



# Convention on the Rights of the Child

Distr.: General  
31 January 2014

Original: English  
**ADVANCE UNEDITED  
VERSION**

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## Committee on the Rights of the Child

### **Concluding observations on the report submitted by the Holy See under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography\***

1. The Committee considered the initial report of the Holy See (CRC/C/OPSC/VAT/1) at its 1853th meeting (see CRC/C/SR 1853) held on 16 January 2014, and adopted at its 1875<sup>th</sup> meeting, held on 31 January 2014, the following concluding observations.

#### **I. Introduction**

2. The Committee welcomes the submission of the Holy See's initial report and its written replies to the list of issues (CRC/C/OPSC/VAT/Q/1/Add.1). The Committee however regrets that the report was submitted with a 6 year-delay and that the Holy See did not respond to questions relating to the implementation of the Optional Protocol by persons and institutions placed under its legal authority. The Committee welcomes the dialogue with the multisectoral delegation of the Holy See.

3. 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 of the Pope in accordance to Canons 331 and 590. The Committee therefore reminds the Holy See that by ratifying the Optional Protocol, it has committed itself to implementing it not only on the territory of the Vatican City State but also as the supreme power of the Catholic Church through individuals and institutions placed under its supreme authority.

4. The Committee reminds the Holy See that these concluding observations should be read in conjunction with its concluding observations on the Holy See's second periodic report under the Convention on the Rights of the Child (CRC/C/VAT/CO/2) and on the initial report under the Optional Protocol on the involvement of children in armed conflict, both adopted on 31 January 2014 (CRC/C/OPAC/VAT/CO/1).

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\* Adopted by the Committee at its sixty-fifth session (13 – 31 January 2014).

## II. General observations

### Positive aspects

5. The Committee welcomes the measures taken by the Holy See in areas relevant to the implementation of the Optional Protocol, including:

(a) The Vatican City State laws No. VIII on Complementary Norms on Penal Matters, Title II: Crimes Against Children and No. IX containing amendments to the Criminal Code and the Criminal Procedure Code and issued *Motu Proprio* by the Roman Pontiff, on 11 July 2013;

(b) The creation of a pastoral Commission for the Protection of Minors, with the aim of proposing new initiatives for the development of safe environment programs for children and improving efforts for the pastoral care for victims of abuse around the world, on 5 December 2013; and

(c) The establishment within the Governorate of Vatican City State of a special Office to oversee the implementation of international agreements to which the *Vatican is a party* on 10 August 2013.

6. The Committee further notes with appreciation the ratification of the United Nations Convention against Transnational Organized Crime on 25 January 2012.

## III. Data

7. The Committee is concerned that the Holy See did not provide the data requested by the Committee on cases of sale of children, child prostitution and child pornography dealt with by the Holy See over the reporting period and by the Congregation for the Doctrine of the Faith (CDF) since 2001. The Committee is also concerned that the Holy See has not established a comprehensive data collection system to enable the recording, referral and follow-up of all cases covered by the Optional Protocol and to analyse and assess progress in the implementation of the Optional Protocol.

**8. The Committee recommends that the Holy See develop and implement a comprehensive and systematic mechanism of data collection, analysis, monitoring and impact assessment on all the areas covered by the Protocol. The data should be disaggregated, inter alia, by sex, age, national and ethnic origin, geographical location, indigenous status and socio-economic status, with particular attention to children in the most vulnerable situations, and include information about the follow-up given to these cases. Until such a data collection system is established and effectively used for information sharing with States where offences are committed, the Committee urges the Holy See to ensure full and immediate disclosure of all the information on cases of sale of children, child prostitution and child pornography gathered by the Holy See and the CDF since 2001 to competent national judicial authorities for appropriate follow-up.**

## IV. General measures of implementation

### **General principles of the Convention on the Rights of the Child (arts. 2, 3, 6 and 12)**

9. The Committee is concerned that in dealing with cases of child pornography committed by members of the clergy, the Holy See has failed to ensure children's right to

express their views and have them given due weight, and that the Holy See has given precedence to the preservation of the reputation of the church over children's rights to have their best interests taken as a primary consideration. The Committee is concerned that in doing so, the Holy See has undermined the prevention of offences under the Optional Protocol and the capacity of child victims to report them and therefore contributed to the impunity of the perpetrators and created further trauma for child victims of offences.

