

Church of the United Nations and Catechism of Human Rights?

Why the Committee against Torture Needs to Review the
Initial Report of the Holy See in a Manner That Respects
Religious Freedom and the Rule of Law

An NGO Report

The Holy See

Initial Report on the Convention against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment

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Submitted by

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The following 53 organizations have expressed to Solidarity Center for Law and Justice, P.C. their agreement with the content of this report and their support for the filing of this report with the UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Upon request, Solidarity Center can provide written emails confirming the support of each of these organizations:

Action4Family, Brussels, Belgium
ArgentinosAlerta.org, Córdoba, Argentina
Associação Mulhere em Acção, Vila Nova de Gaia, Portugal
Association for the Promotion of Family Values, Zagreb, Croatia
Božji otroci, Slovenia
Canada Silent No More, Alberta, Canada
Center for the Renewal of Culture, Zagreb, Croatia
Centre for pro-life and pro-family Initiatives, Warsaw, Poland
Christian Action, Berlin, Germany
Christian Democrats for Life, Muenster, Germany
CitizenGo, Madrid, Spain
Cry for Life, Hilversum, the Netherlands
Derecho a Vivir, Madrid, Spain
East European Mission of Austria, Bad Ischl, Austria
European Christian Political Movement, Amersfoort, the Netherlands
European Dignity Watch, Brussels, Belgium
Family & Life, Dublin, Ireland
Family Center of Lithuania, Kaunas, Slovenia
Family Watch International, Gilbert, Arizona, USA
Federação Portuguesa pela Vida, Lisbon, Portugal
Femina Europa, Paris, France
For Family Rights, St. Petersburg, Russian Federation
Free Society Institute, Vilnius, Lithuania
Fundacja Ruchu ku Cywilizacja Milosci, Kraków, Poland
HazteOir.org, Madrid, Spain
Hnuti Pro život ČR, Jihlava, Czech Republic
Human Dignity Center, Tata, Hungary
In Familia, Braga, Portugal
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In the Name of the Family, Zagreb, Croatia
Ioan Bărbuş Foundation, Bucharest, Romania
Juventude Monárquica Portuguesa, Lisbon, Portugal
Más Libres, Madrid, Spain
National Association of Families and Parents, Vilnius, Lithuania
Natural Family Planning Centre, Zagreb, Croatia
New Women for Europe, Brussels, Belgium
Novae Terrae Foundation, Milan, Italy
One of Us Foundation, Kraków, Poland
Ordo Iuris Institute for Legal Culture, Warsaw, Poland
Parent's Voice for Children, Zagreb, Croatia

Ponto de Apoio à Vida, Lisbon, Portugal
Portugal Pro Vida, Serra-Tomar, Portugal
Profesionales por la Ética, Madrid, Spain
Razón y Fe, Bogotá, Columbia
Red Familia, Chapultepec Morales, Mexico
Res Claritatis, Praha, Czech Republic
Teen Star Association, Zagreb, Croatia
The Justice Foundation, San Antonio, Texas, USA
Together for Life Ministries, Alberta, Canada
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Voto Católico, Bogotá, Columbia
Woman Attitude, Brussels, Belgium
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Foreword

This report is being submitted by Solidarity Center for Law and Justice, P.C., a professional corporation organized under the laws of the State of Georgia, U.S.A. (“Solidarity Center”) for the promotion of social welfare by defending human and civil rights secured by law, to wit: those individual liberties, freedoms, and privileges involving human dignity that are either specifically guaranteed by the U.S. Constitution or international human rights law. When permitted by court rules and practice, Solidarity Center files briefs as *amicus curiae* in litigation of importance to the protection of human and civil rights, particularly when the primary right of parents to direct the upbringing of their children in accordance with the dictates of their consciences is at issue. When permitted by human rights treaty body rules of procedure, Solidarity Center files reports to provide additional information for consideration by human rights treaty bodies in connection with their review of State Party reports, including information regarding the relevant States parties as well as the practices and procedures followed by the treaty bodies in conducting their reviews and in making their concluding observations and recommendations.

This report relates to the Holy See’s Initial Report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/VAT/1 (“Holy See Initial Report”).

Solidarity Center welcomes the opportunity to submit this report, which respectfully requests that, in conducting its review of the Holy See Initial Report and making its concluding observations and recommendations, the Committee against Torture 1) respect the religious freedom of the citizens and residents of the Vatican City State (“VCS”), the Holy See, and Catholics; 2) act only within its limited mandate under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “CAT”); 3) adhere to the “separation of powers” principle that is essential to the rule of law; 4) adhere to the Addis Ababa guidelines on the independence and impartiality of members of treaty bodies; 5) respect the Holy See’s due process right to have an independent judicial authority review the legitimacy of the Committee’s concluding observations and recommendations; and 6) apply customary legal rules of interpretation codified in the Vienna Convention on the Law of Treaties.

By design or otherwise, the United Nations Office of the High Commissioner for Human Rights (“OHCHR”) is using the human rights treaty body system to create universal norms that may complement, or conflict with, the universal norms contained in Canon Law and the teachings and practices of the Catholic Church. As a result, in conducting its review of the Holy See Initial Report and making its concluding observations and recommendations, the Committee against Torture should exercise its duties and responsibilities in an independent and impartial manner that respects religious freedom and the rule of law.

“It is not unusual to meet people who think that *not to believe in any truth, or not to adhere firmly to any assertion as unshakably true in itself*, is a primary condition required of democratic citizens in order to be tolerant of one another and to live in peace with one another. May I say that these people are in fact the most intolerant people, for if perchance they were to believe in something as unshakably true, they would feel compelled, by the same stroke, to impose by force and coercion their own belief on their co-citizens.”

