcement, it formally began on November 25,

1965, after the Vatican Council had concluded. The process of revision ended in 1983 with the promulgation by Pope Paul VI on January 25. At that time, he announced that the new laws would take effect on November 23, 1983.

27. The Code is the basic source of all church laws. From time to time, new laws are issued as needs arise. Though these are not included in the Code itself, they nevertheless are official laws or norms of the Church. The only official interpretations of any Church law come from the pope. Canon Law is not primarily understood through the studies of cases as in the Common Law tradition. Rather, the works of the legal scholars, generally referred to as the *commentaries*, are looked to in order to formulate how best to actually apply the law in a specific situation.
28. One looks to the *Code of Canon Law* for an understanding of the governmental structures of the Church and for the requirements for the various ecclesiastical offices, as well as the rights and responsibilities that go with each office.

#### The Governmental Structure of the Catholic Church- The Basic Chain of Command

(How authority is actually exercised will be discussed in a section subsequent to the descriptions of the structures.)

29. The governmental structure of the Catholic Church is hierarchical by official definition and monarchical in actual practice. The pope is an absolute monarch who answers to no power on earth. The pope's jurisdiction or authority extends over the entire universal church but also over each individual or local church as well as groupings of churches. His power also extends directly to individual members of the Church.
30. The universal Church is divided into sections called *dioceses*, a word that is derived from the Greek. A diocese is determined by geographic boundaries. Dioceses are created, merged or suppressed only by the pope. Each diocese is headed by a *bishop*. Catholic theology holds that the bishops are successors of the twelve apostles. In his diocese the bishop is the absolute ruler, subject only to certain limitations on his power that are found in the Code of Canon Law or may be issued by the pope. These limitations pertain to what the bishop may do or not do. They are not limitations within the context of other authority sources, either individual or communal, in the diocese.
31. Although most dioceses are geographic in nature, there are some exceptions known as *personal dioceses*. These are ecclesiastical jurisdictions created by the pope to serve the religious needs of a specific group of people. The most common examples are the *Military Dioceses* which are actual dioceses set up for members of the various military branches in various countries. These dioceses are unique in that they are both territorial in that they reach to the territories of military installations. They are personal in that the authority of the bishop reaches to the individual members of the military forces.

32. An *archdiocese* is identical to a diocese in governmental structure. It is, however, the major diocese in a region or the most historical one and therefore is known as an archdiocese. It is led by an archbishop. An archdiocese is the primary ecclesiastical jurisdiction of an ecclesiastical *province*. A Province is a grouping of dioceses, usually in the same geographic region. Each diocese is subordinate to the archdiocese; however, the archbishop has no real authority over the bishop of each of the subordinate dioceses. At one time in history, archbishops had a certain degree of actual authority over the bishops of the other dioceses, but at the present time, the authority is primarily moral authority.
33. A geographic diocese is made up of *parishes*, which are geographic divisions created by a bishop and to which belong all Catholics living within the territory. The vast majority of Catholics come in contact with the Church through the local parish.
34. A parish is headed by a *pastor* who must be a priest. In some cases, he may be assisted by assistant pastors who are also priests. There are several terms used for assistant pastors: associate pastors, parochial vicars, and curates. Lay persons may also serve as parochial or parish associates, but they cannot perform any of the ceremonies or rituals that are restricted to priests. The pastor does not have absolute power in his parish. His responsibilities and the limits of his authority are clearly defined in the Code of Canon Law and by any special norms issued by the local bishop. The pastor is the legal and canonical *agent* of the parish. The bishop is the proper pastor of the entire diocese. The local pastor shares in the ministry of the bishop and therefore can be described as a representative of the bishop.
35. Summary of the main line of authority. The essential and basic line of authority in the Roman Catholic Church is a vertical line: **pope – bishop – pastor**. The pope's power is absolute and all inclusive. The pope has authority over every Catholic, cleric and lay. The bishop's power is absolute in his diocese within the limits set by Canon law. The pastor's power is not absolute and is limited by Canon Law and the norms set by the bishop.
36. The scope of the pope's power. The pope's authority reaches directly to every Catholic lay person and every Catholic cleric of any rank. The pope can by-pass all intermediate levels of authority, such as religious superiors or bishops, and issue a command or take an action pertaining to an individual. If the pope chooses to promote or assign an individual priest in a diocese, he can do so without consulting anyone. Similarly, the pope can take disciplinary action or issue an order to any cleric without the approval of the cleric's superior.
37. Since the pope has the fullness of power in all three areas of government, he can directly interfere with any judicial or executive action that is taking place on any level. The most famous example of this involved the late Fr. Marciel Maciel-Degollado. He was the founder of a religious order called the Legion of Christ. He had been accused by nine former members of the order of sexually abusing them when they were minor seminarians. They preferred to pursue their case in the canonical courts. The case was in process at the level of the Congregation for the Doctrine of the Faith. In 1997, at the order of Pope John Paul II, the process was



