

THE HOLY SEE AND THE CONVENTION ON THE RIGHTS OF THE CHILD IN THE REPUBLIC OF THE PHILIPPINES

NGO Report on How the Holy See's Laws Impact
the Philippines' Compliance with the Convention

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Likhaan – Child Justice League – Catholics for a Free Choice

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An NGO Report on How the Holy See's Laws Impact the Philippines' Compliance with the Convention

INTRODUCTION

In May and September 2002, Catholics for a Free Choice (CFFC), an NGO with special consultative status with ECOSOC, submitted reports to the United Nations Committee on the Rights of the Child that presented the worldwide problem of sexual abuse of children and adolescents by Catholic clergy and religious. As a result, CFFC was invited to submit more detailed information to the Committee for its consideration. Since then, CFFC, with partners in Canada, Germany, France and Austria, have submitted NGO reports to the Committee on the dangers these countries face in complying with the Convention, due to the status and role of the laws of the Holy See.

ABOUT THIS REPORT

This report will similarly assess how the laws of the Holy See impact the Roman Catholic church in the Philippines and compromise the laws of the Philippines that seek to protect children. Examples of clergy abuse and how they were dealt with by the church and secular authorities will be presented.

Moreover, this Report will show how the laws of the Holy See undercut national laws, leaving children and young people at risk of abuse by clergy. As such, the Philippine government, as State Party to the Convention on the Rights of the Child, should hold the Catholic church in the Philippines and the Holy See accountable for clergy abuse of minors that happen within the Philippines.

The LIKHAAN or Linangan ng Kababaihan, Inc. (Center for Women's Development, Inc.) and the Child Justice League, Inc. (CJLI) were invited by CFFC to prepare this report.

LIKHAAN is a women's health organization that has education and training programs on the subjects of women, health, development and rights. Among its concerns is the violation against women and their children and advocacy towards ensuring that perpetrators are not given any preferential treatment. It has published various brochures and regular newsletters as well as developed several plays on this issue.

Child Justice League, Inc. is also uniquely situated in writing this report. CJLI is an organization of lawyers providing free legal assistance to child abuse victims and children in conflict with the law. CJLI has also been involved in a few cases where the perpetrators of child sexual abuse have been Catholic priests. Atty. Eric Mallonga, its Founding President and Incumbent Chairman, is a well-known lawyer of child sexual abuse cases who is also the Legal Counsel to ABS-CBN Foundation's *Bantay Bata* (Safeguard the Children) 163, which is a pioneering NGO project that responds to hotline queries and complaints of child abuse nationwide.¹

¹Atty. Eric Mallonga is also President of AMADE Philippines (Association Mondiale des Amis de l'Enfance or World Association of Children's Friends). Princess Caroline of Monaco is the president of the AMADE founded by her late mother, Princess Grace.

THE ROMAN CATHOLIC CHURCH IN THE PHILIPPINES

Much of what is written about the Philippines never fails to mention that it is the only predominantly Roman Catholic country in Southeast Asia. The Philippines has 88 ecclesiastical territories. A total of 415 various institutes of consecrated life, societies of apostolic life, secular institutes, pious unions and lay associations for men and women are active nationwide. The Philippine Roman Catholic church not only owns and runs churches in its various dioceses; it also runs several organized bodies and associations such as the Association of Major Religious Superiors in the Philippines (AMRSP) and a network of educational institutions like the Catholic Educational Association of the Philippines (CEAP) and the Association of Catholic Universities in the Philippines (ACUP). These associations, like other secular institutions, typically have regional and provincial chapters.²

The Philippine Catholic church hierarchy's presence extends far and wide. It is a presence that has been institutionalized in many ways, as its ecclesiastical provinces were established as early as 1595 (Manila). Based on its 2003 Annual Statistical Report to Rome, there is a total of 2,719,781 Catholics in Manila out of its estimated total population of 2,993,000. Aside from the number of churches, seminaries, monasteries, and other places of worship in a diocese, one will also find educational institutions ranging from kindergarten to higher education such as Catholic colleges and universities.³

The Philippine Catholic church is also a social and political force. Its leadership, through the Catholic Bishops' Conference of the Philippines (CBCP), has been instrumental in two dramatic political revolutions⁴ that caused the removal from office of two Philippine presidents, namely, Ferdinand Marcos in 1986 and Joseph Estrada in 2001. Not surprisingly, politicians seemed to heed only one message from these events: avoid any and all possible discord with church authorities. As a result, every time elections draw near, political candidates seek public "anointment" from well-known church figures.

In turn, the church has broadened its participation in the nation's governance, despite the Constitutional mandate of separation between church and state.⁵ The CBCP, through its many commissions, has involved itself with various political issues such as pending legislation on reproductive health and reproductive rights, and the abolition of capital punishment. It issues pastoral letters that priests are required to read to a captive Catholic audience nationwide, more often than not in lieu of a Sunday homily. The CBCP even has legal representation that allows it to participate in Congressional hearings and consultations. It has submitted petitions and other pleadings to government agencies that recommend legal action and/or inaction on pending reform measures. Its values are promoted and even finds government funding as in the recent PhP 50 million pesos Congressional grant to the Catholic organization, Couples for Christ, for promotion of natural family planning nationwide. Recognized as a charitable institution by the Philippine Constitution, the church and all its activities are not and have never been taxed.⁶

The CBCP Commissions cover all aspects of social and political life. It is worth noting how the CBCP has commissions on bioethics, health care, indigenous peoples, migrants, youth, social communication and mass media, social action and justice and peace, to name a few. The Chair, Vice-Chair and members of these commissions are all bishops with lay people mostly acting as staff members or implementers.⁷

² Catholic Bishops' Conference of the Philippines and Claretian Publications, *The 2004 Catholic Directory of the Philippines*, 2004: Manila.

³ Ibid.

⁴ These 'revolutions' are more popularly called People Power/Edsa 1 and 2. They are predominantly considered peaceful.

