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## **Presentation of the Initial Periodic Report of the Holy See to the Committee on the Convention against Torture (May 5, 2014 Palais Wilson, Geneva)**

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*Pubblichiamo di seguito la presentazione del Rapporto iniziale della Santa Sede, tenuto questa mattina a Ginevra davanti al Comitato dell'ONU sulla Convenzione contro la tortura, da S.E. Mons. Silvano M. Tomasi, Capo Delegazione:*

Mr. Chairperson, Members of the Committee,

Allow me, first of all, to extend cordial greetings to all the members of the Committee on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In the presentation of the Initial Report of the Holy See, I wish to introduce the members of our Delegation present for this interactive dialogue. With me this morning are Monsignor Christophe El-Kassis and Professor Vincenzo Buonomo, of the Secretariat of State of the Holy See, and Monsignor Richard Gyhra, Secretary of the Holy See Mission.

The Holy See acceded to the Convention against Torture (CAT) on June 22, 2002. It did so with the very clear and direct intention that this Convention applied to Vatican City State (VCS). In its capacity as the sovereign of Vatican City State, the Holy See provided an important "Interpretative Declaration" that shows its approach to the CAT.<sup>1</sup> Such Declaration underlines the motives for accession to the Convention and expresses the moral support given to it, namely the defense of the human person as already indicated in the Universal Declaration of Human Rights.

For the Holy See, the Interpretative Declaration provides a necessary hermeneutic to understand the motives for acceding to the Convention and also for considering the implementation of the Convention by the legal order of Vatican City State which is the very exercise we are engaging in at this moment in the consideration of the Initial Report of the Holy See to the CAT.

In this sense, my Delegation deems it worthwhile to reiterate several of the more salient points of the Interpretative Declaration so as to properly frame the consideration and discussions of the Initial Report of the

Holy See.

In the first place, the Interpretative Declaration lauds the Convention as a worthy instrument for the defense against acts of torture when it says: "The Holy See considers the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment a valid and suitable instrument for fighting against acts that constitute a serious offence against the dignity of the human person." In this sense indeed, the Holy See wished to express the harmony of its own principles and vision of the human person with those ideals and practices set forth in the Convention against Torture.

Second, the Declaration elaborates more precisely the Holy See's position, in which the teaching of the Catholic Church clearly articulates its opposition to acts of violence and torture.<sup>2</sup> Third, although the Convention applies to Vatican City State, the Holy See adds a crucial moral voice in its support through its teaching<sup>3</sup> and through the following statement: "In this spirit the Holy See wishes to lend its moral support and collaboration to the international community, so as to contribute to the elimination of recourse to torture, which is inadmissible and inhuman."<sup>4</sup> Finally, and not of least importance, the Interpretative Declaration insists that "The Holy See, in becoming a party to the Convention on behalf of the Vatican City State, undertakes to apply it insofar as it is compatible, in practice, with the peculiar nature of that State."<sup>5</sup> As such, in regard to the application of the Convention and any examination, questions or criticisms, or implementation thereof, the Holy See intends to focus exclusively on Vatican City State, respecting the international sovereignty of this State and the legitimate and specific authority of the Convention and of the Committee competent to examine State reports. Hence, my Delegation judges it useful to present, briefly yet clearly, the essential distinctions between Vatican City State and Holy See, as described in the Initial Report.<sup>6</sup>

The Holy See, as member of the international Community, is related but separate and distinct from the territory of Vatican City State, over which it exercises sovereignty. Its international personality has never been confused with the territories over which it has exercised State sovereignty. In its present form, Vatican City State was established in 1929 to more effectively guarantee the spiritual and moral mission of the Holy See. Therefore, colloquial references to the Holy See as the "Vatican" can be misleading. In this sense, the Holy See, as mentioned, globally encourages basic principles and authentic human rights recognized in the CAT, while implementing it within the territory of Vatican City State in harmony with the Interpretative Declaration.

Having presented some of the essential points that should guide and assist our discussion, I now wish to give an overview of the Holy See's Initial Report.

