

# **The Holy See and the Convention on the Rights of the Child in France**

**An NGO Report on how the Holy See's laws impact on France's compliance with the Convention**

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## **I. Introduction**

In May 2002, at the United Nations General Assembly Special Session on Children, Catholics for a Free Choice (CFFC) presented a report to the Committee on the Rights of the Child on the worldwide problem of the sexual abuse of children and adolescents by Catholic clergy and religious. A subsequent and more extensive report was submitted in October 2002 to the Committee in Geneva. The purpose of these two reports was to assist the Committee in conducting a comprehensive review of the laws and policies of the Holy See and an investigation into how they compromise the laws of other States party to the Convention on the Rights of the Child.

Subsequently, because the Holy See has laws that contradict the laws of States party to the Convention, in 2003 Catholics for a Free Choice, with partners in Canada and Germany, submitted NGO reports to the Committee on the dangers Canada and Germany face in complying with the Convention. Similarly, CFFC is submitting this report on how the Holy See's laws contradict France's child protection laws, which puts France in danger of not fulfilling its obligations to the Convention.

CFFC, *Droits et Libertés dans les Eglises*, and *Nous Sommes Aussi l'Eglise* are submitting this report to the French government and to the Committee on the Rights of the Child to expose how the Holy See's laws and practices conflict with France's child protection laws, leaving children vulnerable to continued abuse and exploitation by Catholic clergy in France. It is the hope of the three submitting organisations that this report will assist the Committee and the French government to understand better the implications of the Holy See's laws on child abuse and will thus hold the French Catholic church accountable to French law and the Convention to which the Holy See is a State party.

A copy of this report will be submitted to the French Catholic church and the Holy See's permanent mission in Geneva, asking that they too submit reports to the French government and the Committee to respond to our shared concerns.

## **II. About This Report**

This report provides a review of relevant laws in the Holy See and France, and examines how the Holy See's laws impact France's ability to comply with the Convention on the Rights of the Child. The focus of this report will be the sexual abuse and exploitation of children and adolescents by members of French Catholic clergy and religious, the concealment of the abuse, and how the abuse has been dealt with in a way that violates France's child protection laws. The conclusion will be that the Holy See knew that the abuse was occurring and had the responsibility to comply with French law and the Convention on the Rights of the Child to ensure that French children were protected from further cases of abuse.

The Holy See, the government of the Roman Catholic church, is a Non-member State that maintains a Permanent Observer Mission to the United Nations. The Holy See was one of the first to accede to the Convention on the Rights of the Child in 1990, making it accountable to the world community for implementation of the Convention. By its accession, the Holy See accepted the responsibilities of the Convention, and agreed to implement its provisions to benefit children throughout the world.

### **III. The Holy See and France**

#### ***The Law of the Holy See***

As France and the Committee members analyse French child protection laws, it is important that they consider also the laws of the Holy See in order to ensure that those laws do not prevent France from being in compliance with the Convention. Furthermore, knowledge and understanding of the Holy See's laws will assist France in holding the French Catholic church accountable to its own laws.

The *Code of Canon Law* (the "code") provides the legal underpinning not only for the fundamental legislation of Vatican City (the physical or territorial base of the Holy See) but also spells out the constitutive and disciplinary codes of the Roman Catholic church which is applicable to all Catholics the world over. Canon law has several sections that recognise children's rights and repugnance for the sexual abuse of children by clergy and religious.

The code, like the Convention, recognises that legal majority occurs at age 18. The code provides that before the age of majority, the child's exercise of his or her rights is subject to the authority of the child's parents or guardians (although there are some instances where the rights of the child must take precedence over the parents' authority, such as in instances of child abuse).

The code makes several assertions of basic rights that are applicable to the protection and defence of children. The code clearly states that Catholics have the right to defend their rights in a competent church forum, in accordance with the law. The code also defines relationships between people in terms of their hierarchical relationship within the church. The pope holds supreme, full, immediate and universal power in the Catholic church. He alone approves changes to the law contained in the code, and is the bishops' immediate superior. The pope is the superior of bishops of France.