⁵ Article II, Section 6, Philippine Constitution, 1987.

⁶ Article XIV, Section 4 (3) and (4), Philippine Constitution, 1987.

⁷ <http://www.cbcponline.net/commissions/commissions.html>, accessed 3 December 2004.

The Philippine Roman Catholic church is a major political player that wields power and influence. This report will focus on this important fact and explore policies that the CBCP itself has promulgated especially regarding clergy sexual abuse of minors. It is worth noting that the CBCP in 2002 estimated that 200 of the country's priests could be guilty of sexual misconduct and abuse occurring over the last twenty years.⁸

For the most part, these CBCP policies will be compared with existing child protection laws in the country. These laws will be reviewed in the light of provisions in the Convention on the Rights of the Child since both the Philippines and the Holy See are signatories to this Convention as early as 1990.

THE CONVENTION ON THE RIGHTS OF THE CHILD

Ratified by the Philippine Senate on 20 July 1990⁹ and by the Holy See on September 1990,¹⁰ the *Convention on the Rights of the Child* (CRC) has been subsequently ratified by 187 countries—now considered to be one of the most ratified of international conventions.

The CRC is by no means the only international convention that recognizes the best interests of the child to be of primary consideration in all actions concerning children. (Article 3)

The need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959. It was recognized in the Universal Declaration of Human Rights; in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24); in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children.

In particular, the Declaration of the Rights of the Child states that, “The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, . . .” This also finds resonance in the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.

As member and non-member states to the UN that ratified the CRC, both the Philippines and the Holy See are therefore bound by provisions of the CRC that require States Parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. (Article 19) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

⁸ “Philippine Bishops Apologize for Sexual Abuse by Priests,” *Washington Post*, 9 July 2002.

⁹ Situation Analysis on Children in Conflict with the Law and the Juvenile Justice System, Ateneo Human Rights Center, 1998, 9.

¹⁰ CFFC Shadow Report: The Holy See and the Convention on the Rights of the Child, September 2002, 22.

To require secrecy and remove transparency in processes that involve allegations and investigations of clergy sexual abuse of children definitely run counter to the CRC. States Parties are actually mandated by Article 34 to undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.

Moreover, States Parties are required to make their reports widely available to the public in their own countries. (Article 44)

POLICIES OF THE PHILIPPINE CATHOLIC CHURCH

THE CATHOLIC BISHOPS' CONFERENCE OF THE PHILIPPINES (CBCP)

Is there hope in the midst of crisis?

Last 7 July 2002, the CBCP released a pastoral letter to its Catholic constituents entitled, "Hope in the Midst of Crisis."¹¹ For the most part, it was a confession by and apology from the CBCP as regards "cases of grave sexual misconduct by clerics and religious in the Philippines."

The message anchored its hope on the words of the Prophet Micah, "You know what the Lord God expects of you: *to act justly, to love tenderly and to walk humbly with your God.*" (Micah 6:8)

We see hope in *acting justly*. Justice required that all of us, clergy and religious, your spiritual leaders look after the good of the flock without any regard for profit, pleasure, or power, because that is the call of God to us. We see hope in *loving tenderly*. Love requires all spiritual leaders to offer the sacrifice of their talents, in fact their very lives, for the people given by God to their care. For this was the manner of Christ's own love. It demands a love that neither exploits others nor takes advantage of any member of the flock, but respects and uplifts all members as God's own beloved children. We see hope in *walking humbly*. We walk humbly when we ask for forgiveness from God and from the victims of our sins. We walk humbly when, divesting ourselves of power and authority, go to those from whom we have separated ourselves through self-interest, arrogance, or abuse of power, and reconcile with them heart to heart. For why should not religious leaders be one with their flock, when they themselves are ambassadors of reconciliation?

The message also made mention of the bishops "in the process of drafting through wide consultation with experts from among the lay people, religious men and women, a protocol that addresses the various types of sexual abuse and misconduct."

The following section reviews the result of this consultation.

In writing this section of the Report, two priests highly involved with seminary formation in the Luzon and the Visayas islands¹² were interviewed¹³ in confidence. Archbishop Gaudencio B. Rosales, the new Roman

¹¹ <http://www.cbcponline.net/documents/2000s/2002-hope.html>, accessed 3 December 2004.

¹² The Philippines is divided into three major islands: Luzon, Visayas and Mindanao. Mindanao is known to have more Islam constituents than Catholics.

¹³ Interviews were held on 20 October 2004, Katipunan, Quezon City and on 27 October 2004,

Catholic Archbishop of Manila, also granted an interview.¹⁴

The interviews focused mainly on the *Pastoral Guidelines on Sexual Abuses and Misconduct by the Clergy*¹⁵ that was circulated by the CBCP last September 2003 to be adopted and implemented by dioceses and religious institutes in the Philippines for three years *ad experimentum*. Rosales chairs the Commission on the Clergy that drafted these guidelines.

The first part of the guidelines recognized that “the problem of sexual abuse and misconduct by some members of the clergy is not new. In the past, confidentiality and therefore, secrecy has created the impression of cover-up, toleration of abuse and lack of concern for victims.” Such procedure was also acknowledged to have “enabled abusive behavior to be repeated.”¹⁶ The guidelines were clear in its application only to the ordained, both diocesan and religious, and were “not operable in cases involving laypersons employed by dioceses.”¹⁷

PASTORAL GUIDELINES ON SEXUAL ABUSE AND MISCONDUCT BY THE CLERGY

The guidelines are unequivocal in recognizing that “clergy who engage in any form of sexual misconduct are violating their vows and the ministerial relationship. They are misusing their authority and power and are taking advantage of the vulnerability of those who are seeking spiritual guidance.”¹⁸ The guidelines also state that “the respect and reverence with which people approach the church’s ministers necessarily denotes an imbalance of power and, hence, for clients a vulnerability inherent in the ministerial relationship. This is true to some degree even of sexual relationship with a consenting adult partner... This imbalance of power makes sexual behavior in a ministerial relationship unacceptable and unjust.”¹⁹

Although Paragraph 8 of the guidelines recognizes that “just like all other citizens, clerics and religious are subject to the civil and penal laws of the state” in the civil forum, Paragraph 24 only requires that “the response to cases of sexual abuse by the clergy must address the following: pastoral care of the victim, the healing of the community, the assessment of the accused, and the sanctions on and pastoral care of the offender.” While Paragraph 25 also makes mention of using standards of proof and evidence, no such standards were explicitly presented. Similarly, standards and criteria on who may qualify as “trained and competent personnel” to care for the victims were also not provided. As regards reparation, Paragraph 33 requires the priest-offender to exclusively shoulder the expenses attendant to the victim’s therapy. A diocese may provide financial assistance, but only “out of charity” and “within its means,” and the offender is required to reimburse the diocese for all expenses incurred.