Jacques Maritain¹

I. Overview

The United Nations, States parties, OHCHR, human rights treaty bodies, and nongovernmental organizations (“NGOs”) all have very strong ideas, goals, and strategies pertaining to human rights and their application to national contexts. In essence, the UN human rights treaty body system’s pursuit of its human rights policies and human security agenda is a religious undertaking, a reality reflected in the following remarks made by UN Secretary-General’s Forward to the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies:

The United Nations human rights treaty body system, which combines noble ideals with practical measures to realize them, is one of the greatest achievements in the history of the global struggle for human rights. The treaty bodies stand at the heart of the international human rights protection system as engines translating universal norms into social justice and individual well being. Using a growing set of tools, this system provides authoritative guidance on human rights standards, advises on how treaties apply in specific areas, and informs States parties of what they must do to ensure that all people enjoy their human rights.²

In light of the fact that, for centuries, Canon Law and other official teachings and practices of the Catholic Church have served as authoritative sources for guidance on human rights standards and the pursuit of social justice and individual well being, the Secretary-General’s claim that the UN human rights treaty body system is providing “authoritative” guidance on human rights standards is a startling and troubling one. Basically, it means that, unless the UN’s human rights treaty body system conducts itself in an independent and impartial manner that respects the rule of law and religious freedom, that system will become a coercive one that violates the very human rights that it is dedicated to realizing.³ As a result, the Committee against Torture and all other human rights treaty bodies must exercise extreme caution in reviewing the reports submitted by the Holy See and in making their concluding observations and recommendations.

The Committee against Torture Should Respect the Religious Freedom of the Citizens and Residents of the VCS, the Holy See, and Catholics

At the time of accession to the CAT, the Holy See filed an Interpretative Declaration in which it stated that “in becoming a party to the Convention on behalf of the Vatican City State, [it] undertakes to apply it insofar as it is compatible, in practice, with the peculiar nature of that State.” Canon Law is the primary source of the laws of the VCS and the primary criterion for interpretation. The reliance by the Holy See on Canon Law as the primary criterion for interpreting the VCS’s obligations under international human rights treaties, including the CAT, protects the fundamental right to freedom of religion to which the citizens and residents of the VCS, the Holy See, and Catholics are entitled.

Recently, the Committee on the Rights of the Child recommended “that the Holy See undertake a comprehensive review of its normative framework, in particular Canon Law, with a view to ensuring its full compliance with the Convention.”⁴ The Committee on the Rights of the Child also made concluding observations and recommendations challenging specific Catholic Church teachings and practices in the areas of homosexuality, gender, corporal punishment, family life, and sexual and reproductive health education. By exercising its duties and responsibilities in an independent and impartial manner that respects the rule of law and the religious freedom of the citizens and residents of the VCS, the Holy See, and Catholics, the Committee against Torture can avoid repeating the unauthorized and illiberal actions taken by the Committee on the Rights of the Child.

The OHCHR and Committee against Torture Are Likely Exceeding Their Mandates Under the CAT

In an attempt to generate human rights treaty obligations that go well beyond anything contemplated by the States parties at the time they acceded to the treaties, the OHCHR and human rights treaty bodies, including the Committee against Torture, are likely exceeding the very limited mandates contained in the text of the treaties. While, in doing so, the OHCHR, Committee against Torture, and other treaty bodies, in their opinions, may be advancing the cause of human rights, they are not authorized to do so and, by doing so, undermine the credibility and long-term effectiveness of the international human rights system.

The OHCHR and Committee against Torture Are Violating the “Separation of Powers” Principle and the Rule of Law

By exceeding the limited powers granted to them under the CAT, the OHCHR and Committee against Torture are engaging in the complete range of legislative, executive, and judicial activities that, under the “separation of powers” principle, would normally be shared by three different branches of government or other governing agency. Ironically, in doing so the OHCHR and Committee against Torture

are violating the very separation of powers principle that the OHCHR includes in the manual it uses to train judges, prosecutors, and lawyers on the subject of human rights in the administration of justice. Unless the OHCHR and Committee against Torture respect the separation of powers principle, they will endanger the implementation of the rule of law and the development of a consistent and credible human rights policy.

The Committee against Torture and Its Members Must Act Independently and Impartially as Required by the Addis Ababa Guidelines

The dependence of the Committee against Torture on the OHCHR and NGOs in conducting its activities, the lack of adequate human and financial resources for the strengthening of the human rights treaty system, and the possibility that a reasonable observer could view the activities of one or more members of the Committee as evidencing a bias toward certain teachings and practices of the Catholic Church raise serious concerns about whether the Committee and its members can review the Holy See Initial Report in the independent and impartial manner required by the Addis Ababa Guidelines on the independence and impartiality of members of treaty bodies. Therefore, the Committee against Torture and its members should use the occasion of their review of the Holy See Initial Report, and their making of concluding observations and recommendations thereunder, as an opportunity for thoroughly considering their collective and individual duties and responsibilities under the Addis Ababa Guidelines. Ultimately, any biased or conflicted member should consider whether he or she has an obligation to recuse himself or herself from dialogues, discussions, meetings, consultations, and briefings relating to the Committee's review of the Holy See Initial Report.

The Lack of Independent Judicial Review Undermines the Holy See's Right to Due Process

With regard to the Committee against Torture's State party monitoring and reporting process, the OHCHR and Committee interpret the CAT, determine whether the State party is respecting the CAT, and decide what actions the State party must take to comply with the CAT. Together, they serve as jurist, jury, and judge, leaving the State party with no recourse for contesting any concluding observations and recommendations that conflict with a lawful interpretation of the provisions of the CAT. As a result, in the present case, the Committee against Torture could use the treaty body reporting process to publicly shame the Holy See on disputable applications of the CAT and attempt, as the Committee on the Rights of the Child did, to coerce the Holy See "to undertake a comprehensive review of its normative framework, in particular Canon Law, with a view to ensuring its full compliance with the Convention." Absent the opportunity to secure an independent judicial review of such an outcome, the Holy See would have no recourse but to incur the resulting extremely negative public scrutiny associated with being labeled a "torturer" by the

media and those NGOs that oppose certain teachings and practices of the Catholic Church.

The Committee against Torture Should Not Use Its Own Views and General Comments to Interpret the Terms of the CAT Beyond Their Ordinary Meaning

Although the Committee against Torture has no mandate under the CAT to do so, it has assumed responsibility for interpreting the provisions of the CAT. To protect the Committee's independence and impartiality and to produce interpretations that the international community can view as rational and legitimate, the Committee against Torture should apply the customary international legal method of interpretation codified in the Vienna Convention on the Law of Treaties. Absent the express agreement of the States parties, in order to expand the terms of the CAT beyond their ordinary meaning, the Committee against Torture must rely upon a subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation. The Committee's production of concluding observations, recommendations, and General Comments do not reflect an agreement among the States parties to the CAT, but only the agreement of the members of the Committee and; therefore, should not be used to interpret the CAT beyond the original meaning contemplated by the Holy See to address "evolving" thoughts, attitudes, and practices relating to abortion, sexuality, marriage, childrearing, and family issues.