The Initial Report of the Holy See, submitted to this Committee in December 2012, is divided into four parts: 1) Introduction, 2) General Information, 3) The Convention against Torture, and 4) Affirmation of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment in the teachings and activities of the Holy See. Since much of the content of the Introduction has been already mentioned, as this provides a necessary guide to understanding the approach and perspective of the Holy See regarding the Convention, I shall proceed to the second part on "General Information".

Apart from presenting the essential distinctions and relations between the Holy See, Vatican City State and the Catholic Church, I wish to highlight several important elements presented within the section of "General Information". In particular, the first point of reference is the legal system of Vatican City State, that is autonomous in respect to the legal system of the Catholic Church. In fact, not all canonical norms are relevant for the governance of this territory. In relation to the topic of crime and punishment there are specific laws that criminalize illicit activities and provide for proportionate penalties in Vatican City State. The necessity of a penitentiary system, in this small territory, is minimal, especially considering certain aspects of the Lateran Treaty (Article 22) which afford this territory the option of utilizing the judicial assistance of the Italian State if deemed necessary.

As noted in the section on Statistics, the small population of Vatican City State, while receiving roughly 18 million pilgrims and tourists annually, has a relatively tiny number of criminal and penal matters registered. It is also worth mentioning that the message of the various media services of the Holy See, disseminated in the major

languages, reaches a truly international audience that makes it arguably one of the most effective moral voices in the world for human rights, including the position against torture and other cruel and inhuman punishments.

Turning now to the third part of the Initial Report, which addresses systematically each of the sixteen substantive articles of the CAT, my Delegation wishes to highlight several significant steps and improvements in Vatican City State to comply with the Convention, even since the consigning of the Initial Report in December 2012. In the first place, there is the modification of Vatican City State legislation with the promulgation of Pope Francis' Apostolic Letter on July 11, 2013, "On the Jurisdiction of Judicial Authorities of Vatican City State in Criminal Matters", particularly article 3, of Law N. VIII, which deals specifically with the Crime of Torture.<sup>7</sup> While the implementation of this basic law into the criminal and penal law of Vatican City State in some fashion touches upon different articles of the Convention, it is worth mentioning a few directly. In relation to Article 1 of the Convention, the new Vatican City State legislation integrates, practically verbatim, the definition of torture and cruel and inhuman punishment as supplied therein and, therefore, *de facto*, fulfills Article 4 of the Convention by its integration into the penal code and the establishment of appropriate penalties for such offences. Paragraph 6 of the same article 3 of the amended Law VIII effectively restates article 15 of the Convention, prohibiting the use of any statement made as a result of torture to be considered as evidence.

Also modified in July 2013, the amendments of Law IX address with greater specificity and clarity the questions of crimes, whether within or outside the territory of the State, of jurisdiction, of extradition, and of terms of sentencing.<sup>8</sup> The procedural and legislative changes seek to implement the principles contained in the Convention against Torture under articles 3, 5, and 8. In particular, one should note the development on the question of extradition and also the denial thereof on the part of the Holy See if the requesting State practices torture or uses capital punishment.<sup>9</sup>

To summarize, the third part of the Holy See Report must be viewed through the updates offered by the recent modifications to the procedures and legislation of Vatican City State which are a significant improvement from previous legislation and enhance positively the contents of the Initial Report. In fact, my Delegation views this new legislation as a direct result of the Holy See's adhesion to the CAT. Therefore, I am sure the Committee will consider these new laws in the ensuing discussion and the eventual Concluding Observations.

The fourth part of the Initial Report, regarding the "Affirmation of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment in the teachings and activities of the Holy See", references the wide-array of documents, proclamations, publications, radio and television programs by which the Holy See actively addresses not only followers of the Catholic Faith, but also the international Community and all people of good will.<sup>10</sup>