All relevant guidelines that address how to respond to allegations of sexual abuse are subject to a small footnote that only states they are “without prejudice to the procedure provided by the *motu proprio sacramentorum sanctitatis tutela*, 20 April 2001.” Both priest-formators had never heard of this footnote until their respective interviews. One of them was Vicar for the Clergy in his diocese; while the other is one of three people who have been counseling “erring” priests nationwide, as well as being head of formation for a major seminary. Last 15-18 November 2004, all Vicars for the Clergy in the Visayan and Mindanao dioceses

Guadalupe, Mandaluyong City, Philippines.

¹⁴ The interview was held on 15 November 2004 at the Arzobispado de Manila, 121 Arzobispo Street, Intramuros, Manila, Philippines.

¹⁵ [http://www.cbcponline.net/documents/2000s/2003-](http://www.cbcponline.net/documents/2000s/2003-SEXUAL_ABUSES_AND_MISCONDUCT.htm)

SEXUAL_ABUSES_AND_MISCONDUCT.htm, accessed 3 December 2004.

¹⁶ CBCP Pastoral Guidelines on Sexual Abuses and Misconduct by the Clergy, Paragraph 3.

¹⁷ *Ibid.*, Paragraph 7.

¹⁸ *Ibid.*, Paragraph 15.

¹⁹ *Ibid.*, Paragraph 16.

were “in Cebu to learn to respond to crisis, clergy abuse.”²⁰ Vicars for the Clergy in Luzon had a similar gathering in Manila last 8-12 November 2004. These gatherings were part of the “consultation meetings for strengthening organizational structures of the commission” and for discussing “plans of ongoing formation.”²¹

On his part, Archbishop Rosales of the Diocese of Lipa, explained this to all members of his diocesan clergy in a close-door conference.²² He clarified that *sacramentorum sanctitatis tutela*²³ is applied only in cases of bishops but not other members of the clergy and religious. Otherwise, this would create a scenario where they would have to wait for the Vatican’s advice for each case. Rosales went further in stating that any review of the CBCP guidelines should focus not on a “mere footnote” but rather on the requirements in Paragraph 24 that gives primary consideration to the pastoral care of victims.

The guidelines provide considerable discretion on the part of the bishop and religious superior. Other participants, if at all invited, merely play recommendatory roles. Even in “verified cases of criminal behavior,” the guidelines only require the bishop or superior to recommend that the Promoter of Justice begin a canonical process for appropriate canonical sanctions.²⁴ Rosales clarified that this is no mere recommendatory role but rather a directive on the Promoter of Justice - who could be an elderly Monsignor, usually well-versed in canon law – to immediately begin proceedings. He even has the mandate to form an ad-hoc committee that could investigate the case.

One of the more problematic provisions in the guidelines is the claim that between a cleric and the bishop or religious superior, “there exists a relationship of trust analogous to that between father and son,” hence “it does not belong to the pastoral office of the bishop to denounce a priest to civil authorities.”²⁵ No exceptions were considered. Given the inadequacy of Philippine child protection laws (see following section), this provision further aggravates the situation. It is worth noting that Philippine laws do not recognize this relation as defense in the non-reporting of a crime. Moreover, this provision begs several questions: what happens in cases where the priest-offender was caught by the bishop or religious superior or even fellow clergy *in flagrante delicto*? Or where multiple victims report only one offender? Or where one bishop transfers such an offender to another diocese? Is the receiving bishop assured of complete candor from the sending bishop regarding a cleric’s record, including reports of sexual misconduct?

Rosales commented that in the theological realm, a father-son relationship does exist between a bishop and his priest. In terms of clerical misbehavior or abuse, this relationship should be seen as that between a son and a good father who knows how to admonish and even punish the wrongs committed by the son. Rosales therefore agreed that reporting to civil or secular authorities must be done. Erring priests must not be coddled or protected, especially if a warrant of arrest has been issued. However, he was open in recognizing that this is still dependent on the bishops and priests involved.

While there is not compulsory reporting in the interest of the victims of sexual abuse, the CBCP is clear about defending itself when an accusation is proven false. Any and all activities that involve the civil forum are dismissed except for one instance: Paragraph 39 mandates a very transparent and public action by the bishop or superior in cases where the accusation has been established as false. That is, they must express in writing their “defense of and support for the accused. Bringing the accuser to court can be considered an option. If the media have already reported the false accusation, the bishop or superior should ask those involved in the

²⁰ Short message service sent by the interviewed Vicar for the Clergy on 17 November 2004.

²¹ Short message service sent by the interviewed Vicar for the Clergy on 19 November 2004.

²² Archbishop Rosales will serve for just one year as Archbishop of Manila, on 24 November 2004.

²³ For explanation of *sacramentorum sanctitatis tutela*, see page 17 of this report, “New Law Requires Secrecy and Centralized Review.”

²⁴ CBCP Pastoral Guidelines on Sexual Abuses and Misconduct by the Clergy, Paragraph 37-C.