stopped for no reason. It was only re-opened shortly before the pope's death when he was incapacitated.

### Collegiate, Collaborative and Other Communal Bodies in the Church

38. There are many different collective bodies within the governing structures of the Catholic Church. There are such bodies in the general structure of Church governance (papal administration, diocesan administration and parish administration), and there are such bodies in the governing structures of religious orders. A discussion of religious orders will be reserved for later in this document.
39. The *College of Cardinals* is the pre-eminent collective body in the Church. Cardinals are appointed by the pope. All cardinals under the age of 80 are the electors of the pope. While a pope is alive the College of Cardinals acts as his supreme advisory body but as a group the only time they have decisive power is when they elect a pope.
40. Certain collegiate bodies are obligatory: the regional or national conferences of bishops; the College of Consultors of a diocese; the diocesan finance council; the Council of Priests of a diocese; the Chapter of Canons, which is the European equivalent to the College of Consultors of a diocese; and the finance council of a parish.
41. The bodies included above are all mandated by Canon Law. The pope and bishops are free to establish other collective bodies as they see fit. Although the pope has the power to establish such bodies and to give them deliberative power, he does not do so since that would imply a limitation on his own power. Similarly, bishops may establish various committees and commissions but all are limited to consultative functions.
42. Distinguished from the standing bodies listed above, there are other collegiate gatherings that take place on either a regular or "as needed" basis. These include general or ecumenical councils, synods of bishops, synods of dioceses and other meetings. None of these have deliberate authority. The ecumenical council, the highest form of gathering in the Catholic Church, requires the pope's approval for any and all documents to have force. The same is true for any meetings or gatherings of a lesser nature. The main point is that the pope is all powerful, and this is manifested throughout the governmental structure of the Church.

### The Vatican Bureaucracy

43. The pope is assisted in the administration of the world-wide church by a collection of different bureaucratic entities that are located at the Vatican. Some of the offices are

actually in the geographic confines of Vatican City but most are located nearby in buildings owned or leased by the Holy See.

44. There are several different grades of Vatican departments.

#### The Secretariat of State

45. The highest level of authority under the pope, the secretariat is headed by the papal Secretary of State, always a cardinal. It consists of two sections.
46. The *first section* handles affairs pertaining to the various dioceses and all matters not pertaining to other offices in the administration. The First Section also handles all matters relating to the ambassadors of the Holy See to the secular countries throughout the world. The Secretary of State is, in practice, the second in command of the Catholic Church. He has broad authority to act in the pope's name in matters that pertain to any of the other dicasteries or tribunals. One example is the role of the Secretary of State, then Cardinal Sodano, in the judicial processing of the case of Fr. Marcial Maciel-Degollado. This priest had been accused by several adult males of having sexually abused them when they were minors and seminarians in the minor seminary directed by Fr. Maciel. The men opted to follow the canonical process rather than resort to civil law proceedings. The case was in process with the Congregation for the Doctrine of the Faith, which had jurisdiction. In 1999, the Cardinal Secretary of State ordered Cardinal Ratzinger to stop the proceedings. No reason was ever made public.
47. The *second section* handles relationships with the heads of foreign governments. It is headed by an archbishop who is immediately subject to the Secretary of State.