In this way, the moral voice of the Holy See, while promoting and defending all authentic human rights, reaches the members of the Catholic Church in an attempt to foster an interior conversion of hearts to love God and one's neighbor. This love, in turn, should overflow into good practices at the local level in accordance with the laws of States. It should be stressed, particularly in light of much confusion, that the Holy See has no jurisdiction - as that term is understood also under article 2.1 of the Convention - over every member of the Catholic Church. The Holy See wishes to reiterate that the persons who live in a particular country are under the jurisdiction of the legitimate authorities of that country and are thus subject to the domestic law and the consequences contained therein. State authorities are obligated to protect, and when necessary, prosecute persons under their jurisdiction. The Holy See exercises the same authority upon those who live in Vatican City State in accordance with its laws. Hence, the Holy See, in respecting the principles of autonomy and sovereignty of States, insists that the State authority, which has legitimate competency, act as the responsible agent of justice in regard to crimes and abuses committed by persons under their jurisdiction. My Delegation wishes to emphasize that this includes not only acts of torture and other acts of cruel and inhuman punishments, but also all other acts considered as crimes committed by any individual who, notwithstanding affiliation with a Catholic institution, is subject to a particular State authority. The obligation and responsibility of promoting justice in these cases resides with the competent domestic jurisdiction.

To recapitulate this fourth part of the Report, it might be said that the measures employed by the Holy See to

take effective legislative, administrative, judicial or other measures to prevent and to prohibit torture and to address its root causes to avoid future acts in this area are abundant. This manifests the Holy See's desire "to lend its moral support and collaboration to the international Community, so as to contribute to the elimination of recourse to torture, which is inadmissible and inhuman."<sup>11</sup>

In line with above considerations, the Holy See assures this Committee of its continued implementation and promotion of the Convention against Torture. An analysis of the Concluding Observations offered in the reviews of other Member States suggests that an evolution in the interpretation of this document may raise some questions on the part of the States Parties. As Party to the CAT, the Holy See wishes, that in the application of the Convention to all appropriate new situations, all should remain within its specific area of concern that the CAT outlines.<sup>12</sup>

My Delegation believes that the Holy See has fulfilled in good faith the obligations assumed under CAT, since it has integrated its values and principles into the legislation of Vatican City State according to the particular and unique nature of this State. In conclusion, allow me to underscore the singular role the Holy See has played, and will continue to play, in advocating on a global level the values and all human rights that safeguard the dignity of every person and which are a necessary component for friendly relations among peoples and peace in the world.

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1 In this sense, the Holy See acted in accord with the provisions of international law of treaties, in full compliance of those norms, as accepted by the other contracting Parties.

2 Already in 1953, Pope Pius XII gave a clear condemnation of torture saying: "Preliminary juridical proceeding must exclude physical and psychological torture and the use of drugs; first of all because they violate a natural right, even if the accused is indeed guilty, and secondly because all too often they give rise to erroneous results." (Address to the Sixth International Congress on Criminal Law, 3 October 1953.) "In recent times the Catholic Church has consistently pronounced itself in favor of unconditional respect for life itself and 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". (Second Vatican Council, Pastoral Constitution *Gaudium et spes*, n. 27. Cfr. John Paul II, *Veritatis Splendor*, n. 80 and *Evangelium Vitae*, n. 3). The Declaration also refers to the Code of Canon Law (1983), cc. 1397-1398, and the Catechism of the Catholic Church (1995), nns. 2297-2298, which "enumerate and clearly identify forms of behavior that can harm the bodily or mental integrity of the individual, condemn their perpetrators and call for the abolition of such acts." Following, and building upon, the teaching found these fundamental documents of the Holy See, one should include the articulation found in the Compendium of the Social Doctrine of the Catholic Church, published in 2004, which in treating the question of criminal interrogation states: "the regulation against the use of torture, even in the case of serious crimes, must be strictly observed: 'Christ's disciple refuses every recourse to such methods, which nothing could justify and in which the dignity of man is as much debased in his torturer as in the torturer's victim.' International juridical instruments concerning human rights correctly indicate a prohibition against torture as a principle which cannot be contravened under any circumstances" (*Compendium of the Social Doctrine of the Catholic Church*, n. 404).