Diocesan bishops oversee the conduct and life of priests subject to them, even, in some cases, legislating where appropriate. These men are obliged to promote the observance of the law and to act in executive and judicial roles in accordance with the law. The code makes specific provision for the competence of diocesan bishops to issue norms and pass judgments on matters relating to the priests' obligations to their vows of celibacy and sexual continence. The bishop is the executive, legislator and judge for all matters in his diocese. In most cases, responsibility for handling cases of the sexual abuse of children by clerics lies first with the diocesan bishop, and ultimately with the Holy See.

The Holy See's legal code, in its section on criminal law, states explicitly that sexual activity with minors by clergy is a serious offence, to be dealt with in a serious manner, even including dismissal from the clerical state—considered the most severe penalty for a priest. The code then provides a detailed judicial process to investigate, confirm or repudiate claims, and punish criminal acts. This process includes several mechanisms for protecting the rights of the accused cleric as well as the accusing party, and provisions for due process before the law. The law guarantees the victims of abuse the opportunity to participate in a judicial proceeding and to request and be awarded reparations. The law even prescribes a penalty for negligence which can be imposed when a superior has failed to investigate or punish instances of actionable offences brought to his attention. In

addition to these codified provisions, the legal system of the Holy See allows, in egregious cases, a superior to petition directly to the Holy See, enabling a punishment to be inflicted swiftly, and without due process.

There are special laws for Catholics who are members of institutes of consecrated life, both secular and religious. We know many of these institutes as “religious orders” such as the Dominicans, the Franciscans, the Jesuits, the Christian Brothers, or religious institutes of women. For these people, the code determines that certain offences call for mandatory dismissal from the institute (but the code also provides that in cases of sexual offences, the hierarchical superior need not dismiss the offender if the superior decides that justice can be restored and scandal repaired in another manner). Included in these offences are homicide, kidnapping, and sexual activity that involves force or threats or takes place in public or with a minor. In addition to the code, these organisations also have constitutions and rules of conduct specific to each. The superiors within these institutes are responsible for seeing that the law is followed by the members of the institutes. All laws addressing clergy sexual abuse of a minor, and the local authorities charged with implementing them, are now directly subordinate to one office of the Holy See.

#### ***New Law Requires Secrecy and Centralised Review***

In 2001, the Holy See issued a document entitled *Sacramentorum sanctitatis tutela*, instituting a little-publicised but important change in the law. In this document, which supersedes the code, the Holy See directs all bishops to inform one of its offices, the Congregation for the Doctrine of the Faith, if they receive an allegation of child sexual abuse by a cleric. This same law prohibits bishops or other church authorities from taking any action beyond a preliminary investigation of the allegation without further direction from the Holy See’s delegate.

According to the new law, this office of the Holy See may, at its discretion, conduct an inquiry itself, or transmit norms to the local ecclesiastical authority explaining how to proceed. These cases, the law states, are “subject to the pontifical secret”. This is the Holy See’s highest level of confidentiality—just short of the absolute secrecy required by sacramental confession—and allows the Holy See to punish any party who reveals information about the clerical sexual abuse of children. Furthermore, the document mandates that no one but a priest may be involved in the proceedings concerning such abuse. These provisions raise questions about the integrity of the internal processes as well as questions of how this law might conflict with the laws of the geographically defined jurisdictions in which the subjects of the Holy See find themselves.

The new legal requirements make clear two facts: (1) the Holy See has overtly claimed responsibility for managing these cases, and (2) the Holy See does not intend to comply fully with the Convention on the Rights of the Child. The latter is shown by the Holy See’s desire to skirt the reporting requirements of Article 44 through its own secrecy requirements and to frustrate legitimate efforts of other States party, like France, to the Convention by advocating circumvention of their laws in favour of the Holy See’s new secret procedures.

Overall, Holy See law does provide redress and some protection for children in cases of sexual abuse and also provides for the punishment of clergy and religious who sexually abuse children. The

existence of a law, however, is of little use if the law is not enforced. The canon laws that touch on this issue are many and have been consistently ignored, inadequately applied, or wrongly applied in favour of the church authorities and its institutional image.