²⁵ *Ibid.*, Paragraph 36-G.

reporting to clear the name of the falsely accused.” Evidently, the church finds use for the civil forum only when it proves beneficial to the accused cleric but not when it would benefit the children-victims who are minors and considered vulnerable by law. It should need no further emphasis that paramount consideration must always be for the abused children.

A bishop-member of the Commission on the Clergy who was perceived to have substantially drafted the guidelines was not able to grant a formal interview. However, in a phone conversation, he did mention that the guidelines are “under scrutiny” and up for possible revisions by January 2005. Rosales also acknowledged this possibility during his interview.

PHILIPPINE CHILD PROTECTION LAWS

The Legal Environment

The last decade is significant in terms of the legal framework that evolved for women and children in the Philippines. However, although known for enacting many relevant legislation, the Philippines has still been found lacking in the political will and the resources to implement these laws.

This next section will present some of the existing child protection laws²⁶ in the country and will highlight the reasons why these laws, although many, still remain inadequate in addressing clergy sexual abuse of minors. More importantly, these laws unfortunately fall short of the standards that the Convention on the Rights of the Child (CRC) is promoting.

PHILIPPINE CONSTITUTION (1987)

The Philippine Constitution of 1987 is considered the highest law of the land. Article II, Section 13 of the Constitution provides that, “The State recognizes the vital role of the youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being...” No other constitution in the world contains this mandate. This provision, unique to the Philippines, also echoes the paramount consideration given by the CRC to children.

CHILD AND YOUTH WELFARE CODE – PRESIDENTIAL DECREE NO. 603 (1974)

P. D. 603 (Presidential Decree No. 603) established the Council for the Welfare of Children (CWC) under the Office of the President.

Only hospitals, clinics and other institutions as well as private physicians providing treatment are required to report in writing any case of a maltreated or abused child. Non-reporting is punishable, but only for a fine of not more than Php 2,000 pesos.

This law actually devotes a whole section on “Child and Youth Welfare and the Church.”²⁷ Unfortunately, this section grants unconditional trust to the church (and its personnel). The State gives much authority and discretion to the church, especially in matters affecting the religious and moral upbringing of the child. Insofar as may be allowed by the Constitution, the government shall extend to all churches, without discrimination or preference, every opportunity to exercise their influence and disseminate their teachings. Parents are even instructed to admonish their children to heed the teachings of their church and to perform their religious duties. In essence, this section of the law reflects much of how the church is inextricably linked

²⁶ Internet source for exact texts of the laws may be found in the Annex.

²⁷ Title IV, Articles 79-83.

to one's daily existence and plays a major role in Filipinos' lives.

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT – R. A. NO. 7610 (1992)

In its declaration of state policy and principles, this law provides that “the best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.”

Although clearly indicating that there is no exception to this paramount consideration of children, the law's enactment did not cover sexual abuse of children on church premises or properties. For example, Article VII details sanctions for establishments or enterprises which promote, facilitate or conduct activities constituting sexual and other kinds of abuse, but gives examples limited to a sauna, travel agency or recruitment agency.

Article XI, Section 27 of the law provides that complaints may be filed by an officer, social worker or representative of a licensed child-caring institution or at least three (3) concerned responsible citizens where the violation occurred, but there is no mandatory reporting required. The Implementing Rules and Regulations (IRR) of R. A. No. 7610 contains mandatory provisions on reporting child abuse cases, but reporting has been applied in a limited way only to care givers, nurses, doctors and teachers. As such, fellow priests and bishops or superiors of the offending cleric are not liable for non-reporting under this law. Since the ecclesiastical culture is fairly hierarchical and highly secretive in cases like this, it is difficult to establish personal knowledge and non-reporting.

ANTI-SEXUAL HARASSMENT ACT OF 1995 – R. A. NO. 7877

This law defines sexual harassment only in three specific areas: work, education or training-related. Section 3 defines sexual harassment as an act that may be committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

Therefore, clergy sexual abuse could be punishable under this Act only if the accused priest or religious performs any of the above functions with the accuser under his influence or moral authority.

ANTI-RAPE LAW OF 1997 – R. A. NO. 8353

Although with no direct reference to pedophilia, this legislation amended the law on rape by classifying it as a crime against persons and by expanding its definition to include rape by sexual assault between persons of different or similar gender as long as there was any of the following: force, threat or intimidation; offended party is deprived of reason or otherwise unconscious; fraudulent machination or grave abuse of authority; and offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned are present.

Whereas punishment for rape ranges between life imprisonment to death, rape by sexual assault is punishable only from six to twelve years. When a religious nun or priest is raped, it is considered a qualifying circumstance that raises the punishment to the death penalty. No priest or nun have received the death penalty after being convicted of raping a child.

RELEVANT PROVISIONS FROM THE REVISED PENAL CODE - ACT NO. 3815 (1930)

Article 336 of the Revised Penal Code provides:

Art. 336. Acts of Lasciviousness. Any person who shall commit any act of lasciviousness upon other persons of either sex...shall be punished by *prision correccional*. (six months and one day to six years)

The acts of lasciviousness punished under this article are committed with the consent of the offended party, but such consent is obtained through abuse of authority, confidence, relationship or deceit. The above provision and others that follow have been largely superceded by R. A. No. 7610, which provides that sexual abuse of children is punishable with twelve to twenty years of imprisonment²⁸ and by the Anti-Rape Law which punishes rape by sexual assault, regardless of gender.

Prior to the enactment of the Anti-Rape Law, if the sexual act does not constitute rape or acts of lasciviousness but there was sexual intercourse, the act may fall under the crime of simple seduction. Article 338 of the Revised Penal Code provides:

Art. 338. Simple Seduction. The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*.

It is an essential element of this crime that the offender uses deceit in order to have sexual intercourse with the offended party. However, the deceit spoken of in this crime generally takes the form of an unfulfilled promise of marriage and only contemplates a woman or a girl-child as offended party.