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Article 18(1), International Covenant on
Civil and Political Rights

II. The Committee against Torture Should Respect the Religious Freedom of the Citizens and Residents of the VCS, the Holy See, and Catholics

On 22 June 2002, the Holy See acceded to the CAT. The Holy See exercises complete sovereignty over the VCS and represents the VCS in international relations.⁵ At the time of accession to the CAT, the Holy See filed an Interpretative Declaration (the “Interpretative Declaration”), in which it stated that “in becoming a party to the Convention on behalf of the Vatican City State, [it] undertakes to apply it insofar as it is compatible, in practice, with the peculiar nature of that State.”

Canon Law is the primary source of the laws of the VCS and the primary criterion for interpretation, although not every aspect of Canon Law is applicable in the temporal governance of the VCS. As explained in the Holy See Initial Report:

Canon law, in comparison with the laws of other States, is a complex unity of divine positive law, divine natural law and human law which reflect and express the Catholic Church: its origin, means, spiritual and moral mission, organizational structure, supernatural end, and spiritual and temporal goods. The divine positive law and divine natural law (the latter, also referred to as simply “natural law”) are those immutable norms presented in the Decalogue and knowable through right reason. They indicate the primary and essential norms regulating the moral life, as interpreted by the Church’s teaching authority and set out in the Catechism of the Catholic Church.⁶

In the Interpretative Declaration, the Holy See made it clear that its moral support and collaboration with the international community for the elimination of recourse to torture would take place in the spirit of: 1) the Catholic Church’s consistent pronouncement in favor of unconditional respect for life and 2) the law of the Church and the Catechism of the Catholic Church, the latter of which “aims at presenting an organic synthesis of the essential and fundamental contents of Catholic doctrine, as regards both faith and morals” and the principle sources of which are “the Sacred Scriptures, the Fathers of the Church, the liturgy, and the Church’s Magisterium.”⁷

The use by the Holy See of Canon Law as the primary criterion for interpreting the VCS's obligations under international human rights treaties, including the CAT, protects the fundamental right to freedom of religion to which citizens and residents of the VCS, the Holy See, and Catholics are entitled. This fundamental right to freedom of religion includes "freedom either alone or in community with others and in public or private, to manifest his religion or belief," without undue outside interference.⁸ Simply put, it is highly unlikely that, by acceding to the CAT and other international human rights treaties, the Holy See agreed to subordinate Canon Law to the ambiguous and shifting provisions of those treaties as unilaterally interpreted and implemented by a small number of people working for the OHCHR and a few experts serving on human rights treaty bodies.

To protect the religious freedom of Catholics, the provisions of Article 18 of the International Covenant on Civil and Political Rights ("ICCPR") must also apply to the right of the Holy See to determine Canon Law. The Human Rights Committee has made it clear that "*the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.*"⁹ (emphasis added) Under this and any other reasonable interpretation of Article 18, the Holy See is guaranteed "independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."¹⁰ If the CAT or any other treaty body can dictate changes to Canon Law or religious teachings and practices integral to the conduct of the Catholic Church's basic affairs, then, correspondingly, the religious freedom of Catholics will be violated.

In its concluding observations on the second periodic report of the Holy See, the Committee on the Rights of the Child made a recommendation that, if repeated by the Committee against Torture, would evidence a dangerous trend toward the violation of the religious freedom of the citizens and residents of the VCS, the Holy See, and Catholics. After welcoming the Holy See's approach to ensuring that the legislation of the VCS complies with the Convention on the Rights of the Child, the Committee on the Rights of the Child expressed its regrets "that the same approach has not been followed in relation to its internal laws, including Canon Law." The Committee on the Rights of the Child also expressed its concern "that some of the rules of Canon Law are not in conformity with the provisions of the Convention, particular those relating to children's rights to be protected against discrimination, violation and all forms of sexual exploitation and sexual abuse."¹¹ Shockingly, the Committee on the Rights of the Child then recommended "*that the Holy See undertake a comprehensive review of its normative framework, in particular Canon Law, with a view to ensuring its full compliance with the Convention.*"¹² (emphasis added)

The Committee on the Rights of the Child also made concluding observations and recommendations challenging specific Catholic Church teachings and practices in the areas of life, sexuality, gender, corporal punishment, family life, and sexual and reproductive health education.

The Committee on the Rights of the Child's unconscionable recommendations evidence that the OHCHR and the human rights treaty bodies are attempting to generate State Party human rights treaty obligations that go well beyond what States parties intended or contemplated at the time they acceded to the treaties. To protect religious freedom and to avoid becoming inextricably and perpetually entangled in debates over the propriety of certain Catholic teachings and practices, the Committee against Torture should refrain from repeating this unfortunate mistake. Otherwise, the Committee runs the risk of establishing its own views on moral issues as an "official" religion in opposition to the Catholic faith.

The disposition of mankind, whether as rulers or as fellow-citizens, to impose their own opinions and inclinations as a rule of conduct on others, is so energetically supported by some of the best and by some of the worst feelings incident to human nature, that it is hardly ever kept under restraint by anything but want of power.

John Stuart Mill¹³

III. The OHCHR and Committee against Torture Are Likely Exceeding Their Mandates Under the CAT

In an attempt to generate human rights treaty obligations that go well beyond anything contemplated by the States parties at the time they acceded to the treaties, the OHCHR and human rights treaty bodies, including the Committee against Torture, are likely exceeding the very limited mandates contained in the text of the treaties.

Article 19(1) of the CAT requires States parties to submit reports to the Committee against Torture “on the measures they have taken to give effect to their undertakings under the CAT.” This provision contemplates a reporting process consisting of having States parties provide details regarding legislative, regulatory, judicial and other developments that have furthered their compliance with the CAT. Article 19(1) does not require States parties to report to the Committee against Torture on obstacles to compliance with the CAT or on domestic laws, regulations, court decisions, or practices that may contradict or violate the CAT. As evidenced by the limited State party reporting requirements of Article 19(1) and common sense, it is highly unlikely that any State party would have acceded to an international human rights treaty that would require it to detail in writing the many ways in which it might not be complying with the CAT. Yet, contrary to the plain meaning of Article 19(1), the OHCHR and the Committee against Torture have developed a State party monitoring and reporting process that directs States parties to do just that. Also, the OHCHR and Committee encourage NGOs and civil society organizations (“CSOs”) to cooperate with the Committee against Torture in identifying and detailing the many ways in which States parties are allegedly not complying with the CAT. Likewise, without authority for doing so in the CAT, the Committee against Torture uses the State party reporting process to direct States parties to take specific legislative or regulatory actions, engage in programs and activities, and ratify new international agreements.¹⁴