**10. The Committee reminds the Holy See of its obligation under article 8 1) (b) and (c) and 3) of the Protocol and recommends that the Holy See take all necessary measures to ensure that the rights of child victims of sale, prostitution and pornography to express their views and to have their best interests taken as a primary consideration are protected and respected.**

#### **Legislation**

11. While welcoming the adoption of Vatican City State laws No. VIII and IX on 11 July 2013 which penalize offences under the Optional Protocol, the Committee is concerned that the application of these laws is restricted to the territory of the Vatican City State and therefore do not apply to all individuals and institutions placed under the supreme authority of the Holy See. The Committee is also concerned that the Holy See has still not amended and continues to apply Canon Law provisions which breach the Optional Protocol as regards notably the legal definition of these offences as crimes and the procedure to address them.

**12. The Committee urges the Holy See to bring all its norms and regulations, including Canon Law in line with the Optional Protocol and ensure that the same laws apply to the Vatican City State and to individuals and institutions placed under its supreme authority. The Committee also urges the Holy See to amend without delay all Canon Law provisions which contradict the Protocol and in particular the 1962 *Crimen Sollicitationis* and *Sacramentorum Sanctitatis tutela* of 2011.**

#### **Coordination and evaluation**

13. The Committee is concerned that the Holy See does not have a coordinative body providing leadership and effective general oversight for the monitoring and evaluation of activities under the Optional Protocol.

**14. The Committee recommends that the Holy See create a coordinative body capable of monitoring and evaluating activities for the implementation of the Optional Protocol.**

#### **Dissemination and awareness-raising**

15. While welcoming the publication and distribution to educators of materials on children's rights and the Optional Protocol by Catholic specialized institutions, the Committee is concerned that similar measures have not been taken by the Holy See to raise awareness about the Protocol to children, their families and the public at large and in particular to inform children on how to protect themselves and to report these offences.

**16. The Committee recommends that the Holy See makes full use of its moral authority and adopt a comprehensive approach for the Optional Protocol to become widely known to the public at large, including to children, their families and communities, and to this aim develop, in close cooperation with civil society organizations, the media, the private sector, communities and children themselves, awareness-raising programmes, including campaigns, on all issues covered by the Optional Protocol. The Holy See should also ensure that individuals and institutions working under its authority worldwide, including Catholic schools, play an active role**

**in this regard, including in translating the Optional Protocol into local languages of the countries and in disseminating it in child-friendly formats.**

#### **Training**

17. The Committee notes as positive the programmes developed by Catholic institutions at national level, such as the Catholic Pastoral Awareness Programme developed in Kenya to train teachers of Catholic Schools to detect and address situations of children at risk of abuse and exploitation. The Committee is however concerned that the Holy See has not developed similar programmes and disseminated them to all individuals and institutions placed under its authority but continues to refer exclusively to the 2011 Circular Letter to assist episcopal conferences in developing guidelines for dealing with cases of sexual abuse of minors perpetrated by clerics, which has revealed inefficient in protecting children and in providing individuals and institutions with appropriate guidance on how to deal with these offences.

**18. The Committee urges the Holy See to provide appropriate guidelines and training material on the prevention, detection and appropriate handling of offences under the Protocol to all individuals and institutions placed under its authority. The Holy See should ensure that teachers and personnel of Catholic schools and institutions systematically receive this training and earmark the necessary resources to conduct such training.**

#### **Allocation of resources**

19. The Committee is concerned that the Holy See has not allocated a budget for the development and implementation of programmes aimed at preventing offences under the Optional Protocol, protecting children and providing child victims of offences committed by individuals placed under its authority with physical and psychological recovery and social integration. The Committee is also concerned that the Holy See has no specific allocation for promotional activities of the Optional Protocol at the international level.

**20. The Committee recommends that the Holy See accord high priority to allocating sufficient human, technical and financial resources for the development and implementation of programmes aimed at the prevention, protection, and rehabilitation of victims.**

## **V. Prevention of the sale of children, child prostitution and child pornography (art. 9, paras. 1 and 2)**

#### **Measures adopted to prevent offences prohibited under the Protocol**

21. The Committee welcomes the various initiatives developed by Catholic congregations and organisations around the world to support children in vulnerable situations and the indication that the Holy See employs its moral leadership worldwide to address contributing factors of offences under the Optional Protocol. The Committee is however concerned the Holy See has not applied a similar approach to individuals placed under its authority and has not taken timely appropriate measures to prevent priests and nuns from committing offences under the Optional Protocol. The Committee is particularly concerned about cases of priests producing, possessing and diffusing child pornography who have knowingly been kept in contact with children.