#### **IV. French Law on Sexual Abuse and Exploitation**

##### ***French Law***

As a State party to the UN Convention on the Rights of the Child, France has included measures in its penal law that are binding on every French citizen. In cases of the sexual abuse of a minor, Article 222-24 states that rape may be punished by 20 years imprisonment when it is committed by a guardian or any person having authority over the victim. In cases when it is not an incident of rape but of “sexual aggression,” the French penal code provides for sanctions ranging from five to ten years imprisonment and fines of between 75,000 and 150,000 Euros. Under Article 222-28, sexual aggression other than rape is punished by seven years of imprisonment and a fine of 100,000 Euros when committed by a person who abuses the authority vested in them.

In June 1998, the French legislature reinforced child protection laws to make them among the most severe in the world. The statute of limitations was set at ten years. However, confronted with a growing number of cases involving people in professions that deal with children (teachers and priests, for example), and the discovery of a series of local and international child prostitution networks, a number of psychologists, lawyers and policy makers advocated to extend the statute of limitations. Ségolène Royal, then a minister in the government of Lionel Jospin with responsibility for Childhood and the Family, spoke out in favour of an extension. On April 15, 2002, while travelling to Ruffec to visit parents of children who had been victims of sexual abuse at their nursery school, she publicly stated that in child sexual abuse cases, the statute of limitations should begin when a case came to light, and not when the crime was committed.

##### ***Professional Confidentiality***

Professional confidentiality—doctor-client privilege or attorney-client privilege—compounds the problem when there is a relatively short statute of limitations. Perpetrators of sexual abuse who are members of institutions, such as an order in the Catholic church, can be directly or indirectly protected by their institutions. At the same time, the victim will face enormous difficulties proving the abuse that she or he has suffered, and often does not come forward within ten years of the crime.

Until 1971, offences committed against minors did not require mandatory reporting to civil authorities. In fact, omitting to report incidents of abuse was not punished as such but subsumed under the crime of failing to aid a person in danger. However, punishing those guilty of child maltreatment and abuse has the critical added purpose of helping prevent recidivism. A 1971 law, amended in 1982, mandated the reporting to civil authorities of reprehensible acts against children. While the law mandates a large fine for those who betray professional secrets, it specifically includes a number of exceptions, including for those who inform judicial, medical or administrative authorities about deprivations or maltreatment including sexual offences inflicted on a minor aged less than 15 years or on any person unable to protect themselves because of age or mental or physical state.

This exception is important as it is often during the exercise of their professional duties that people, including physicians, lawyers, therapists—and priests—learn about child maltreatment and abuse. However, the exception does not state that reporting child maltreatment is a legal imperative. The New Penal Code accords professionals impunity whether they report incidents of abuse of minors or not. The professional can report known cases of child abuse without the risk of violating professional confidentiality. However, professionals can also choose not to report them, in the name of professional confidentiality, without being guilty of not reporting the abuse of a minor.

The Convention on the Rights of the Child (CRC) is very clear. The principle enunciated in article 3.1 reads: “the best interests of the child shall be a primary consideration”. But the CRC, which was adopted by the UN on November 1989 and ratified in 1990, has not been considered by the French court of appeal—a necessary step before it is incorporated into French law. In fact, the high court considers that the CRC does not impose obligations on states and does not provide rights to individuals. Consequently, the provisions cannot be invoked or applied during law suits or trials in France. This juridical hair-splitting is unacceptable, taking into consideration the fact that the aim of the Convention was to give rights to children and to compel states to institute systems of child protection.

## **V. The Position of the Church in France on Clergy Sexual Abuse**

Incidents of paedophilia involving Catholic priests have created turmoil in the French Catholic church. The information collected for this report shows that the attitude of Mgr. Pierre Pican—a French diocesan bishop who was convicted of a cover up when he did not report a case of sexual abuse to civil authorities—is not an isolated case. The Catholic church in France seems to consider itself above both civil and penal law. As they cover up and protect priests who have committed sexual abuse, French bishops choose to protect the institution of the church over the security of the children entrusted to its care. As the paedophilia scandal undermines the church’s credibility in the eyes of parents, the hierarchy seeks to avoid its responsibilities. It continues to take refuge behind spurious arguments about ordained ministers being bound to codes of secrecy and silence and by stigmatising claimants, suggesting that their accusations are untrue and that they are motivated by a desire to diminish the church’s honour.