Article 19(3) of the CAT requires the Committee against Torture to consider each State party report and permits the Committee to “make such general comments on the report as it may consider appropriate” and forward these general comments to the State party concerned. Contrary to the practice of the Committee against Torture, Article 19(3) does *not* direct the Committee to compare the general comments made in connection with one State party’s report with the general

comments made in connection with the reports of other States parties and to synthesize and publish commonly made general comments on particular issues in the form of one or more “General Comment.” Yet, to date, the Committee against Torture has published three General Comments pursuant to which it interprets the provisions of the CAT and explains the obligations of States parties thereunder. Absent clear authority to do so under the CAT, the production by the Committee against Torture of these General Comments is an *ultra vires* act, beyond the Committee’s powers under the CAT, and, therefore, is null and void.

While, by engaging in these activities, the OHCHR and Committee against Torture, in their opinions, may be advancing the cause of human rights, the fact is they are not authorized to engage in these activities, and, by doing so, undermine the international human rights system. In light of the very limited powers granted to the Committee under the CAT, the following acts by the OHCHR and the Committee must be recognized as being *ultra vires*:

- Exerting on States parties any kind of pressure aimed at having them change their national legislation or ratify new international agreements, unless directly following from the respective treaty;
- Interpreting the CAT in a way inconsistent or contrary to its text, the norms of international treaty law, or intergovernmental consensus;
- Attempting to present their interpretation of the CAT as a binding norm;
- Attempting to introduce new “human rights” and the corresponding state obligations not following from the CAT and definite intergovernmental consensus; and
- Directly or indirectly introducing into the sphere of international law notions and concepts with no established intergovernmental consensus behind them.¹⁵

By abusing their limited powers under the CAT and engaging in *ultra vires* acts, the OHCHR and the Committee against Torture violate the “separation of powers” principle, thereby also violating the rule of law.

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

James Madison¹⁶

IV. The OHCHR and Committee against Torture Are Violating the “Separation of Powers” Principle and the Rule of Law

By exceeding the limited powers granted to them under the CAT, the OHCHR and Committee against Torture are engaging in the complete range of legislative, executive, and judicial activities that, under the “separation of powers” principle, would normally be split among three different branches of government or other governing agency. In doing so, they are not respecting the rule of law.

In the present case, the OHCHR and Committee against Torture have assumed sole responsibility for interpreting the CAT, determining whether the Holy See is respecting the CAT, and deciding what actions the Holy See must take to comply with the CAT. Thus, *the OHCHR and Committee are serving as jurist, jury, and judge*. When the Committee against Torture interprets the CAT, monitors State party compliance with the CAT, and recommends remedial State party actions, the Committee members are unable to objectively conduct State party reviews. Because the Committee against Torture seeks to protect and promote its *ultra vires* interpretation of the CAT, it is compelled to monitor the Holy See’s implementation of the CAT with that objective in mind. Likewise, the Committee will only make those concluding observations and recommendations that protect and promote its interpretation of the CAT.

Ironically, the OHCHR and Committee against Torture are violating the very “separation of powers” principle that the OHCHR includes in the manual it uses to train judges, prosecutors, and lawyers on the subject of human rights in the administration of justice:

In the modern constitutional State, the principle of an independent Judiciary has its origin in the theory of separation of powers, whereby the Executive, Legislature and Judiciary form three separate branches of government, which, in particular, constitute a system of mutual checks and balances aimed at preventing abuses of power to the detriment of a free society.¹⁷

Similarly, the Human Rights Committee has noted with concern that “the lack of clarity in the delimitation of the respective competences of the executive, legislative and judicial authorities may endanger the implementation of the rule of law and a consistent human rights policy.”¹⁸

Without legal authorization, the OHCHR and Committee against Torture have assumed complete responsibility for interpreting, administering, monitoring, and ensuring State party compliance with the CAT. Specifically, the OHCHR and Committee against Torture:

- Interpret the provisions of the CAT and, through the production of General Comments, generate the human rights policies which the Committee is responsible for monitoring;
- Train new members of the Committee against Torture on the “approved” content of the CAT and on the procedures the Committee members are to follow in monitoring and reporting on State party compliance with these policies;
- Train States parties, NGOs, and CSOs on how to effectively participate in the Committee against Torture’s State party monitoring, reporting, and compliance process;
- Arrange for and supervise in-country visits during which OHCHR staff and members of the Committee against Torture ascertain the degree to which States parties are complying with the CAT;
- Prepare the list of issues to which States parties are to respond during the reporting process; secure and review the written reports submitted by States parties during the reporting process; supervise the private and public meetings at which the States parties present their reports; prepare and adopt concluding observations and recommendations for consideration and adoption by the Committee; and organize and conduct follow-up meetings and in-country visits to determine the degree to which States parties are implementing the recommendations; and
- Encourage and organize NGOs, CSOs, and other parties that support the OHCHR’s and Committee’s interpretation of the CAT to engage in building grassroots support for those policies at the national level and to prepare and submit reports expressing support for those policies during State party monitoring process.

Absent an appeals mechanism for independent judicial review of whether the concluding observations and recommendations made by the Committee against Torture conform with the properly interpreted provisions of the CAT, the Committee’s State party monitoring and reporting process violates the requirements of independence and impartiality set forth in the Addis Ababa Guidelines on the independence and impartiality of members of treaty bodies (the “Guidelines”).¹⁹

Achieving such a standard of independence and impartiality [under the Addis Ababa Guidelines] is a precondition for attaining the ultimate objective of the treaty body system, namely to provide the most objective and respected assessment and guidance to States parties in fulfilling their human rights treaty obligations.

High Commissioner Navanethem Pillay²⁰

V. The Committee against Torture and Its Members Must Act Independently and Impartially as Required by the Addis Ababa Guidelines

The dependence of the Committee against Torture on the OHCHR and NGOs in conducting its activities, the lack of adequate human and financial resources for the strengthening of the human rights treaty system, and the possibility that a reasonable observer could view the activities of one or more members of the Committee as evidencing a bias toward certain teachings and practices of the Catholic Church, raise serious concerns about whether the Committee and its members can review the Holy See Initial Report in the independent and impartial manner required by the Guidelines.