#### The Congregations.

48. The Congregations are departments that handle specific areas of the pope's administration of the Church. There are nine congregations.
49. *The Congregation for the Doctrine of the Faith.* This congregation was founded in 1542 and was originally known as the *Sacred Congregation of the Universal Inquisition*. It was founded to combat heresy throughout the Church. The name was changed in 1908 to the *Sacred Congregation of the Holy Office*. In 1965, the name was changed to the present one, which is the *Congregation for the Doctrine of the Faith* (CDF). Its main duty is the safeguarding of faith and morals throughout the Church. This congregation examines the writings of theologians for heresy or variance with standard doctrine. It also handles cases of sexual abuse of minors by the clergy. The CDF used to handle the process for all requests for laicization of priests; however, this was changed to the Congregation for the Sacraments. At the present time, the CDF handles the processes involving priests who have been accused of sexual abuse of minors.
50. The CDF has had jurisdiction over cases of clergy (priests and deacons) who sexually abuse since the time of the Inquisition. In the modern era, it has had explicit jurisdiction over sexual abuse of minors since 1922 when the Holy Office issued the

instruction *Crimen sollicitationis*, which was a set of procedures to be used for processing cases of solicitation and which stipulated that cases of homosexual relations by clerics, bestiality by clerics and sex abuse of minors by clerics were subject to the jurisdiction of the Holy Office. The 1922 document was repeated in 1962.

51. *The Congregation for the Oriental Churches*. The Catholic Church is made up of six different rites. The largest is the *Roman Rite*. The other five differ in that each is comprised of Catholics from different ethnic groups, all of which are eastern European or middle eastern. The five are:

*Byzantine Rite* (Greek, Ukrainian, Russian, Romanian Catholics as well as Melkite Catholics who are Lebanese)

*Antiochian or Western Syrian Rite* (Maronite-Lebanese, Syrians, Indian Catholics)

*Chaldean Rite* (Iraq, Eastern Indians)

*Armenian Rite* (Armenians)

*Alexandrian Rite* (Coptic – Egypt, and Ethiopians)

This congregation handles all matters that pertain to any of the above-mentioned rites.

52. *The Congregation for Divine Worship and Discipline of the Sacraments*. This congregation handles all matters pertaining to the liturgy or worship rituals of the Church, with the exception of liturgy issues of the Oriental Churches. It also handles issues pertaining to the seven sacraments, which are the core religious ceremonies of the Catholic Church. Since 1989, it has been entrusted with the process for laicization of priests who request this of their own volition.

53. *The Congregation for the Causes of Saints*. This congregation handles the processes for declaring people as saints.

54. *Congregation for the Evangelization of Peoples*. This congregation coordinates and organizes the Church's missionary efforts throughout the world, especially in Third World countries.

55. *Congregation for the Clergy*. The Congregation for the Clergy handles certain issues pertaining to the diocesan clergy throughout the world. It also handles matters pertaining to catechetics (the religious formation of children and adults) and matters pertaining to the regulation and administration of church property and other material goods. Since 2009 this Congregation has also been entrusted with certain aspects of the process whereby clergy are laicized or dismissed against their will.

56. *The Congregation for Institutes of Consecrated Life* handles all matters pertaining to the orders and congregations of religious men and women.
57. *The Congregation for Catholic Education*. This congregation handles matters pertaining to the seminaries and institutes of instruction and formation for priests. It also has a section that handles certain matters that pertain to the Catholic universities and colleges throughout the world. and a third section that collaborates with other Vatican administrative departments on issues that pertain to a variety of aspects of Catholic education throughout the world.
58. *The Congregation for Bishops*. This congregation is the department that handles the process followed for the vetting of candidates for the office of bishop. This process begins at the local or national level, with the papal delegate or nuncio, and is finalized at the Congregation for Bishops. The final result of the process is the recommendation to the pope that he appoint the candidates in question to the office of bishop. It is also responsible for the process used for the creation, division or suppression of dioceses. This congregation also handles the retirement, removal or re-assignment of bishops. All decisions recommended by the congregation concerning bishops must be approved by the pope.