### ***The Declaration***

Confronted by the growing number of clergy proven to have sexually abused minors and the shattered image of the church, the bishops responded. On November 9, 2000, the bishops’ conference adopted a symbolic declaration during its plenary session in Lourdes.

The church condemns absolutely these acts of paedophilia. The acts of paedophilia, sexual acts characterised by a strong inequality, are profoundly destructive. They are even more so because they concern children who have no control over their circumstances.... When a priest is the aggressor, a twofold betrayal takes place. Not only does a conscious adult impose his will on a minor, but his acts contradict the Gospel that he preaches....

The responsibility of the bishop in this field is at the same time a clear and delicate one. He cannot remain passive and even less cover up punishable acts. But paedophilia is a phenomenon which is still not well known. It is hidden. It rarely reveals itself. It is often not easy for a bishop to gather sufficient proof that would allow him to know if a priest has in fact committed these acts.

As shown by the most recent cases, the silence of hierarchical superiors is a major problem in cases of clergy sexual abuse. What must a priest or a bishop do when he learns about abuses committed on children by another cleric? Must the problem be dealt with internally, knowing that simply removing the perpetrator to another parish is not acceptable? Or does the perpetrator have to be reported to the police, and when does that have to happen? The French Catholic church is currently deliberating on these matters.

In November 2000, when the bishops' conference held its annual plenary meeting in Lourdes, the bishops debated the issue of secrecy in the company of theologians and physicians. The daily *La Croix* reported on their reflections. One bishop, who wanted to remain anonymous, confided, "The question haunts me. I cannot break the trust given to me. People need to be listened to and to find a place where they can put down their heavy burden." Mgr. André Vingt-Trois, archbishop of Tours, asked himself, "How can a bishop become the accuser of one of his priests, as well as of one of his faithful?"

On the other hand the bishop of Saint-Claude, Mgr. Yves Patenôtre, affirmed that he would not hesitate to follow the law, "The law frees us from the professional secret if a child younger than 15 years of age is in danger. Given the trauma for the child, I would do it without hesitation". Moving on to the image of the church, Mgr. Patenôtre concluded: "In a certain sense, as much as paedophilia, what scandalizes people is the impression that the church wants to cover things up".

According to the bishops' declaration, "priests who are guilty of paedophile acts must be held accountable for their acts and be brought to justice. They must repair the evil committed and bear the weight of the punishment that the church and society imposes on them". Mgr. Louis-Marie Billé, then president of the bishops' conference and archbishop of Lyons (now deceased) affirmed that the bishops did "not seek to protect these men, as little as we do not seek to protect ourselves". At the same time he defended secrecy. "Secrecy in a society is nothing other than a way of guaranteeing mutual confidence. A society where it would be impossible to keep a secret would simply be unliveable". And he dared to draw a curious parallel, "Secrets guarantee trust and dependence. The totalitarian regimes have always held it in suspicion, if not banned it.... If respect for secrecy should disappear, private life would no longer be protected". Nevertheless, according to the bishops, "secrecy does not excuse anything. It is an obligation of conscience for the person who is the recipient [of a confidence] not to reveal the person who has made that confidence, but to ensure that this person behaves responsibly and assist them to own up to their acts". Summing up, the church wants to defend confidentiality while promoting "a humane and responsible society".

This lack of legal clarity on the issue of professional secrecy when it comes to child maltreatment and abuse acts against the rights of the child, in particular for professionals who feel bound by a double



loyalty: to French civil law as French citizens and to the Holy See as members of the Roman Catholic clergy.

