

STATE PARTY EXAMINATION OF THE HOLY SEE'S SECOND PERIODIC REPORT

65TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

13 JANUARY – 31 JANUARY 2014

Content

Opening Comments.....	1
General Measures of Implementation.....	2
Definition of the Child	4
General Principles	4
Civil Rights and Freedoms.....	5
Family Environment and Alternative Care.....	6
Basic Health and Welfare	7
Education, Leisure and Cultural Activities.....	7
Special Protection Measures	7
Concluding Remarks	8

The Holy See ratified the Convention on the Rights of the Child (CRC) on 20 April 1990. On 16 January 2014, the Committee on the Rights of the Child (the Committee) examined the second periodic report of the Holy See. It was last examined on 14 November 1995.

Opening Comments

The delegation of the Holy See was led by Mons. Silvano M. Tomasi, Permanent Observer of the Holy See to the United Nations Office. He was supported by a delegation composed of Mons. Charles Scicluna, Mons. Christopher El-Kassis and professors of law Vincenzo Buonomo and Jane Adolphe.

In his introductory statement, Mons. Tomasi indicated that the protection of children remained a major concern for the Holy See. Mons. Tomasi acknowledged that cases of child abuse could be found among the most respected professionals, including Catholic Church personnel. He underlined that this fact was particularly serious since members of the clergy were in a position of great trust which required a higher sense of responsibility. Faced with such a reality, he stated that the Holy See was committed to prevent future cases of child abuses and to collaborate with respective State authorities to ensure justice for these crimes.

Mons. Tomasi explained that the legislation of the Holy See had been made compliant with international legal obligations and that the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, as well as the Optional Protocol on the Involvement of Children in Armed Conflict, had been ratified.

Note: This report is prepared at the discretion of Child Rights Connect. The content is designed to give a summary of the key discussions during the session of the Committee on the Rights of the Child but it is neither an official nor fully comprehensive report. More reports and further information can be found at 1

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Mons. Tomasi informed the Committee that the Holy See had developed guidelines for local churches and that the latter were instructed to adapt them to the local context. Local churches, he added, were creating a prevention framework in accordance with national legislation.

Mons. Tomasi highlighted that the various institutions of the Catholic Church provided vital social, health and educational services. Catholic schools provided education to more than 50 million children worldwide.

Mons. Tomasi quoted Pope John Paul II and Pope Benedict XVI, saying that there was no excuse or justification for any form of violence or exploitation of children. He explained that Pope Francis was committed to following up on the work undertaken by his predecessors and had announced the creation of a Commission for the Protection of Minors.

Ms. Oviedo Fierro and Ms. Wijemanne, the Country Rapporteurs, welcomed the delegation and recognised the specific legal nature of the Holy See. They underlined the moral weight and great influence the Holy See held over more than 1.2 billion Catholics. They welcomed the opportunity to discuss child rights issues with the Holy See representatives.

General Measures of Implementation

Legislation

The Committee congratulated the Holy See for having ratified the CRC, taking into consideration its specific nature, and asked if the Holy See would ratify other conventions, such as the Convention on the Elimination of Discrimination Against Women. It asked whether there was any intention to withdraw the reservations to the CRC and asked which specific changes had been made to penal canon law in order to be in conformity with international law. The Committee also asked if the CRC took precedence over canon law. Finally, it asked the delegation about the possible ratification of the Third Optional Protocol to the CRC on a Communications Procedure and the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

The delegation responded that the Holy See was studying the opportunities and consequences of ratifying the Third Optional Protocol to the CRC on a Communications Procedure as well as of removing the three reservations to the CRC. With regard to reservation b) to Articles 13, 14, 15, 16 and 28 which safe guarded the primary rights of parents, the delegation explained that the Holy See had its own definition of the family.