#### The Tribunals or Courts of the Vatican

59. *The Roman Rota* is the highest appeal court in the Catholic Church. It is made up of twenty judges, called *auditors*. The other staff includes notaries, secretaries and defenders of the bond. The Rota usually hears cases on appeal from tribunals throughout the world, most of which involve the nullity of marriage. It is also the tribunal that has jurisdiction of cases brought against bishops that do not involve alleged violations of criminal laws in the Code of Canon Law. The judges are all appointed by the pope and serve with an indefinite term. The head of the Rota is the *Dean* who achieves that position by reason of his seniority of appointment. The dean is often but not always appointed to the rank of archbishop.
60. *The Apostolic Signatura*. The Signatura is sometimes called the Church's "Supreme Court" but in reality it is not comparable to the Supreme Court of any civil jurisdiction. The Signatura hears cases that are appealed to it from the Rota. It also hears cases of conflict of jurisdiction and cases alleging the nullity of tribunal processes due to a defect in process. The tribunal of the Signatura is headed by a Prefect, a cardinal and the membership is made up of cardinals and archbishops appointed by the pope.
61. *The Apostolic Penitentiary*. This tribunal handles matters of the internal forum which today are rare. Under the 1917 Code there existed what were called *reserved sins*. The Penitentiary gave permission for priests to absolve such sins. Today it is limited to dealing with certain types of excommunications the absolution of which is reserved to the Vatican. In the practical order the major task of the Penitentiary is to handle matters involving indulgences.

## The Governance of a Diocese or Archdiocese

62. The diocese is governed by the bishop (or archbishop) in much the same way that the international church is governed by the pope. The bishop has full authority in his diocese for all three essential branches of government. He is the chief judge of the diocese. He is the sole legislator of the diocese, and he is the executive.

### *The Bishop*

63. The bishop is assisted by several layers of bureaucracy, all of which operate on power delegated to them by the Code itself or directly by the bishop. There are several offices that are required of all dioceses.

64. *Vicar General.* A vicar is one who takes the place of or acts in the name of another. The Vicar General (VG) is the alter ego of the bishop. He possesses by law nearly all of the administrative powers of the bishop and, when the bishop is absent, he acts as second in command. There is always at least one Vicar General, but, depending on the size of the diocese, there may be more than one. The VG speaks for the bishop. Reports or messages given to him are considered as given to the bishop. The VG must be a priest.

65. *Chancellor.* The chancellor is essentially the record keeper of the diocese but, in practice, usually handles many other administrative matters. The chancellor may be a priest or a lay person.

66. *Episcopal Vicars.* Episcopal Vicars are priests who represent the bishop either to geographic areas of the diocese or to specific groups, such as immigrants, college students, etc. They have whatever authority and power the bishop gives them. Usually, they act as a level of authority between the group they represent and the bishop.

67. *Judicial Vicar.* Although the bishop is the chief judge, canon law provides for an office for a priest who actually fulfills the duties. The judicial vicar functions as the chief judge of the diocesan court or tribunal. He must be a priest with a degree in Canon Law.

### *Diocesan departments.*

68. The Code of Canon Law requires that there be a tribunal or court in every diocese. It requires that there be archives or files and a finance council. The finance council has consultative authority, and in a very few matters the bishop is required to consult with them before making decisions.

69. The *College of Consultors* is a body made up of priests. Some are members by reason of their office, such as the Vicar General. Others are appointed by the bishop. They act as the top advisory body to the bishop. The only deliberative function they

have is to elect an administrator of the diocese if the bishop dies or if the bishop retires or is transferred. The administrator governs the diocese in the interim period and has broad powers of governance but is limited in the kind of decisions he can make.