3 The Interpretative Declaration provides evidence of this unique contribution by offering examples from papal addresses and publications. On 14 January 1978, Pope Paul VI, in his last address to the diplomatic corps, after referring to the torture and mistreatment practised in various countries against individuals, concluded as follows: "How could the Church fail to take up a stern stand ... with regard to torture and to similar acts of violence inflicted on the human person?" Pope John Paul II, for his part, did not fail to affirm that "torture must be called by its proper name" (Cfr. Pope John Paul II. *Message for the Celebration of the World Day of Peace*, 1 January 1980). He also expressed his deep compassion for the victims of torture and in particular for tortured women, (see respectively, Pope John Paul II. *World Congress on Pastoral Ministry for Human Rights*, Rome, 4 July 1998; and Pope John Paul II, *Message to the Secretary-General of the United Nations*, 1 March 1993). To these could be added numerous other examples from the pontificates of Pope Benedict XVI and Pope Francis. For

example, Benedict XVI, in speaking of the purpose of punitive institutions, declared: "By their very nature, therefore, these institutions must contribute to the rehabilitation of offenders, facilitating their transition from despair to hope and from unreliability to dependability. When conditions within jails and prisons are not conducive to the process of regaining a sense of a worth and accepting its related duties, these institutions fail to achieve one of their essential ends. Public authorities must be ever vigilant in this task, eschewing any means of punishment or correction that either undermine or debase the human dignity of prisoners. In this regard, I reiterate that the prohibition against torture 'cannot be contravened under any circumstances'" (Benedict XVI, *Address to the Participants in the Twelfth World Congress of the International Commission of Catholic of Catholic Prison Pastoral Care*, 6 September 2007).

4 *Interpretative Declaration*. (The Holy See recognizes that its moral voice may assist the International Community in acting as an active agent in the promotion and defense of human rights. It willingly enters into the Convention against Torture with the principal intention of defending the inviolable rights of the human person and encouraging other Member States to do the same through adequate legislation and institutional practices which respect the life and dignity of the human person.)<sup>5</sup> Ibid<sup>6</sup> Holy See, Initial Report, nn. 4-6.<sup>7</sup> Holy See, *Supplementary Norms: Law VIII*, Chapter I, *Crimes Against the Person*, Art. 3: Torture. Full text follows:<sup>1</sup> 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>2</sup> The penalty is increased by one-half if the offence results in serious injury or if it is committed against a minor. The penalty is doubled if the offence results in an injury of the utmost gravity.<sup>3</sup> If, as an unintended consequence of the offence, the victim dies, the penalty shall be of no less than fifteen years imprisonment.<sup>4</sup> The offence does not exist when the pain or suffering arises from, is inherent to, or is caused by legitimate measures or sanctions.<sup>5</sup> The offence is not justified by an order from a superior officer or a public authority, nor by a state of war or a threat of war, nor by internal political instability or any other exceptional circumstances.<sup>6</sup> No statement made under torture may be invoked or used as evidence in any proceedings, except against a person accused of torture, in order to prove that such a statement was made.<sup>8</sup> Holy See, *Law IX: Amendments to the Criminal Code and the Code of Criminal Procedure*. Of particular relevance vis-à-vis the CAT are articles 1-7 and 32-46.<sup>9</sup> Cfr., Ibid., Chapter I, Article 6 on "Extradition".<sup>10</sup> In particular, the Holy See exercising its voice as a moral authority to the community of believers freely integrated into, and following, Catholic doctrinal and moral teaching, promotes the integral formation of the human person based on an accurate understanding of human dignity. This formation, while guided by Catholic principles, is primarily rooted in the education of the faithful, especially the young, which then also permeates all of society through the dedicated efforts of Catholic inspired institutions, found throughout the world, as they fulfill their mission in the variety of fields from education, health care, penitentiaries, refugee camps, among others.<sup>11</sup> Holy See. Interpretative Declaration.<sup>12</sup> The caveat of the Holy See is twofold. First, for the sake of defending the competency, integrity and duty of the Committee to oversee the implementation of the Convention against Torture, it seems fair and prudent that the focus should remain upon the contents of the Convention. Second, the introduction of other themes, of which the Convention does not speak, effectively diminishes the original focus of the Convention and thus further jeopardizes the situations for those who are truly being abused, tortured and punished. As such the purpose of the Convention, as it is being unfolded in the work of the Committee, runs the risk of not only being ineffective, but even counterproductive, with regard to its original, noble, intention.

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