The Committee commented on the specific legal nature of the Holy See, underlining that it had a full legal personality in international law, as opposed to the Vatican State. In this context, the Committee emphasised that the CRC was to be applied in all the activities of the Catholic church and recommended that domestic law should be made fully compliant with the CRC. It commented that the Holy See also had a moral leadership that entailed responsibilities.

The delegation responded that the Holy See could not impose its jurisdiction beyond the Vatican State since it did not have sovereignty in the classical sense of the word. The delegation explained that the Holy See's jurisdiction should be understood in a spiritual sense and could not override the one of States.

The Committee asked about the case of Nuncio Wesolowski and how that related to the jurisdiction of the Holy See. The delegation answered that, as a diplomat and citizen of the Holy See, Nuncio Wesolowski was being tried in the Vatican State and the judicial process was underway. It further insisted that priests were not functionaries of the Holy See and remained citizens of their respective countries.

The Committee asked about the implementation of the guidelines, stated in the introduction as being developed by churches at a local level. The delegation explained that there was a commitment on the ground from local churches. It explained that in May 2011 the Congregation for the Doctrine of the Faith had issued a letter to all Conferences of Bishops asking them to work on the guidelines and adapt them to the local context. The delegation described that by the autumn of 2012, 90 per cent of the Conferences of Bishops had presented guidelines with only a few organisational problems, especially in Africa. It explained that most of these guidelines had been reviewed by the Congregation for the Doctrine of the Faith.

Coordination and monitoring

The Committee asked about the number of Pontifical Councils, noting that none of them focused specifically on children, and asked how these Councils were being coordinated. The delegation explained that the Pontifical Councils were central points of reference with different ones having competences related to children such as the Councils on Family, Migration, Health and Catholic Education. It added that there was no formal coordination between the different Pontifical Councils and that it was the Secretary of State who allocated responsibilities. It also explained that the Secretary of State was responsible for the implementation of the CRC. The delegation informed the Committee that it would transmit its advice on establishing a coordinating body to the Holy See.

Dissemination and training

The Committee asked if the CRC was disseminated within the State and how. It enquired whether priests and other individuals in contact with children were receiving training on the CRC, emphasising that the CRC should be included in all curricula.

The delegation responded that personnel received training about their work with children and that an articulate decision had been made to train specific individuals to take responsibilities in institutions which dealt with children. The delegation added that this was being undertaken systematically. It stated that human rights courses had been introduced in Catholic universities since the Vienna Conference of 1993. The delegation informed the Committee that the CRC was to become an integral part of training delivered to future priests and any individual involved in pastoral care. It added that the CRC had been translated in different languages, in an effort to reach out to children.

Ombudsman

The Committee asked what initiatives had been taken to create an independent monitoring mechanism. It welcomed the Commission for the Protection of Minors created by Pope Francis and asked what its mandate would be. The Committee further asked about its composition and if there would be a possibility for civil society representatives to be part of it.

The delegation explained that the Commission would be an independent mechanism to which direct complaints could be sent. It also answered that the Commission was still being discussed and that its composition was not yet known.

Data collection

The Committee asked for clarification about the existence of a database comprised of information on investigations and reparations that had taken place in regard to sexual abuse cases. The Committee took note that there was no reference in the State report to a comprehensive data collection system on children's rights. It asked if steps had been taken in this regard and if the changes that had been set out in the circular of 2011 had had an impact

on the available data.

The delegation explained that statistics had been published in the annual statistical report of the Holy See since 2005. It informed the Committee that in 2012 612 new cases of sexual abuse had been reported and that 465 out of the 612 cases were considered serious and 418 involved minors. The delegation further added that there were reports from the Congregation for the Doctrine of the Faith which set out the number of new cases but that there was no data on the outcome of the procedures that had been undertaken to address these cases. The delegation underlined that gathering data on children would be a lot of work, though it was a serious request and it was willing to transmit this recommendation to the Holy See.

Budget

The Committee asked if a reparation fund or a compensation scheme had been set up for victims of abuse. The delegation answered that it was unable to respond at this point in time but that it would take this question seriously.