Finally, the crime of corruption of minors is also provided in the Revised Penal Code:

Art. 340. Corruption of Minors. – Any person, who shall promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another, shall be punished by *prision mayor* and if the culprit is a public officer or employee, including those in government-owned or controlled corporations, he shall also suffer the penalty of temporary absolute disqualification.

It is worth noting that there has been no jurisprudence at all on these crimes. It is highly probable that there has been only a few or no prosecutions at all.

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 – R. A. NO. 9208

Trafficking in persons is committed not just on a wide scale in the Philippines, but also in instances where there is recruiting, transporting, transferring, harboring, providing or receiving a person by any means for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage.

²⁸ However, legal practitioners still consider this provision for plea bargaining purposes since it is a probational offense.

There is qualified trafficking, which provides for higher penalties, when the trafficked person is below 18 years of age or when the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person, or when the offense is committed by a public officer or employee.

Clergy sexual abuse has been known to happen where a cleric initially established the trust of children and/ or their parents to bring the former to out-of-town trips and during such trips, molested or abused the minors. Pedophile priests have taken children from the streets as wards or charity cases only to facilitate future abuse. As these cases fall under the aforementioned definitions of trafficking, they may be actionable against pedophile-priests.

ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 – R.A. NO. 9262

Although considered an important legislation for the protection of women and children, this law still falls short of expectations since it only protects women and children in a domestic setting. Since the abuse must clarify as “domestic,” no clergy sexual abuse may be actionable under this law unless it is proven that the priest has or had a sexual or dating relationship with a woman and abused her child.

LEGAL IMPLICATIONS

The inadequacy of the Philippines’ laws becomes more disturbing when seen in the light of the church’s seemingly selective application and acceptance of these laws. There appears to be a distinct separation of ecclesiastical obligation and civil obligation for the Catholic church in the Philippines, especially in cases involving clergy sexual abuse. The church seems to accept laws that benefit the institution and uphold its dogmas, yet civil and criminal laws seem to be willfully disregarded when possible liabilities may arise. Instead clergy or religious have asserted their exclusive reliance on church laws, with the caveat that only such laws could govern them. Higher authorities within the church not only seem to tolerate this but have actually established guidelines that impede the application of civil laws. One such international guideline is the papal Apostolic Letter, *Sacramentorum sanctitatis tutela*.

NEW CHURCH LAW REQUIRES SECRECY AND CENTRALIZED REVIEW

In 2001, the Holy See issued a document entitled *Sacramentorum sanctitatis tutela*,²⁹ instituting a little publicized but important change in the Catholic church’s canon law. In this document, which supersedes the law in the codes, the Holy See directs all the bishops of the world 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 the 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.³⁰

²⁹ John Paul II, Apostolic Letter *motu proprio*, *Sacramentorum sanctitatis tutela*, April 30, 2001, sent by letter of the Congregation for the Doctrine of the Faith to all Catholic bishops in the world on May 18, 2001 (*Epistula ad totius Catholicae Ecclesiae Episcopos aliosque Ordinarios et Hierarchas interesse habentes de <<delictis gravioribus>> eidem Congregationi pro Doctrina Fidei<< reservatis>>*), *Acta Apostolicae Sedis* 93 (2001) 737–739 and 785–788 respectively. See http://www.vatican.va/roman_curia/congregations/cfaith/doc_dis_index.htm, accessed 15 December 2004.

³⁰ The Congregation for the Doctrine of the Faith (commonly abbreviated CDF), founded in 1542 by Pope Paul III, is one of the departments of the Vatican that assists the pope in governing the Catholic church. It was originally called the Sacred Congregation of the Universal Inquisition, as its duty was to defend the church from heresy. It is the oldest of the Curia’s nine congregations. The congregation says the “Activity of the Holy See,” in conformity with its *raison d’etre*, promotes in a

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 reserves the right for the Holy See alone to punish any party who reveals information about clerical sexual abuse of children. Furthermore, the document mandates that no one but a priest may be involved in the proceedings concerning clergy sexual abuse of minors.³¹ These provisions raise questions about the integrity of the church’s internal processes in dealing with cases of molestation and child abuse, as well as questions of how this law might conflict with laws of the geographically defined jurisdictions in which the subjects of the Holy See reside.

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 Holy See’s unwillingness to comply with the Convention is demonstrated in its secrecy requirements that skirt the reporting requirements of Article 44. This frustrates legitimate efforts of other States party to the Convention such as the Philippines, by advocating circumvention of their laws in favour of the Holy See’s new secret procedures. It should be noted that the secrecy required in Philippine jurisprudence is to protect the child’s identity from stigmatization and not to protect the identity of the offender who may happen to be a priest or religious.

Overall, the Holy See’s law does provide redress and some protection for children in cases of sexual abuse, and it does provide for punishment of clergy and religious who sexually abuse children. The existence of law, however, is of little use if the law is not enforced. The many canon laws relating to this issue have been consistently ignored and inadequately or wrongly applied in favor of the church authorities and its institutional image.

As the moral harbinger of truth and justice, the church is expected to have laws that not only complements civil laws, but that are even higher and more stringent in its standards, especially when it comes to issues of sexual abuse and misconduct. In fact, sexual abuse of children is considered to be such a grave offense that Jesus Christ said, “Whoever shall offend one of these little ones that believe in me, it is better that a millstone were hanged around his neck and he were cast into the sea.” (Mark 9:42)

The inevitable conclusion that could be reached is that the church participates in civil activities when laws governing secular activity benefits them. Otherwise, they ignore these laws with impunity. Such arbitrary stance definitely runs counter to the Convention on the Rights of the Child and undermines the Philippine government’s compliance to the Convention.

collegial fashion encounters and initiatives to “spread sound doctrine and defend those points of Christian tradition which seem in danger because of new and unacceptable doctrines.” See the Vatican website: <http://www.vatican.va>, accessed 15 December 2004.

³¹ See note 29 above.