The Committee against Torture's annexation of the Guidelines to its Rules of Procedure on 13 May 2013 represents a long-overdue recognition of the necessity for the Committee and its members to be independent and impartial in performing their duties and responsibilities under the CAT. The Guidelines require that the members of the Committee against Torture be independent and subjectively and objectively impartial:

The independence and impartiality of members of the human rights treaty bodies is essential for the performance of their duties and responsibilities and requires that they serve in their personal capacity. Treaty body members shall not only be independent and impartial, but shall also be seen by a reasonable observer to be so.²¹

The Committee against Torture's adoption of the Guidelines was a seminal event, as adherence to the Guidelines by the Committee and its members is critical to reclaiming and maintaining the credibility of the Committee's State party monitoring and reporting process. Now that the Committee against Torture has adopted the Guidelines, it is imperative that the members of the Committee take seriously the dictates of independence and impartiality required by the Guidelines. The commitment the Committee members have made to independence requires them to closely consider whether the lack of adequate financial and human resources relative to the performance of the Committee's responsibilities has rendered them dependent on the OHCHR and NGOs to such a degree that they are

no longer independent. Meanwhile, the commitment the Committee members have made to impartiality requires each member to honestly consider whether, in the present case, a reasonable observer could view his or her activities as evidencing a bias toward certain teachings and practices of the Catholic Church.

a. The Committee against Torture's dependence on the OHCHR and NGOs undermines its independence under the Guidelines

The Committee against Torture's lack of adequate financial and human resources to conduct all of the activities in which it is engaging, and the resulting dependence of the Committee on the OHCHR and NGOs to facilitate, inform, and participate in such activities, raises the question of whether, as a whole, the Committee can realistically conduct its monitoring of the Holy See independently of the direction, influence, or instructions of the OHCHR and NGOs. This is especially the case in light of recent efforts by the OHCHR and UN Secretary-General to strengthen the human rights treaty bodies.

Under the Guidelines, the principle of independence requires that Committee against Torture members "not be subject to the direction or influence of any kind, . . . and they shall neither seek nor accept instructions from anyone concerning the performance of their duties."²² Yet, the OHCHR plays a pervasive role in interpreting the CAT, preparing and publishing General Comments, training members of the Committee against Torture, drafting concluding observations and recommendations for consideration by the Committee, and conducting follow-up discussions and in-country visits regarding the Holy See's implementation of such recommendations.

Meanwhile, well-funded NGOs that oppose the teachings and practices of the Catholic Church relating to abortion and sexuality regularly communicate with the Committee against Torture and other human rights treaty bodies to inform and influence their deliberations, concluding observations, and recommendations. For example, the Center for Reproductive Rights is a global non-governmental organization based in New York that uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to respect, protect, and fulfill. Recently, the Center for Reproductive Rights has submitted letters:

- Requesting the Human Rights Committee, based on a legal analysis provided by the Center, to consider having the Irish Government report on, and answer questions about, issues relating to abortion in Ireland;²³
- Requesting the Committee on the Elimination of Discrimination against Women, based on an analysis provided by the Center, to consider having the Hungarian Government report on, and answer questions about, issues relating to the situation of women and girls' sexual and reproductive rights in

Hungary, including greater access to abortion, contraception, and sexuality education in schools;²⁴

- Identifying four reproductive rights issues for the Human Rights Committee to consider as it prepares its list of issues for review of the United States, including the impact of religious refusal laws on women's reproductive healthcare;²⁵ and,
- Providing information to further the work of the Committee against Torture for the adoption of its list of issues prior to reporting for the Republic of Moldova by providing independent information concerning the rights protected by the CAT.²⁶

Any person with access to the Internet who conducts one or two days' worth of research relating to the current working methods of, and participants in, the human rights treaty system will quickly realize that OHCHR staff and outside NGO lawyers, human rights experts, and lobbyists are conducting a significant part of the work relating to, and produced by, the human rights treaty body system. As a result, *no reasonable observer could believe that the members of the Committee against Torture are not subject to the direction or influence of the OHCHR and NGOs and do not seek or accept instructions from OHCHR staff regarding the performance of their duties.*

The persistent and pervasive underfunding of the UN human rights treaty body system aggravates the Committee against Torture's dependence on the OHCHR and NGOs, which further jeopardizes the Committee's independence under the Guidelines. On 17 January 2014, the UN Secretary-General reported to the Human Rights Council his conclusion that "the growth of the treaty body system, combined with the increase in States parties to the international human rights instruments has not been met with an equivalent allocation of resources or meeting time necessary to ensure the effective fulfillment of the treaty bodies' mandates."²⁷

Many years ago, regardless of the lack of authority contained in the international human rights treaties, the OHCHR decided that it would develop and direct the treaty body system in a way that would advance the OHCHR's human rights policy agenda beyond any level that States parties could have contemplated or foreseen. Once the OHCHR decided to do so, it could no longer reasonably maintain that the Committee against Torture or any other treaty body is not subject to the OHCHR's direction, influence, and instructions and to the influence of a few well-funded NGOs that have a global reach and capacity. In light of recent steps taken by the OHCHR to strengthen the treaty body system, and the resulting systemic underfunding of the treaty body system, the OHCHR's direction of, and influence over, the members of the Committee against Torture, and the pervasive influence of NGOs over the Committee's work program and outcomes, will only increase.

- b. The UN's strengthening of the human rights treaty body system will significantly increase the Committee against Torture's lack of independence

The UN Secretary-General's January 2014 report on measures taken to improve the effectiveness, harmonization, and reform of the treaty body system listed the ways in which the OHCHR continuously promotes the harmonization of the work of the treaty bodies and the secretariats supporting them. These new measures are designed to ensure that:

- All of the treaty bodies are following the same methods and instructions;
- All OHCHR divisions are aware of how to integrate the outcomes of the treaty body reporting process to realize the human rights policy outcomes desired by OHCHR;
- OHCHR representatives present at the national level actively participate and identify States parties' compliance shortcomings;
- OHCHR treaty body secretariats and treaty body members can quickly access the OHCHR human rights policies and outcomes that can guide their upcoming State party reporting events;
- NGOs and CSOs who share the OHCHR human rights policies and agenda have the up-to-date information they need to organize grassroots support at the national level and prepare and submit shadow reports to influence the treaty body reporting process;
- That the UPR process is informed by the concluding observations and recommendations made during the treaty body reporting processes; and
- OHCHR human rights policies and treaty body monitoring outcomes are disseminated to present and future supporters of the OHCHR human rights agenda.²⁸

As the Secretary-General has concluded, this growth of the treaty body system has resulted in a "chronic deficiency of resources [that] has led to a significant backlog of reports awaiting consideration by the treaty bodies and an excessive waiting time for authors of individual complaints, largely undermining the protective function of the complaints procedures."²⁹ This deficiency of resources significantly and negatively impacts the ability of the OHCHR treaty body secretariats to properly and timely serve their respective treaty bodies. Meanwhile, global NGOs, which provide the Committee against Torture and other human rights treaty bodies with free legal counsel and background reports on country situations, significantly influence the work program and outcomes of the human rights treaty system. Yet, the OHCHR

secretariats and members of the treaty bodies do not have the capacity to independently verify the information provided by those NGOs.