### ***Fighting against Paedophilia***

A year later, the bishops' conference created a consultative committee on the sexual abuse of minors. Composed of eleven members, it was presided over by Mgr. Bernard-Nicolas Aubertin, bishop of Chartres. The committee had three tasks: to offer help to victims, to organise follow-up on convicted paedophiles and to improve the education of church employees on prevention. The working group first step was to produce a detailed brochure on paedophilia.

Under the title "Fighting against Paedophilia, Benchmarks for Educators," the publication, produced in 2002 by the information and communication service of the bishop's conference of France, was distributed to all parishes and could be found in many bookstores. Fifty pages long, it is divided into four parts: "Treat children and adolescents well", "The unacceptable", "Acting and reacting", and "Preventing". Several experts on the issue, theologians, physicians (Marie-Jo Thiel), and priests (Stanislas Lalanne, spokesman and general secretary of the French bishops' conference), make up the editorial committee. Sidebars on proper educational attitudes and discussions on themes like loving one's body and sexuality and morality, were interspersed with the more theoretical passages. Practical information and legal advice are also included.

While the consultative committee and publication are an important part of the bishops' efforts to address the extensive problem of clergy sexual abuse in France, it is important that such a committee and expert consultants be composed of individuals who are independent of the bishops' conference and the institutional church.

## **VI. The Holy See's Position on Clergy Abuse in France**

After the trial against Mgr. Pican in France, the Vatican thanked him for not "denouncing" the paedophile priest. In a letter dated September 8, 2001, Cardinal Castrillón Hoyos took the opportunity to recall the official position of the Holy See: "I congratulate you for not having reported a priest to the civil administration. You have acted well and I am happy to have a brother bishop who in the eyes of history and of all other bishops in the world prefers to go to prison before denouncing his priest-son.... This theme has also been dealt with during the last Council, by the bishops' synod in 1971 and by that in 1991. The bishop has other ways of acting, as the French bishops' conference recently recalled, but one cannot demand from a bishop to denounce on his own initiative. In all civilized juridical systems the opportunity of not testifying against a direct relative is afforded to all.... This Congregation, in order to encourage brother bishops in this delicate matter, will forward a copy of this letter to all bishops' conferences."

As a matter of fact, the above letter from the Holy See refutes the French bishops' own position in their November 2000 document about paedophilia that allowed the reporting of abuse to the police and judicial authorities. The French bishops' position was subsequently overturned by Holy See law. Indeed the subjugation of the French bishops' conference to the Holy See will result in future cases of clergy sexual abuse being subject to the demands of the Holy See. This is a big step backwards.

## **VII. Conclusion**

The cases of sexual abuse give evidence of the incompetence, if we are being charitable, or of bad faith, if we are not, of the church in dealing with matters of clergy sexual abuse. How can we accept the irresponsible behaviour of the French Catholic hierarchy, subsequently approved by the new regulations from Holy See? As long as the church hierarchy invokes professional confidentiality to avoid reporting allegations of the sexual abuse of children by people in authority, it is clear that it aims to protect the interests of the institution and the direct or indirect protection of its members over the rights of victims and the prevention of recidivism. The further problem of the statute of limitations, which is too short, is illustrated in the case of sexual abuse allegations made against Mgr. Jean-Michel di Falco (then auxiliary bishop in Paris, today bishop of Gap), against whom charges of abuse were dismissed because the alleged crimes happened during the 1970s.

The issues of professional confidentiality and the short statute of limitations must be addressed by the French legislature, along with measures needed to ensure that French Catholic church officials will be held accountable by French law, over and above the law of the Holy See.

## **VIII. Recommendations**

### ***To the French Government***

- When reporting to the Committee, France should include information about the scope of clergy sexual abuse in France, and what measures the French government has taken to protect children from future clergy sexual abuse and exploitation.
- French authorities should carry out an analysis of the Holy See's laws and the laws of France and determine areas where the French Catholic church may not be in compliance with France's child protection laws.
- French authorities should extend the statute of limitations for the sexual abuse and exploitation of minors.
- To implement the Convention on the Rights of the Child in France, the government should determine to enshrine the Convention in French law, as demanded by many organisations and lobbyists, not least the French parliament and the Commission for the Rights of the Child.