RECOMMENDATIONS

TO THE PHILIPPINE GOVERNMENT

- The Council for the Welfare of Children (CWC), Department of Social Welfare and Development (DSWD) and the Commission on Human Rights (CHR) are just some of the executive agencies mandated by law to implement policies for the protection of children. These agencies must recognize the pervasiveness of clergy sexual abuse of minors and not dismiss these cases as isolated events. Agency reports must incorporate data on this.
- Agencies should gather data regarding incidents of clergy sexual abuse and provide information as to the church's concomitant reporting or non-reporting. For instance, the CHR regional directors submit monthly reports of child abuse cases in their region to the Child Rights Center of the CHR. However, the only data required in these reports is the accused's relation to the victim. It is recommended that these reports should also include profiles of the accused, especially if they belong to an organized body, such as clergy.
- The CWC has been mandated to implement every second week of February the "National Awareness Week for Prevention of Child Sexual Abuse and Exploitation."³² The CWC should take the lead in organizing a roundtable discussion or forum that focuses on how all sectors, both public and private, could address this specific abuse of children by the clergy.
- The laws on child abuse must be enforced without fear or favor. The Philippine Supreme Court, for example, must take affirmative action when it comes to making the judiciary sensitive to children who are victims of clergy sexual abuse. Prosecutors and judges must be trained to recognize the psychological and socio-cultural underpinnings of cases like this.
- Corrective legislation must be enacted. There must be recognition that clergy problems are traditionally handled privately and this must be a legal concern. Accordingly, the following questions must be definitively answered by any future legislation in this regard: under secular law, what should be an ecclesiastical superior's response when a priest has been accused of child molesting? Could a bishop be indicted for failure to report a priest who abused a child? What are the allowable scope and limitations of religious confidentiality? How do the civil statutes of limitations apply in this case?
- The law should clearly delineate age limits for classification and the statute of limitations for filing complaints, with sensitivity toward the victim's experience and ability to confront their abusers.
- The notion of *criminal negligence* should be reviewed in cases where a priest is allowed to continue to function, endangering the health of children, following the receipt of private, confidential knowledge that this priest victimized a child. Sound medical research must accompany any legislation in this regard. Michael Peterson, a well-known American priest-psychiatrist who treated priests with sexual disorders such as pedophilia, noted that "it is inadequate to treat a sex offender in the diocese on a private psycho-therapy model. It should be emphasized that inpatient treatment preferably with peers is the most preferable mode."³³

³² Presidential Issuance: Proclamation No. 731, series of 1996.

³³ *Ibid.*, 99.

- The Philippines must implement laws that hold church officials accountable for clergy sexual abuse of minors.

TO THE COMMITTEE ON THE RIGHTS OF THE CHILD

- This Report seeks clarification from the Committee as regards the unique situation of the Holy See, whose constituency resides all over the world. As signatory to the Convention on the Rights of the Child, the Holy See should not have any preferential treatment different from other countries that signed the Convention. There must be a process by which countries whose laws are undermined by the direct or indirect intervention of the Holy See by virtue of its issuances and centralized governance--will have recourse to the Committee in particular, or to the UN in general.
- Other than recommending that the Holy See law of secrecy regarding clergy sexual abuse be withdrawn, the Committee should request that the Holy See demonstrate that its Congregation on the Doctrine of the Faith has an organized and systematic manner of pooling information about the abuse reports.
- The Committee should request that the Holy See submit findings by said Congregation as regards clergy sexual abuse of minors all over the world. It is certain that they have important data in this regard since the encyclical came out and required all allegations of clergy abuse to be forwarded to the said Congregation as early as 2001.
- The above recommendations are in keeping with Article 44 of the CRC, which states that the Committee may request from States Parties further information relevant to the implementation of the Convention. In fact, States Parties are required to make their reports widely available to the public in their own countries and the Committee should encourage the governments of the Holy See and Philippines to do so.
- There must also be recognition of the universality of jurisdiction over the church by civil society. For instance, genocide cases can be taken over by the UN. These are cases that are so inhuman and usually done by high officials. Accordingly, an international tribunal takes over so high officials could be sanctioned. Heads of countries can be held criminally liable. This also conceives of geographical assignments outside the Philippines. Recognition of the universality of the crime, as above-mentioned, should lead to recognition of the universality of jurisdiction of tribunals over such universal crime.
- Finally, the Committee must also look into situations of children sired by Catholic priests. The CBCP guidelines state that priests who sire children may eventually decide to remain as priests. In such cases, they are proscribed from having any contact with their children such that the guidelines provide that a third party should be the one to give support.

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 members of religious orders, with a concrete plan for ensuring that future abuse does not occur. It should also submit a

report to the government of the Philippines including full disclosure about cases of abuse in the Philippines and measures the Holy See is taking to prevent future abuses.

- In addition, the Holy See should reveal to other States' parties what measures it has taken to eliminate the sexual abuse of children and adolescents by Catholic clergy and members of religious orders 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 commit to rescinding its requirements of secrecy in these cases, and it 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 organizations 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 Groups or those affiliated with World Youth Day), hospitals, mentoring groups, missionary activities to children and youth, seminaries and convents.

TO THE ROMAN CATHOLIC CHURCH IN THE PHILIPPINES

- This recommendation primarily calls on the bishops that make up the CBCP to take an unequivocal stand in identifying and removing pedophiles from pastoral work and to develop a national policy to this effect. In particular, the CBCP must clearly address the problem of recidivism, which is particularly high among diagnosed pedophiles.
- The CBCP must ensure that child molesters are not returned to ministry with children.
- Policies must be supported by raw data. A database in this regard should be established to prevent as well as to address proper intervention. A database would make transparent a perpetrator's history and the organizational support that may have been unwittingly rendered.
- Any guidelines that the CBCP promulgates on this matter must be exhaustive and immediately responsive. There must be different procedures that appropriately respond to various sexual misconduct committed against minors, adult men and women.
- Short-term or preliminary intervention, especially as regards remuneration and therapy for the victims, must be put in place. Research shows that most victims are from poor or dysfunctional families. After trying to overcome fear and stigma by coming out, they are revictimized by inaction.
- There must be a victim's advocacy board that operates independently from church administration. Investigations of this nature are not what would be considered pastoral or priestly duties. Objectivity in how decisions are reached must be manifest. An independent board of lay experts should handle accusations against priests and help victims.