The OHCHR and a few influential NGOs have created a vast, unaccountable human rights global governance network that directs, influences, and instructs the Committee against Torture in its interpretation and implementation of the CAT.³⁰ The mere fact that States parties elect the experts who serve on the Committee does not ensure the Committee's independence from the OHCHR and its NGO partners. As the UN strengthens the treaty body system, it is incumbent on the members of the Committee against Torture, in the context of its State party monitoring and reporting engagements, including those relating to the Holy See, to honestly assess whether they are acting independent of the OHCHR and NGOs, as required under the Guidelines.

- c. One or more members of the Committee against Torture may not be impartial with respect to the Holy See

Regardless of whether the Committee against Torture can truly be independent in regard to its monitoring of the Holy See, the Committee members must be impartial.

The Guidelines provide that “all members shall avoid any action in relation to the work of their treaty body which might lead to or might be seen by a reasonable observer to lead to bias against States.”³¹

The Guidelines also provide that “a member shall not participate or influence in any way the consideration of a State party report by the treaty body, or by any of its subsidiary bodies, if he or she may be seen by a reasonable observer to have a conflict of interest with respect to that State party.”³²

Thus, under the Guidelines, questions about the impartiality of a member of the Committee against Torture in its monitoring of the Holy See will arise where any evidence exists of a possible pre-disposition against the teachings and practices of the Catholic Church relating to the issues of life, abortion, sexuality, sexual orientation, marriage, family, bioethics, or euthanasia.

For example, in 1994, the Chairman of the Committee against Torture (who also serves as the Chair of the United Nations Human Rights Treaty Bodies) participated in, and wrote the subsequent Preface to a law journal article summarizing the deliberations of, a conference that examined possible strategies for ensuring that reproductive rights are respected in practice at the local, national, and international levels.³³ According to the Preface, “*the goal of the Conference was to evaluate how international law could be used more effectively to advance women's reproductive rights in light of the United Nations International Conference on Population and Development (ICPD) held in Cairo, Egypt in September 1994.*”³⁴ (emphasis added)

With no intention of impugning the esteemed Chairman's personal or professional character, his participation in, and public support for, a conference so completely at odds with the teachings and practices of the Catholic Church relating to life and sexuality issues raises the question whether he has engaged in an action in relation to the work of the Committee against Torture which might lead to, or might be seen by a reasonable observer to lead to, bias against the Holy See.

In addition, the Chairman's role as Dean of American University Washington College of Law and his supervisory relationship and financial support for one of America's leading advocates for the legal recognition of a wide range of personal relationships beyond traditional marriage raise the possibility of a conflict of interest under the Guidelines.

The Guidelines provide:

Individuals holding or assuming decision-making positions in any organization or entity which may give rise to a real or perceived conflict of interest with the responsibilities inherent in the mandate as a member of a treaty body shall, whenever so required, not undertake any functions or activities that may appear not to be readily reconcilable with the perception of independence and impartiality. Such organizations or entities may include private corporations or entities, civil society organizations, *academic institutions* or State-related organizations.³⁵ (emphasis added)

In his capacity as Dean of Washington College of Law, the Chairman of the Committee against Torture supervises the Washington College of Law's Women and the Law Program and the work of Nancy Polikoff, a Professor of Law at the law school. Professor Polikoff teaches in the areas of family law, civil procedure, and sexuality and the law.

In her 2008 book titled *Beyond (Straight and Gay) Marriage: Valuing all Marriages under the Law*, Professor Polikoff acknowledged that, "Dean Claudio Grossman provided generous financial support."³⁶ Earlier, at the outset of her 2002 *Hofstra Law Review* article titled "Ending Marriage as We Know It," Professor Polikoff stated that she appreciated "the summer research grant from Washington College of Law Dean Claudio Grossman that enabled me to complete this Article."³⁷ In the latter article, *which the Chairman of the Committee against Torture enabled to be published*, Professor Polikoff concludes:

Rather than invoke the advantages of marriage as grounds for access by same-sex couples, advocates for lesbians and gay men could work to create a more just network of laws, regulations, and programs that value a wide range of close personal adult relationships. . . . Lasting commitment, care, love, and emotional and economic support also occur in a wide range of relationships. When the law can recognize and reflect this fact, we will have ended marriage as we know it.³⁸

Clearly, the Committee Chairman's supervision and financial support of Nancy Polikoff raises questions about his impartiality under the Guidelines in connection with the Committee against Torture's monitoring of the Holy See's compliance with the CAT.

Unfortunately, at the close of the Committee against Torture's review of the Holy See Initial Report, the Committee may make concluding observations and recommendations about the Holy See's "normative framework," including Canon Law and Catholic Church teachings and practices relating to life, sexuality, sexual orientation, marriage, childrearing, family, or other issues. As that may be the case, then each member of the Committee should consider whether, under the Guidelines, the making of such observations and recommendations might lead to, or might be seen by a reasonable observer to lead to, bias against the Holy See. Each Committee member should also consider whether he or she holds a decision-making position in any organization or entity which may give rise to a real or perceived conflict of interest with the responsibilities inherent in serving on the Committee's review of the Holy See. If so, each biased or conflicted member should consider whether he or she has an obligation to recuse himself or herself from related dialogues, discussions, meetings, consultations, and briefings in the manner contemplated by the Guidelines.³⁹

[The UN General Assembly] *decides* to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.

UN General Assembly Resolution
A/RES/61/261 (2007)

VI. The Lack of Independent Judicial Review Undermines the Holy See's Right to Due Process

The UN human rights treaty body system must respect the due process rights of States parties, including engaging in an independent judicial review of whether, in making concluding observations and recommendations, a treaty body has exceeded its mandate or misinterpreted or misapplied the provisions of a human rights treaty.