**22. The Committee urges the Holy See to ensure the immediate removal of all priests suspected of child pornography and other crimes under the Optional Protocol and adopt without delay regulations, guidelines and mechanisms to effectively prevent**

children from becoming victims of offences under the Protocol. The Committee urges the Holy See to ensure that the Pastoral Commission for the Protection of Minors created in December 2013 undertake a comprehensive assessment of policies and practices applied by the Holy See to cases of child pornography committed by individuals placed under its authority and ensure that the outcome of this assessment be made public and accessible, especially to the victims.

#### **Sale of children / Adoption**

23. The Committee expresses deep concern about the discovery in 2011 that thousands of babies had been removed from their mothers in maternity wards in Spain and sold by networks of doctors, priests and nuns to childless couples who were considered as more appropriate parents. The Committee is also concerned that similar practices were also carried out in other countries such as in Ireland where girls detained in the Ireland Magdalene laundries had their babies systematically taken away from them.

24. **The Committee urges the Holy See to ensure that individuals and institutions placed under its authority who have organized, participated and assisted in the removal of babies from their mothers and their transfer for remuneration or any consideration to childless couples, individuals or institutions be held accountable. The Committee urges the Holy See to ensure a full disclosure of all information gathered by the institutions and individuals involved in these offences in order to facilitate victims' access to information on their biological filiation.**

25. The Committee is concerned that although many Catholic institutions and organizations are involved in inter-country adoptions, the Holy See has not taken the necessary measures to ensure that Catholic institutions do not engage in unlawful adoption.

26. **In light of article 5 of the Optional Protocol, the Committee urges the Holy See to adopt as a matter of priority appropriate legal and administrative measures to ensure that all individuals and institutions under its authority that are involved in the adoption of a child, act in conformity with applicable international legal instruments. The Committee recommends that the Holy See consider ratifying the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.**

## **VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)**

#### **Existing criminal or penal laws and regulations**

27. While welcoming the adoption in July 2013 of the Vatican City State laws No. VIII on Complementary Norms on Penal Matters, Title II: Crimes against Children and No. IX containing amendments to the Criminal Code and the Criminal Procedure Code, the Committee is concerned that:

(a) Laws VIII and IX apply only to the Vatican City State and do not address offences committed by individuals and institutions under the authority of the Holy See, which continue to be subject to Canon Law provisions; and

(b) The 2011 Circular Letter to assist episcopal conferences in developing guidelines for dealing with cases of sexual abuse of minors perpetrated by clerics gives precedence to Canon law proceedings over national penal proceedings to deal with offences under the Optional Protocol.

28. **The Committee urges the Holy See to:**

(a) **Extend the application of laws No. VIII and IX to all individuals and institutions under its authority; and**

(b) **Adopt clear rules for the immediate referral of all suspected cases of offences under the Optional Protocol to national law enforcement authorities even in cases where national laws do not make reporting of these crimes compulsory.**

#### **Prosecution and impunity**

29. The Committee is deeply concerned that the vast majority of priests and clerics who have committed acts of child pornography as well as those who have concealed these crimes have benefited from impunity. The Committee is particularly concerned that:

(a) Canon Law provisions and proceedings which have allowed perpetrators to escape justice by imposing an obligation of silence on victims, prevented the reporting of cases to national law enforcement authorities and provided punishment with no relation to the gravity of the offences committed, are still in force and applied;

(b) On numerous occasions, the Holy See has refused to cooperate with law enforcement authorities and to disclose information requested by prosecutors and national commissions of inquiry; and

(c) The Holy See has signed treaties with certain States, notably Italy, which guarantee areas of immunity from prosecution to Vatican officials, including for bishops and priests accused of offences under the Optional Protocol.

30. **The Committee urges the Holy See to repeal without delay all Canon Law provisions which have created an environment favouring the impunity of perpetrators of crimes under the Optional Protocol. The Holy See should also amend its internal guidelines and ensure a transparent and effective cooperation with national law enforcement authorities. The Committee further urges the Holy See to revoke parts of any treaty it has signed with States which would contribute to the impunity of perpetrators of child sexual abuse.**

#### **Extradition**

31. The Committee notes that the Holy See does not seek extradition of persons for the purposes of prosecution and extradites persons to the Italian authorities according to art. 22 of the Lateran Pact based on the double criminality rule. The Committee is particularly concerned that the Holy See in January 2014 refused the requests of a Polish prosecutor to extradite an Archbishop from the Vatican to Poland to face charges, including child pornography.