70. The *Presbyteral Senate* or Priests' Senate is also a consultative body that is recommended but not required. Members are elected by their peers, have membership because of an office they hold or are appointed by the bishop.
71. The *tribunal* or court is the forum for deciding certain disputed issues of Canon law. In practice, most tribunals handle marriage-related issues, such as dispensations or annulments. Although, in theory, any canonical dispute not reserved to a higher authority can be adjudicated in a tribunal, in practice, this rarely happens.
72. The bishop may have a number of other committees, offices, commissions or boards to assist in the administration of the diocese. All are created by the bishop and members are appointed by the bishop. They all serve in a consultative fashion and may be dissolved or members dismissed or replaced by the bishop without cause.

#### The local bishop's independence

73. The local bishop is appointed by the pope and ordinarily serves until he is transferred, removed or retired. He answers only to the pope but ordinarily does business with the Vatican through the various departments and offices of the Holy See.
74. The bishop is automatically a member of the episcopal or bishops' conference of the region or country where he lives. The episcopal conference is a pastoral/administrative body that assists local bishops in a variety of ways. The conference has officers elected by the bishops. However, the president of the conference has no authority over individual bishops. The conference of bishops can create laws for the territory, but these laws must be approved by the Holy See. A good example is the legislation passed by the U.S. bishops in 2002 for dealing with clergy sex abuse. The bishops in the U.S. created the draft documents and voted on them. They were then sent to the Holy See for review. The Holy See insisted on a number of changes. Once these changes were made, the document was sent back to the Holy See for the final approval or *recognitio* as it is called. Without the approval of the Holy See this legislation and any other legislation created by a local bishops' conference lacks force of law.
75. The style of the local bishop determines how his administration is run. The gamut runs from bishops who are secure with delegating and allowing delegated people to make decisions without constantly referring to him and then backing their decisions whether he agrees or not (subject always to his right to intervene) to micro-managers who insist that all decisions be passed through them.

#### Criminal Cases of Sexual Abuse on the Diocesan Level

76. The Code of Canon Law contains a number of actions that are considered to be *delicts* or crimes. The act may or may not be considered a crime in the civil law of the region. For example, it is a grave crime in canon law to violate the seal of the confessional by revealing the identity of people who come to a priest for confession or by revealing information shared. The crime is punished by automatic and immediate excommunication. This act is not considered a crime in any civil law jurisdiction. There are other actions that are listed as crimes in canon law which are crimes in civil law as well: murder, kidnapping, rape and child sexual abuse for example.
77. The Canon Law system is for the internal regulation of the Church. It does not supplant the civil law system in any way. If a priest is convicted in a church court of a crime that is also considered a crime in civil law, he is still liable to prosecution by the civil law. In some civil jurisdictions failure to report a known felony to civil law enforcement authorities is considered a crime in civil law. In the Catholic Church, if a superior official learns that a subject has committed an act that is a crime in civil and canon law, he is obligated to report the suspected crime to civil authorities.
78. Sexual abuse of a minor under the age of 18 is a crime in Canon Law. This commission of this crime by lay persons rarely, if ever, comes to the attention of the Canon Law system. Commission of this same crime by a cleric (deacon, priest, bishop) is another matter.
79. If a bishop receives a report of possible sexual abuse of a minor by a cleric he is obligated to initiate and conduct a *preliminary investigation*, as it is called in Canon Law. This investigation looks into the credibility of the report and the sources of proof. It is to be conducted with discretion so as not to ruin anyone's reputation, keeping in mind that this is only a preliminary investigation looking into possible sources of proof to be possibly evaluated later. The entire process is to be documented and the file or *acts*, as the record is called, are to be preserved in the diocesan archives.
80. If the evidence persuades the bishop that a crime was possibly committed, he can proceed with an administrative or judicial process. An administrative process can impose lesser punishments such as temporary suspension, but it cannot be used for more serious punishments such as dismissal from the clerical state.
81. If a priest is convicted of sexual abuse of a minor, the tribunal must then assess the penalty. There is little evidence of the process having been used in the U.S. or elsewhere prior to the late 1990s and after the turn of the millennium. The process itself is complex, cumbersome and highly secretive. It has been used much more frequently in the U.S. and other western countries in the past ten years as a result of pressure on the Vatican and other church authorities to take some decisive action in the face of ever-increasing reports of sexual abuse of minors by clerics.
82. If a priest is convicted and the penalty is dismissal from the clerical state, the decision is automatically appealed to the Congregation for the Doctrine of the Faith. It is difficult to predict how long the appeal process will take. Although an accused priest has the right to an advocate on the local level, this advocate cannot represent him

before any of the Vatican tribunals, including the CDF. He must be represented by an advocate admitted to practice before these tribunals. If the original decision and penalty are upheld on appeal, a final decree is issued, and the priest is notified that his dismissal has been confirmed.