Admirably, the UN goes to great lengths to ensure the due process rights of its staff. The UN has many rules governing its internal affairs that are designed to ensure integrity, fairness, and equality in the treatment of its employees. To address situations where UN employees feel their rights have been violated, they have access to an internal justice system, recourse to which the UN views as a fundamental right of staff. The purpose of the UN's internal justice system is to serve as "a pillar in the overall effort to strengthen accountability and ensure responsible decision-making."⁴⁰ The UN Internal Justice System includes a Dispute Tribunal that hears and decides cases filed by UN staff members appealing administrative decisions relating to alleged violations of their terms of employment. In addition, both UN staff members and the Administration have a right to appeal the judgments of the Dispute Tribunal to the UN Appeals Tribunal.

Ironically, although the UN grants its staff the right to an independent judicial review of whether their conduct has violated UN rules and regulations, the UN fails to provide States parties to human rights treaties the right to an independent judicial review of the propriety of concluding observations and recommendations alleging their non-compliance with treaty obligations. This procedural deficiency violates the due process rights of States parties and is unjust.

With regard to the Committee against Torture's State party monitoring and reporting process, the OHCHR and Committee interpret the CAT, determine whether the State Party is respecting the CAT, and decide what actions the State party must take to comply with the CAT. Together, they serve as jurist, jury, and judge, leaving the State party with no recourse for contesting any concluding observations and recommendations that conflict with a lawful interpretation of the provisions of the

CAT. As a result, in the present case, the Committee against Torture could use the treaty body reporting process to publicly shame the Holy See on disputable applications of the CAT and attempt, as the Committee on the Rights of the Child did, to coerce the Holy See “to undertake a comprehensive review of its normative framework, in particular Canon Law, with a view to ensuring its full compliance with the Convention.” Absent the opportunity to secure an independent judicial review of such an outcome, the Holy See would have no recourse but to incur the resulting extremely negative public scrutiny associated with being labeled a “torturer” by the media and those NGOs that oppose certain teachings and practices of the Catholic Church.

In cases such as this, where an agency and its agents are responsible for generating policies, determining compliance, and publicly recommending measures to remedy non-compliance, it is instructive to consider Article 6 § 1 of the European Convention on Human Rights and Fundamental Freedoms (the “Convention”). Article 6 § 1 of the Convention provides that “in determining his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” Clearly, as contemplated by Article 6 § 1 of the Convention, the Committee against Torture is not an independent and impartial tribunal established by law. As a result, if the Committee concludes that the Holy See’s “normative framework” does not comply with international human rights norms and recommends that Canon Law and Church teachings be revised to comply with the CAT, the Committee’s lack of independence and impartiality will violate the civil rights of the citizens and residents of the VCS, the Holy See, and Catholics.

To avoid such a violation, the Holy See must be able appeal the Committee’s concluding observations and recommendations to a judicial body that has full jurisdiction and can provide the guarantees of independence and impartiality.⁴¹ Unfortunately, the Committee against Torture’s reporting process does not provide a State party with the opportunity to challenge the Committee’s concluding observations or recommendations before an independent judicial body.

In the *Bryan* case, pursuant to land use policies promulgated by the Secretary of State for the Environment, a local town council ordered Bryan to demolish two brick buildings on his land. Bryan appealed to the Department of the Environment and an inspector who was a civil servant and a member of the salaried staff of the Department of Environment heard his case. The Secretary of State had appointed the inspector and had the power to withdraw the inspector from the case at any time. The inspector dismissed Bryan’s appeal. The European Court of Human Rights (“ECHR”) determined that, because the Secretary of State, whose own policies were at issue, could withdraw the inspector, a reasonable person would not view the inspector to be independent and impartial. However, *because Bryan was able to appeal his case to the High Court and secure an independent judicial review of his case*, the ECHR determined there had not been an Article 6 § 1 violation.

The role of an inspector in land use planning cases is comparable to the role of a member of the Committee against Torture in regard to its review of the Holy See's compliance with the CAT. The inspector performs his duties subject to the direction or influence of the Secretary of State and seeks or accepts the Secretary of State's instruction. Similarly, a member of the Committee performs his duties subject to the direction or influence of the OHCHR and seeks or accepts the OHCHR's instruction. The inspector considers the facts and circumstances relating to the landowner's compliance with environmental policies or norms generated by the Secretary of State. Similarly, a member of the Committee against Torture considers the facts and circumstances relating to the Holy See's compliance with human rights policies or norms generated by the OHCHR and the Committee. The inspector is an expert who listens to the views of the landowner and other interested parties. Similarly, the Committee against Torture member is an expert who listens to the views of the Holy See and other interested parties. Both the inspector and Committee member produce a report in which he makes concluding observations and recommendations.

If the inspector or member of the Committee against Torture misinterprets the land use planning legislation or human rights treaty provisions under which he purports to act, or if he takes into account matters irrelevant to his decision or fails to take into account matters relevant to his decision, or reaches a perverse decision, there must be a higher judicial authority that can review the decision. Otherwise, important civil rights, including, in the case of a landowner, the right to property or, in the case of the citizens and residents of the VCS, the Holy See, and Catholics, freedom of thought, conscience, and religion or belief, may be violated.

Ultimately, despite the facts that members of the Committee against Torture are not judges and that their concluding observations and recommendations are not binding, it seems that the Committee and the OHCHR, as well as some States parties, NGOs, and courts, view these concluding observations and recommendations as being similar to judgments. Also, many of these same parties view General Comments produced by the Committee against Torture as authoritative interpretations of the CAT or as having considerable legal weight. As a result, until an independent judicial authority is created to review the Committee against Torture's concluding observations and recommendations regarding the Holy See's compliance with the CAT,⁴² the Committee must take all steps necessary to ensure that its concluding observations and recommendations and General Comments are credible and persuasive ones. One important step is for the Committee against Torture, in interpreting the provisions of the CAT, to apply an appropriate and accepted method of interpretation that makes the interpretations rational and legitimate as far as legal issues are concerned. Thus, the Committee against Torture should apply the treaty interpretation rules contained in the Vienna Convention on the Law of Treaties (the "Vienna Convention"). The use of those rules will help distinguish the Committee's legitimate determinations of the meaning of the CAT provisions from arbitrary and random findings that manifest a lack of independence or impartiality.⁴³

Some people are in favor of the Living Constitution because they think it always leads to greater freedom — there’s just nothing to lose, the evolving Constitution will always provide greater and greater freedom, more and more rights. Why would you think that? It’s a two-way street. And indeed, under the aegis of the Living Constitution, some freedoms have been taken away.