Cooperation with civil society

The Committee reminded the delegation that children were the subjects of rights and yet it noted that they had not been consulted for the compilation of the State report. It also asked if there were any possibilities for civil society to engage with the Holy See. The delegation responded that it had engaged with Catholic NGOs in the drafting of the State report. It added that some of these NGOs worked on education and had shared their good practices to be included in the State report. The delegation explained that children had not directly participated but that they could be heard through the NGOs.

Definition of the Child

The Committee underlined the fact that the reservations to Articles 13, 14, 15 and 16 of the CRC questioned some of its core principles, such as the child being a subject of law. It explained that the CRC recognised the rights and duties of parents, while acknowledging children as rights holders. The Committee added that the definition of the child by the Catholic Church would not prevent the child from being seen as an independent subject of law. The delegation stated that parental rights were primary and inalienable but that the definition of the child would be discussed within the Bishops' meeting on family issues that was scheduled for February 2014.

General Principles

Non – discrimination

The Committee asked if the Holy See had considered removing the discriminatory concept of “illegitimate children” from its doctrine, as well as from canon law. The Committee also noted that the Holy See defended the idea of gender complementarities rather than equality, and asked what was being done to fight gender stereotypes. It also expressed concern about the impact of such ideas on radical religious groups. The delegation responded that the Holy See's priority was to fight discrimination and ensure the best interest of the child. In this view, the Holy See was revising its language, including the concept of children born out of wedlock.

The Committee asked about the case of a 9-year-old Brazilian child who had had an abortion after being raped by her stepfather and was consequently excommunicated by the Catholic Church. It was concerned by this decision, given that the stepfather had not been excommunicated by the Catholic Church. The delegation acknowledged this case and

recognised that the perpetrator should have also been excommunicated.

Best interests of the child

The Committee asked if actions had been taken regarding the best interest of the child, having noted that the interest of the clergy had been placed above in certain cases. It reminded the delegation that the interest of the child should be a primary consideration and this was also the case for all decisions which could affect children. The delegation answered that the best interest of the child was a non-negotiable principle.

Respect for the views of the child

The Committee asked if the participation of children was ensured and their opinion taken into account through guidelines or instructions. It asked if measures had been taken to empower children, give them tools to have their voices heard and, in cases of abuse, an accessible reporting mechanism. The Committee expressed concern about the lack of child friendly reporting mechanisms and the lack of provision on participation of child victims. The Committee further asked if efforts were made to respect the views of children, starting at the level of families through to schools. The delegation explained that it depended on local circumstances but that there was a tendency among local churches to encourage child participation. It added that children were allowed to express themselves outside of the family, since they could receive sacrament of their own will.

Civil Rights and Freedoms

Corporal punishment

The Committee inquired about preventing corporal punishment and using non-violent discipline. It asked if the Holy See recognised this concept and had set out guidelines for its personnel. The Committee emphasised that there was a significant difference between the non-promotion of corporal punishment and its actual prohibition. The delegation explained that there was a cultural factor in corporal punishment and that this issue needed to be addressed locally. It insisted that it was not professed by the Holy See and that it would take into consideration the recommendation of issuing a firm declaration against corporal punishment.

Child abuse

The Committee noted the International symposium on child abuse which had been held in 2012, in Rome, during which good practices were discussed. It asked what follow-up had been organised in regard to the guidelines and the child safety programmes discussed at the symposium. The Committee emphasised the need for the Holy See to set a precedent as far as sexual abuse was concerned. The delegation said that a number of preventive measures had been taken. In 2001, the age to be considered a minor in cases of sexual abuse had been changed from 16 to 18. In the USA, background checks and screenings of Catholic Church personnel, both priests and individuals with pastoral care, were carried out systematically.