### The Actual Practice of Handling Cases of Clergy Sexual Abuse

83. The issue of sexual abuse of minors by Catholic clergy became nationally known in 1984. It had existed throughout the history of the Church. Since 1985 when the first civil suit was filed in the U.S., there have been approximately 7000 civil suits filed in the U.S., Canada, the U.K., Ireland, Australia, New Zealand, Belgium, Italy and the Netherlands. There have also been several official government sponsored investigations in Ireland, Belgium, Canada and the U.S. In the U.S. these have taken the form of grand jury investigations in at least 8 jurisdictions. The conclusive evidence from all of these civil court actions, which have had access to restricted church files, has shown that the vast majority of bishops never followed the processes mandated by the Code of Canon Law or by the special papal instructions from 1922 and 1962 in responding to cases of sexual abuse of minors by priests or deacons. This amounts to a violation of internal church law by bishops. The various Vatican departments such as the CDF, the Secretary of State, the Congregation for the Clergy and the Signatura have been aware that bishops have consistently failed to follow the procedural laws involving cases of child abuse. There is no known instance when any bishop has either been ordered to follow the proper legal procedures or been disciplined for failure to follow such procedures.
84. The documentation obtained by civil lawyers in several countries through the discovery process in secular civil or criminal cases involving clergy sexual abuse have revealed evidence that the proper canonical procedures have been followed in only a very small number -- under twenty -- of the thousands of cases that have been studied.

### Bishops accused

85. Since 2002, it has been revealed that several bishops, archbishops and one cardinal have been credibly accused of sexually abusing children. Most of the known cases have been from the U.S. (approximately 20), with others being from Canada (4) and Europe (15). According to Canon Law any case involving a charge of violation of a canonical crime, such as sexual abuse of a minor, against a bishop, can be handled only by the pope. In practice there have been neither canonical investigations nor adjudicatory processes of any of the bishops or archbishops accused of violation of children. All have been allowed to retire. No bishop has been removed for this crime.
86. The other canonical offense involving bishops and archbishops is intentional negligence in dealing with priests who commit the crime of abuse of a minor.



Bishops have failed to respond when given information or reports about specific instances of sexual abuse of a minor, and they have re-assigned priests whom they knew have committed this crime. This is a violation of canon law which amounts to complicity in the commitment of a crime and neglect of office. There is no known instance when any bishop anywhere in the world has been investigated, charged and prosecuted by the Vatican for this violation.