- In its ongoing formation of seminarians and the religious, there must be recognition that any plan to attempt to break the cycle of child abuse must include prevention as its cornerstone. Seminary standards must therefore be strengthened in this regard.
- Religious governance must be such that all priests and other religious with caretaker capacities for children have an obligation, both legal and moral, to report abuses to the State according to existing laws.
- Finally, there must be a comprehensive education in all Catholic schools, seminaries and religious institutes on sexual abuse prevention. The church must not maintain a traditional stand that anything that involves sex education is promoting promiscuity. This is an important and crucial preventive measure.

TO THE PHILIPPINE NGOS ON CHILDREN'S RIGHTS

- Unlike other countries, the Philippines has no organizations that singularly caters to this group of victims of clergy sexual abuse and ministerial misconduct. Philippine NGOs must begin to focus and unravel how to deal with this matter and ensure children's protection. NGOs for children must be at the forefront in demanding accountability from institutions such as the Philippine Catholic church.
- Culturally, it would seem that sexual information would be known (eg. sexual proclivities and relations of priests or children sired by priests) among Catholic constituents in parishes and dioceses, but this information is not recorded. This must be addressed by the NGOs. Recent statistics on pedophilia in the Philippines show that 96 percent of victims are girls. NGOs must review this data. NGOs must address sexual abuse of boys so that they would be encouraged to come forward. There must be a recognition that Philippine cultural socialization may more often than not serve as barrier to prevent boys and men from reporting a sexual abuse history.³⁴
- Finally, NGOs must call for a zero-tolerance policy and ask for the immediate defrocking of convicted clerics. In Philippine culture, the use of the term, *Father*, is so personal and imbued with trust that there must be a realization of the gravity of violating this trust. A Catholic priest abusing a child is no different from a parent violating the trust and confidence of their children through sexual molestation and incest. The same penalties must be incurred because the magnitude of the offense is also as great.

³⁴ John C. Gonsiorek, editor, *Breach of Trust: Sexual Exploitation by Health Care Professionals and Clergy* (California: SAGE Publications, 1995) 95.

CONCLUSION

UN Secretary-General Javier Perez de Cuellar once said that “(t)he way a society treats its children reflects not only its qualities and protective caring, but also its sense of justice, its commitment to the future and its urge to enhance the human condition for coming generations.” Recent legislation and jurisprudence in the Philippines have shown that the child must have a special place in society that is protected, assured and not compromised by the authority or even right of any adult. This principle accepts no exemption especially in cases of sexual abuse of children. Clergy sexual abuse of children must accordingly be dealt with in like manner.

As signatories to the UN Convention on the Rights of the Child, the Philippine government and the Holy See must recognize that children have needs and human rights, which extend far beyond basic concepts of protection. As such, there must be a firm commitment to take all legislative, social, educational and other measures to safeguard children from sexual abuse and exploitation, including prostitution and pornography.

Particular to this report, there is a need to evolve a comprehensive national program for the protection of both male and female children from all forms of clergy sexual abuse. The program must not only provide for mechanisms for the successful prosecution of pedophile priests, but must likewise provide for an effective rehabilitation program for the victims of any and all kinds of clergy sexual abuse.

ANNEX A
ACCOUNTS OF CLERGY SEXUAL ABUSE OF MINORS
*Assault on Innocence*³⁵

THE CASE OF FR. AGUSTIN CUENCA, OFM³⁶
1990

On 1 August 1990, Fr. Agustin Cuenca, OFM,³⁷ a parish priest assigned to the Our Lady of the Abandoned Church in Sta. Ana, Manila, was accused of sexually molesting two of his teenaged acolytes. The complaint alleged that his accusers, 15 and 16 years old, were abused sexually for a period of two years starting in December 1988 until June 1990 by Cuenca.

In December 1988, Cuenca allegedly ordered all his acolytes to sleep in his room at the parish rectory in order for them to wake up early for the pre-Christmas dawn masses. One of the acolytes alleged in a sworn statement that he was woken up by the priest's hands groping parts of his body. This incident was repeated several times with the priest going to the extent of sucking his organ. As a result, the acolyte suffered from urinary tract infection.

The other acolyte alleges being sexually molested only once, on Easter Sunday 1990, when Cuenca hugged him tightly and repeatedly told him that he will "taste God's cooking." (*"Matitikman mo ang luto ng Diyos."*)

Both acolytes alleged that others have also been molested but have chosen to keep quiet-, especially after being given money by Cuenca.

The criminal case of acts of lasciviousness was dismissed at the preliminary investigation level. The prosecutor alleged that while this penal provision applied to female children, it only applied to male children if they were below 12 years old.

The administrative case submitted to then Philippine Archbishop Jaime Cardinal Sin was apparently referred to Cuenca's superior in the Order of the Friars Minor (Franciscans) who merely transferred Cuenca to a different parish in the province.

At present, Cuenca is supposedly back in Manila. No information is available as to whether he was further investigated or whether he has undergone treatment and rehabilitation or not. Could there have been other cases and/or allegations of sexual abuse against him? Having been assigned to the province where the Catholic church is undeniably more powerful and where there are few, if any, NGOs that

³⁵ This is the same title of a book written by Hilary Stiles, a.k.a. Jeanne Miller, also on clergy sexual abuse.

³⁶ Accounts came from Earl K. Wilkinson, *People Priests and Pedophiles* (Manila: International Research Foundation, 1994) 89-90, and from interviews with Atty. Eric Mallonga on 21 October 2004.

³⁷ Order of the Friars Minor (*Franciscans*)

address child abuse much less clergy sexual abuse, one cannot help but be concerned with the way this case was handled.