The Committee asked what kind of cooperation the Holy See provided to national authorities for investigations of sexual abuses. It referred to the case of the French bishop Pierre Pican, who was praised by the Holy See for not disclosing information to the authorities. It asked whether the guidelines included specific instructions on the obligation to cooperate with competent authorities. It nonetheless highlighted that the Holy See should go beyond and had to insist that all cases should be systematically reported. The delegation answered that the Holy See was willing to cooperate with local authority as far as possible, and cited the case of Australia to underline that cooperation and communication should happen through appropriate channels. It explained that the guidelines stated that local churches had to follow

domestic law in regard to mandatory or non-mandatory disclosures. The delegation emphasised that the Holy See did not substitute itself to the legitimate jurisdiction of States. It stated that it was not the policy of the Holy See to encourage cover-ups, underlining that the cited case was 10 years old and that, since then, changes had taken place. It added that the policy of silence might have been the case but that, in the last few years, there had been a push for clarity and transparency.

The Committee asked about the specific process to deal with perpetrators. The delegation explained that its internal procedure followed penal canon law and the outcome of a trial could be: proven guilty, non-guilty or non-proven guilty. In case of non-proven guilty, the lack of sufficient evidences did not erase the doubt and therefore specific measures were taken in order to avoid any contact with children. The delegation added that, in 2010, Pope Benedict XVI had reformed the 2001 law and had made the procedure more expedite for the most serious cases, including the possibility that the statute of limitations could be waived. It insisted that the Catholic Church needed to defend the community from any harm and that the penalties handed out were of spiritual and pastoral nature with no possibility of imprisonment. The delegation added that penalties could lead to the dismissal from the clerical state.

Freedom of thought, conscience and religion

The Committee asked if children could choose their religion when they were in Catholic institutions. The delegation answered that freedom of religion was respected and that 60 per cent of the pupils in its schools were not Catholic.

Family Environment and Alternative Care

Family support

The Committee asked if the Catholic Church had modified its understanding of the family. It also asked about children of priests and how they were dealt with by the Holy See. The delegation explained that Pope Francis would meet the cardinals in February to discuss the family and that an International synod would take place in October on the same subject. As far as the children of priests were concerned, the delegation responded that those responsible had to deal with the situation and that the priority was the life of the child.

Institutions and family-based care

The Committee asked if the Holy See was actively preventing anonymous abandonment and whether it considered putting an end to the use of baby boxes. The delegation responded that it was not very informed on the subject but that baby boxes were set up for the immediate care of the abandoned child. It agreed with the Committee that better alternatives existed, such as an initiative in New York to provide care for mothers until they gave birth.

The Committee highlighted that institutionalisation of children should be seen as a measure of last resort and asked if the Holy See favoured family based care, rather than institutionalisation of children. The delegation agreed with the Committee that a minor should grow in a family set up as much as possible. It further explained that the Holy See made efforts to create family environments within existing institutions, which indeed were considered as a last resort. The delegation gave the example of the Diocese of Malta to illustrate the actions done at a local level which encouraged the creation of a family environment in the institution. The delegation recognised that children should grow up in families but that, in many instances, the creation of institutions was linked to the social and economic context. In Ethiopia, for example, children with HIV were institutionalised because they were neglected by their families.

Adoption

The Committee asked how the conclusions of the 1994 symposium on adoption had been implemented. The delegation answered that it had no specific knowledge about the conclusions of the 1994 symposium on adoption but insisted that there was a need to follow-up at a local level. It further added that different Catholic institutions were competent for adoption and that they respected State legislations.

Basic Health and Welfare

Health services

The Committee asked if the Holy See had considered creating psychological aid for children victim of abuse. The delegation recognised that victims needed specific attention and declared that the Holy See was in the process of having specialists to deal with them, though this depended largely on the national context. It added that the rehabilitation of the victims was essential, which had led local churches and religious communities to set up pastoral care and the possibility to listen to them with respect.