### ***To the UN Committee on the Rights of the Child***

- When France reports to the Committee, the Committee should inquire about instances of clergy sexual abuse in France, and ask that the French government explain how French law holds French Catholic church officials and other religious leaders accountable in cases of clergy sexual abuse and the exploitation of minors. The French government should be asked what measures it has taken to investigate the magnitude of such cases and to prevent them from happening in the future.
- The Committee should urge the French government to seek ways to hold the French Catholic church accountable to its laws, especially those that seek to protect children from abuse, over and above the secrecy-laced laws of the Holy See.

### ***To the Holy See***

- The Holy See, a State party to the Convention on the Rights of the Child, is delinquent in its obligations, as it has not yet submitted its 1997 and 2002 reports to the Committee. It should do so immediately, and include a full report on child abuse by clergy and religious with a concrete plan for ensuring that future abuse does not occur. It should also submit a report to the French government to reveal full information about cases of abuse in France, and measures the Holy See is taking to prevent future abuses.
- In addition, the Holy See should reveal to other States party what measures it has taken to eliminate the sexual abuse of children and adolescents by Catholic clergy and religious in those countries, and what measures it proposes to take to secure justice for the abused.
- The Holy See should commit to cooperating with local civil authorities by providing evidence and assisting with the prosecution of Catholic church officials involved in the abuse of children and adolescents.
- The Holy See must furthermore commit to rescinding its requirements of secrecy in these cases, and should comply with its own law in creating accessible opportunities for children and adolescents, or their representatives, to vindicate and defend their rights, and must guarantee procedural integrity in internal judicial and non-judicial processes.
- The Holy See must also prohibit those clerics who have abused children from affiliation with activities and organisations which would allow them access to children, including, but not limited to: parishes, schools, day care facilities, leisure groups and activities (such as Catholic Youth Organisations or those affiliated with World Youth Day), hospitals, mentoring groups, missionary activities to children and youth, seminaries, and convents.
- To assist in fulfilling these ends, the Holy See should create and maintain a publicly accessible database of proven child-abusing clergy and religious so that these people cannot merely relocate to avoid the consequences of their crimes.

### ***To the Roman Catholic Church in France***

- The Catholic Church in France should cooperate with government officials to ensure that in handling cases of clergy sexual abuse, the French Catholic church complies with the national laws of France.
- The French Catholic church should work in conjunction with the French government to ensure both France's and the Holy See's compliance with the Convention on the Rights of the Child.
- The Catholic church in France should assist claimants who are trying to locate clergy members whom they allege have abused them.
- The current consultative committee on the sexual abuse of minors must be composed of people independent of the church hierarchy to ensure adequate protection for victims. The team should also include victims of assault and their family members.
- A record should be published of all cases of sexual abuse—respecting the privacy of victims and offenders—that includes criminal cases and those reported to the Holy See.

**ANNEX**

**Clergy Abuse in France**

While the Holy See's internal and confidential process prevents the presentation of a comprehensive and cumulative assessment of the scope and gravity of child abuse by Catholic clergy and religious in France, this annex provides a sample of the crisis.

- Rev. Rene Bissey was convicted of raping and molesting 11 minors between 1996 and 1998. He was eventually sentenced to 18 years of prison. So egregious was the official cover-up that when Bishop Pierre Pican was convicted of concealing evidence that Rev. Bissey was sexually abusing children, he was given a three-month suspended sentence and fined one franc in symbolic damages in a court in Caen, France.<sup>1</sup>
- Thirty priests have been convicted of sexual abuse since 1995.<sup>2</sup>
- Abbot Jean-Lucien Maurel was sentenced to 10 years in prison for raping and sexually abusing three boys, aged 10 to 13, in incidents dating back to 1994.<sup>3</sup>

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<sup>1</sup>John Tagliabue, "Europe has problems, but not like America's. Maybe," *New York Times*, April 21, 2002.

<sup>2</sup>Ibid.

<sup>3</sup>*Missing Link Linkup Newsletter*, Spring-Summer 1999.