U.S. Supreme Court
Justice Antonin Scalia⁴⁴

VII. The Committee against Torture Should Not Use Its Own Views and General Comments to Interpret the Terms of the CAT Beyond Their Ordinary Meaning

The United Nations has declared the Universal Declaration on Human Rights to be a “living document that will continue to inspire generations to come.”⁴⁵ However, it is one thing to refer to the UDHR as a living document that can inspire; it is another thing to consider the UDHR and various human rights treaties generated after its adoption as “living” documents in the sense that a handful of unelected and unaccountable experts can unilaterally interpret them to invent new economic, social, and cultural rights. Thus, it is absolutely necessary for the Committee against Torture to apply recognized international standards of treaty interpretation.

Although the Committee against Torture has no mandate under the CAT to do so, it has assumed responsibility for interpreting the provisions of the CAT. Yet, as part of an ongoing debate about treaty body treaty interpretation, commentators “regularly criticize a lack of substantial arguments, coherence, and analytical rigor; the absence of a visible concept of interpretations; and the existence of contradictory remarks by different committee members, which are caused by the absence of a principled approach.”⁴⁶ Therefore, to protect the Committee’s independence and impartiality and to produce interpretations that the international community can view as being rational and legitimate, the Committee against Torture should apply the customary international legal method of interpretation codified in Articles 31 and 32 of the Vienna Convention. “Such an approach will ultimately strengthen human rights law by contributing to clearly circumscribing rights and obligations, instead of risking weakening human rights law by blurring the line between existing obligations and desirable future developments.”⁴⁷

According to the general rule of interpretation contained in Article 31(1) of the Vienna Convention, “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” However, this limited interpretative tool is of little value to the Committee against Torture, as it seeks to apply the CAT beyond its

ordinary meaning to cases not contemplated by the States parties. To remedy this situation, the Committee could apply Article 31(3)(a), which permits the Committee to take into account “any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;” however, this would require States parties to reach further agreement about how to interpret the CAT.

Another interpretative option, under Article 31(3)(b), would be for the Committee against Torture to take into account “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.” Under this provision, the Committee against Torture and other human rights treaty bodies may argue that the concluding observations and recommendations made under their respective State party treaty body monitoring and reporting processes, and the General Comments generated therefrom, constitute “subsequent practices in the application of the treaty.” However, this argument fails to satisfy the second element of Article 31(3)(b), which requires that the “subsequent practice” actually establish the “agreement of the parties.” *The production of concluding observations, recommendations, and General Comments do not reflect an agreement among the States parties to a convention, but only the agreement of the members of the particular treaty body.* Moreover, the use by the treaty bodies of their own jurisprudence and General Comments to interpret the provisions of their treaties even further beyond their original meaning or to confirm their own earlier interpretations entails self-referential or circular reasoning, a method that “may alienate human rights interpretation from national state practice and implementation.”⁴⁸

As much as the Committee against Torture, OHCHR, and NGOs may view the CAT as a “living document” that needs to be interpreted beyond the original meaning contemplated by the Holy See and other States parties to address “evolving” thoughts, attitudes, and practices relating to abortion, sexuality, marriage, childrearing, and family issues, an objective application of the Vienna Convention seems to preclude such a practice. If, in violation of the Holy See’s Interpretive Declaration, the Committee against Torture can use its concluding observations and recommendations to impose obligations that conflict with Canon Law, then freedom of thought, conscience, and religion or belief, national sovereignty, and the rule of law no longer exist.

VIII. Conclusion and Recommendations

By design or otherwise, the OHCHR is using its human rights treaty body system to create universal norms that can complement, or conflict with, the universal norms contained in Canon Law and the teachings and practices of the Catholic Church. As a result, the Committee against Torture needs to resist the temptation to engage in a misguided interpretation of the CAT that unlawfully challenges the Holy See to review all or any part of its “normative framework” to ensure full compliance with what the Committee considers to be a “living” CAT. To avoid such a result—a result that would violate the religious freedom of the citizens and residents of the VCS, the Holy See, and Catholics— it is recommended that the Committee against Torture:

- 1) Avoid unlawful interference with, and entanglement in, the acts of the Holy See that are integral to the conduct of its basic affairs, thereby respecting religious freedom;
- 2) Review its mandate under the CAT, objectively determine the lawful limits of its authority, and govern itself accordingly;
- 3) Analyze the “separation of powers” principle, determine whether, by serving in what constitutes a combined legislative, executive, and judicial capacity, it is violating that principle and the rule of law, and, if so, alter its responsibilities and activities accordingly;
- 4) Analyze the requirements under the Addis Ababa Guidelines to perform its duties independently and impartially, especially as they relate to its review of the Holy See Initial Report, and take such actions as may be required by the Guidelines to avoid bias or conflicts of interest, whether actual or apparent to a reasonable observer;
- 5) Determine whether, to remedy any lack of independence or impartiality under the Guidelines, it is necessary for the Committee to have an independent judicial authority review its concluding observations and recommendations relating to the Holy See Initial Report; and
- 6) Diligently apply the customary legal rules of interpretation codified in the Vienna Convention on the Law of Treaties, especially as they pertain to attempts by the OHCHR and Committee to expand the terms of the CAT beyond their original meaning.

Endnotes

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⁵ Fundamental Law of 2000, arts. 1-2.

⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN document CAT/C/VAT/1, 7 December 2012, § 7.

⁷ Catholic Church. *Catechism of the Catholic Church*. 2nd ed. Vatican: Libreria Editrice Vaticana, 2000, § 11.

⁸ Art. 18 of the Universal Declaration of Human Rights, Art. 18(1) of the International Covenant on Civil and Political Rights, Art. 1(1) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; cf. Art. 9(1) of the European Convention on Human Rights and Fundamental Freedoms.

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¹⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Rules of Procedure Annex: Guidelines on the independence and impartiality of members of the human rights treaty bodies, UN document CAT/C/3/Rev.6, 13 August 2013.

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²² *Ibid.*, § 5.

²³ Center for Reproductive Rights, Letter to Human Rights Committee, 9 August 2013.

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²⁶ Center for Reproductive Rights, Letter to Chairman, Committee against Torture, 21 March 2012.

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