The Committee also asked what was being done in regard to reproductive health. The delegation reaffirmed the position of the Holy See which was to give priority to life and that efforts to educate individuals were essential.

Education, Leisure and Cultural Activities

Education

The Committee noted that more than 50 million children attended Catholic schools and that the Holy See recognised the right of parents to educate their children in their faith. It asked if the Holy See believed that the State could not intervene in matters of freedom of religion. The Committee underlined the particular risks linked to such a stance in regard to the spreading of fanaticism.

The delegation answered that there was a substantive difference between faith schools and Catholic ones, since the latter followed a curriculum approved by the State. It reaffirmed the right of parents to transmit their belief but it recognised that the State had a role in preventing any incitation of hatred. The delegation recalled that 60 per cent of the pupils in its schools were not Catholic.

Special Protection Measures

Protection of child witnesses and victims

The Committee asked what was envisaged in order to prevent perpetrators being in contact with children. It underlined that the proceedings of the Congregation for the Doctrine of the Faith were confidential and this contributed to concealment. It also expressed concern in relation to the practice of transferring offenders to different Dioceses. The delegation highlighted the importance of rehabilitating the offenders as an integral part of prevention. It acknowledged that most of the priests who were found guilty had been dismissed. The delegation recognised that the mobility of offenders was a great concern and, in accordance, this was prohibited. The delegation explained that the Congregation for the Doctrine of the Faith had explicitly stated in the circular letter the obligation to advise other Diocese about any concerns before a member of the clergy was transferred.

The Committee explained that it had been informed of a priest accused of sexual abuse that had been transferred to India. It asked how the Holy See had envisaged bridging the gap between its measures and the events on the ground. The delegation acknowledged that there

seemed to be a gap but also pointed out that old perceptions lingered. It insisted that for the Holy See sexual abuse was a wound that had hurt the Community of faith and that it could not summarise itself to a legal problem but was a human and moral one. The delegation recognised that it was a good idea to have a better dialogue with civil society to bridge the gap.

The Committee asked what type of communications and support had been addressed to victims. The delegation answered that the empowerment of the community came through education and that the guidelines from 2011 aimed to create child safety programmes at a local level. The delegation recognised that the main concern was the pastoral care of victims and listening to them with respect. It advocated for a multidisciplinary approach between society and the Catholic Church and recognised that this had to be worked on. . The Committee asked if damages or compensations were awarded to victims. It cited cases where compensation had been handed out in exchange of a vow of silence from the victim. The delegation recognized that this might have happened but underlined that in the vast majority of cases no such transaction had taken place. It took the example of the USA, where in most cases compensation was the result of a legal process without any silence agreement. The delegation explained that there were two canon laws on damages and that they promoted personal liability which implied the need to make amends. It further added that the community could be proactive by offering support to the victim and its family.

The Committee asked if the fall in recruitment of priests had an effect on the quality standards. The delegation answered that the scarcity of recruitment would not change the standards of the Holy See. It presented measures that had been taken such as examinations based on objective criteria to determine the attitude and background of the lay and clerical person wishing to work for the Catholic Church. It added that this was being done more systematically in the USA.

Concluding Remarks

Ms. Oviedo Fierro and Ms. Wijemanne thanked the delegation for the interactive discussion. They asked if the Holy See would provide written answers to the pending questions and emphasised the need to follow up on all issues that were discussed. They reminded the delegation that all the discussions were an attempt to ensure the best interest of the child and that the Concluding Observations should be taken very seriously. They underlined that the moment had come for action in regard to longstanding issues. They concluded that there were high expectations for the Holy See to make the best use of its moral power and to establish a dialogue with civil society.

The delegation said that it was looking forward to the Concluding Observations and that it would transmit to the Holy See the Committee's recommendations. It declared that the interactive dialogue had been positive and that the Holy See would pursue its work in favour of all children. The delegation added that the Holy See was on the road to real implementation of the CRC with concrete actions being undertaken.