32. **The Committee urges the Holy See to take the necessary measures to ensure that all the offences referred to in article 3, paragraph 1, of the Optional Protocol are extraditable offences, and that the requirement of double criminality for extradition and/or prosecution of offences committed abroad is repealed. The Committee also urges the Holy See to use, where necessary, the Optional Protocol as a legal basis for extradition, in conformity with article 5 of the Protocol, and to proceed with the extradition of any clerics facing charges of child sexual abuse abroad.**

## VII. Protection of the rights of child victims (arts. 8 and 9, paras. 3 and 4)

### Measures adopted to protect the rights of child victims of offences prohibited under the Optional Protocol

33. The Committee is concerned that in spite of the many obstacles encountered by child victims of crimes prohibited under the Optional Protocol to report the offences they were subject to by Catholic priests, the Holy See still does not consider the creation of a child-sensitive mechanism for children to make complaints as a legal requirement under article 8.1 of the Optional Protocol. The Committee is also deeply concerned that:

(a) Canon laws which have been and continue to be applied to offences under the Optional Protocol do not contain any provision on the protection of rights and interests of child victims; and

(b) In many cases, child victims and their families have been re-victimized by the Church authorities, as noticed by several national commissions of inquiry.

34. **In the light of article 9, paragraph 3, of the Optional Protocol, the Committee urges the Holy See to take all necessary measures to protect the rights and interests of child victims of all offences under the Optional Protocol and to ensure that the best interests of the child are a primary consideration in the treatment afforded by the criminal justice system to child victims. The Committee urges the Holy See to:**

(a) **Establish without further delay child-friendly mechanisms and procedures for complaints, remedy or redress in relation to all offences under the Protocol;**

(b) **Develop guidelines on child protection for all individuals and institutions working under the authority of the Holy See and ensure training on such guidelines;**

(c) **Establish mechanisms and procedures for the early identification of child victims of the offences under the Optional Protocol, including by establishing cooperation mechanisms with national law enforcement authorities; and**

(d) **Ensure that child victims are no longer victimized by church authorities when they denounce crimes under the Optional Protocol.**

### Recovery and reintegration of victims

35. While noting that the Holy See seeks to inspire States parties to the Optional Protocol to provide assistance to child victims and that the Catholic church provide assistance to children victims of sexual exploitation, the Committee is concerned about the absence of appropriate measures taken by the Holy See to provide child victims of clerics with assistance for their physical and psychological recovery and social reintegration. The Committee is also particularly concerned that:

(a) Canon Law provisions which have been used to deal with cases of child pornography committed by Catholic priests contain no provision on the recovery and reintegration of the victims;

(b) The Holy See has not directly cooperated with States Parties in assisting children, as indicated in its written responses to the Committee; and

(c) Confidentiality has been imposed as a condition of financial compensation to child victims of abuses under the Optional Protocol.

36. The Committee urges the Holy See to take all appropriate measures for the physical and psychological recovery and social reintegration of child victims of all offences under the Optional Protocol, and ensure that those measures take place in an environment that fosters the self-respect and dignity of the child. The Committee also urges the Holy See to fulfil its obligation to provide compensation to victims of offences committed by individuals and institutions under its authority without imposing any obligation of confidentiality on the victims. To this aim, the Holy See should establish a compensation scheme for victims of offences under the Optional Protocol committed by clerics.

## **VIII. International assistance and cooperation (art. 10)**

### **Multilateral, bilateral and regional agreements**

37. In the light of article 10, paragraph 1, of the Optional Protocol, the Committee encourages the Holy See to strengthen international cooperation through multilateral, regional and bilateral arrangements, by strengthening procedures for and mechanisms to coordinate with law enforcement authorities and improve prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences covered under the Optional Protocol. In this context, the Committee urges the Holy See to exclude offences under the Optional Protocol from any immunity agreement with States. The Holy See should also consider ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

## **IX. Follow-up and dissemination**

38. The Committee recommends that the Holy See take all appropriate measures to ensure the full implementation of the present recommendations by, *inter alia*, transmitting them to the Pope, the Curia, the Congregation for the Doctrine of the Faith, the Congregation for Catholic Education, the Catholic Health Care Institutions, the Pontifical Council for the Family as well as bishops conferences, individuals and institutions functioning under authority of the Holy for appropriate consideration and further action.

39. The Committee recommends that the initial report and written replies submitted by the Holy See and the related concluding observations adopted by the Committee be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

## **X. Next report**

40. In accordance with article 12, paragraph 2, the Committee requests the Holy See to include further information on the implementation of the Optional Protocol and the present concluding observations in its next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.