### The Vatican Response to Specific Cases

87. The Congregation for the Doctrine of the Faith is the Vatican department responsible for the adjudication of cases of sexual abuse of minors by priests or deacons. Under the terms of the instruction *Crimen sollicitationis* of 1962, all cases were to be sent to the Congregation once the process was completed on the local level. Bishops had the option of referring cases to the CDF after the initial investigation, or even after the initial report, but it was not mandatory to refer every case. Under the terms of the procedural instruction now in force, *Sacramentorum sancitatis tutela* (issued May, 2001), after the initial investigation on the local level, every case *must* be sent to the CDF. The CDF then decides whether to refer the case back to the sending diocese for further processing, refer the case to another diocese as a change of venue, or retain the case where it would be processed at the congregation. The CDF also handles requests by bishops for the involuntary laicization of priests accused of sexual abuse of minors. This happens when the evidence is compelling and/or when there has been a civil conviction.
88. Prior to 2001, there have been cases of sexual abuse by priests that have been duly processed on the local level and which have concluded with the conviction and imposition of the penalty of dismissal from the clerical state. These cases had to be referred to the CDF for a mandatory appeal and did not become finalized until the CDF had verified the lower court's decision, remanded it for another trial or accepted to try it again on the congregation level.
89. It is known that several cases of voluntary laicization have been submitted by priests who have sexually abused minors. In such cases the documentation has contained detailed information about the sexual abuse perpetrated by the petitioning priest. Although the Congregation has obtained detailed evidence of sexual abuse in numerous instances, there is no indication that it ever requested a supplemental investigation into the reasons why some priests were sexually abusing children.
90. The most notorious case of interference with the canonical process is that of Fr. *Marcial Maciel-Degollado*, as mentioned above. The canonical process was interrupted by the Secretariat of State presumably with the approval of the pope. It was re-opened in 2004 but never carried to completion. Rather, Maciel was ordered to cease public ministry and to lead a life of prayer and penance.
91. Another case involved Fr. *Lawrence Murphy* of the archdiocese of Milwaukee. Murphy sexually abused at least 200 deaf, minor boys at a school where he was chaplain. He had been denounced to the Vatican for this in 1956, but there was no action taken. In 1997, Murphy was convicted by a canonical tribunal of the Archdiocese of Milwaukee and sentenced to dismissal. The decision was appealed to

the CDF. The archbishop of Milwaukee, the bishop of Superior, Wisconsin and the auxiliary bishop of Milwaukee went to the CDF and met with the secretary, Archbishop Bertone, and urged the CDF to ratify the dismissal. They had already appealed in writing and received no action. After their personal intervention the CDF, then under the direction of Cardinal Ratzinger, decided not to complete the appeal process and to allow Murphy to remain a priest.

92. There were two cases from the Diocese of Tucson that were intentionally mishandled by the CDF. Both involved priests accused of sexually abusing minors. The first, the case of *Robert Trupia* involved repeated interference by the Cardinal Prefect of the Congregation for the Clergy, who sought to stop the canonical process and allow Trupia to retire on a retirement salary provided by the diocese. The second case involved *Michael Teta* whose case took several years to adjudicate on the local diocesan level before a final decision was given and dismissal imposed. The case was sent to the CDF for the appeal and ratification of the decision. In spite of appeals for a decision within a reasonable period of time, the CDF delayed the final decision for slightly over seven years with no reasonable explanation.
93. A third case involved a priest from the Oakland, California diocese named *Robert Keisle*. He had voluntarily asked to be laicized primarily because he was a confirmed child abuser and had no future as a priest. His case was sent to the CDF, and Cardinal Ratzinger replied that it would be delayed because the "Faithful" would be scandalized if a priest under 40 were laicized. No account was taken of the offenses - - neither of Keisle nor of the bishop's clear plea that, for the good of the people, the man should be removed.

### Conclusion

94. The pope has direct authority over every priest in the world and direct authority over every department, office and tribunal in the Vatican. The pope, usually acting through the Cardinal Secretary of State, has directly intervened in a number of issues involving doctrine or public disagreement with Church teachings. In such cases there is no due process. The accused person is investigated and penalized often before he or she even knows there has been a question or an investigation.
95. The Vatican has operated in a radically different manner with regard to cases of known sexual violation of children throughout the world. No bishop has ever been questioned, much less prosecuted, for sexual abuse himself or for aiding and abetting sexual abuse by priests under his authority.
96. In such cases the Vatican has unofficially urged bishops not to report priests who have sexually abused children to law enforcement authorities (see, e.g., the recent address by the Prime Minister of Ireland to the Irish Parliament). The Vatican has followed a policy of distancing itself from bishops who have had problems with sexually abusing priests with the justification that this is a bishop's problem and not a Vatican problem. In other words, it has arbitrarily chosen when to directly intervene and when to ignore a case. It has directly intervened in cases when its dogma or authority is questioned and

September 11m 2011

Vienna, VA

*Thomas P. Doyle*

---

Thomas P. Doyle, J.C.D., C.A.D.C.