THE CASE OF FR. MACARIO APUYA, SVD³⁸ 1998

On 16 October 1998, most of the national newspapers carried identical stories about a priest who allegedly raped a girl while his mother watched.

In the city of Dagupan, north of Metro Manila, Fr. Macario Apuya, SVD³⁹ of the Saint Therese Parish, was accused of two criminal charges, one charge of rape and one of child abuse as defined under R. A. No. 7610. Initially referred to the local DSWD, the case was subsequently handled by Atty. Mallonga. The case had historical significance since it was the very first time that a priest was being prosecuted for pedophilia in the Philippines. Apuya was incarcerated in the Quezon City jail for almost three years during the whole time the case was on trial.

The girl told authorities that sometime October 1997, she heeded the request of the priest's mother to accompany her and the priest to Vigan, Ilocos Sur, to attend the fiesta in that town. She later found out that there was no fiesta. On the third night, the victim claimed she woke up when she felt Apuya already forcing himself on her. She failed to resist, claiming she was overwhelmed with threats on her and her siblings' lives and that his mother was silently watching her abuse. At the time, the girl was a 14-year old minor while Apuya was 52 years old. She also claimed that she had sexual intercourse with Apuya on occasions after the alleged rape.

The victim was introduced to Apuya through Malou, a 17-year old girl who would bring her to Apuya's mass and then visit him in the convent. Apuya would often take both girls out for snacks and would wander through the mall where he would buy small gifts for the victim.

The girl related that on 7 September 1997, she, Malou and another friend were stranded in Dagupan and ended up spending the night in Apuya's parish. He ushered them to his bedroom in the convent where he allegedly brought them food and wine. She also stated that Apuya had instructed them that Malou was to sleep with him on the bed, while she and her friend were to sleep on the floor. Later that night, her friend woke her up sensing something was wrong. She turned towards the bed and saw Apuya totally naked on top of an equally naked Malou. Nothing else was said among them even as they saw Apuya gave Malou PHP 300 pesos after the incident, with the latter swearing them to secrecy.

During one hearing, the defense counsel agitated the child as the former asked her repeatedly about details of the sexual abuse incident reprehensible tactic applied to one already traumatized by abuse. This led the child to walk out of the hearing. When asked by defense counsel where she was going, the child replied, "*Ang pangit mo!*" ("You're ugly!"). Unbelievably, the judge who heard this case decided on 20 December 2002 that this show of aggression by the child could only evidence one thing that she could have also retaliated and defended herself against Apuya's alleged abuse. He also ruled that the case could not have been possible in the first place. The judge, who is a dyed-in-the-wool Catholic, could not

³⁸ Accounts came from Earl K. Wilkinson, *Priestly Pedophiles* (Printed in Hong Kong: Published by Book of Dreams Verlag, Germany, 2003) 86-107, and from interviews with Atty. Eric Mallonga on 21 October 2004.

³⁹ Society of the Divine Word

imagine either a clergy abusing a minor or that a cleric's mother allow and/or condone her priest son to commit such abuse. In Judge Abednego Adre's words:

"...the claim that the mother of the accused asked about the complainant's menstrual cycle and if she could be used by her son borders on the incredible. No mother would do that on behalf of a son who is a priest, unless she was a pervert or out of her mind. That at the moment she was being ravished the old woman was at the doorway silently watching made the story worse. Even pagan mothers would not countenance such indecent act openly and in their presence, much more a normal, conservative mother whose cherished dream of having a son, poor as they were, spend life in the service of God and his people was already a reality."

As fittingly critiqued by Wilkinson, what appears incredible is that "an uneducated girl of 14 could make up such a story. There have been many stories in recent years of wives assisting their own husbands to rape children. To normal people, this may appear incredible, but it nevertheless has proven true."⁴⁰

In his decision, Judge Adre also stated that:

"Nothing of substance came out although creditably the complainant stood her ground and reiterated what she declared during the presentation of the evidence in chief of the prosecution."

This was a strange admission of the court in view of what the decision later stated:

"The glaring inconsistencies and improbabilities during the long and intense cross questioning cast serious doubts on the veracity of the accounts given and the veraciousness of the complainant."

However, the Philippine Supreme Court has repeatedly ruled that variance as to the time and date of the rape do not generally diminish the complainant's credibility. This is -established jurisprudence that has obviously passed the notice of Judge Adre.

Based on all this, the accused priest was acquitted of rape and child abuse charges by Judge Adre of the Quezon City Regional Trial Court. The administrative case against Apuya was rendered moot and academic by the acquittal.

The judge ended his decision with the sentence:

"The accused may have been a flirt, he might have nearly crossed the threshold of perdition but certainly he was no child molester, much less rapist."

One is left with no other choice but to agree with Wilkinson's conclusions. "The message given by the court is very clear. If your child is sexually molested or abused by a priest in the Philippines then better forget it. The church hierarchy will do nothing about it and neither will law enforcement agencies. Even if it does get to court, the accusers will be judicially insulted by being called troublemakers. It will be interesting to find out just what duties Father Apuya will be given by his church. Let us hope it does not allow him to "help" any other poor young girls."⁴¹

⁴⁰ Earl K. Wilkinson, *Priestly Pedophiles* (Printed in Hong Kong: Published by Book of Dreams Verlag, Germany, 2003) 102.

⁴¹ *Ibid.*, 107.

EFFECTS OF ABUSE IN CATHOLIC MINOR AND MAJOR SEMINARIES

Atty. Mallonga, during an interview on 21 October 2004, also recounted at least two instances when colleagues shared about their experience of sexual abuse in the seminaries. More than anything, the following shows how prevention measures in seminary formation are crucial.

A neighbor who finished his high school (secondary) studies in a Catholic Minor Seminary shared that he was abused in the seminary by the priest rectors. He became an alcoholic and he kept inviting male friends to frequent beer houses where he would “get” as many female *GROs* (Guest Relation Officers) as possible to prove his masculinity. His neighbor never filed a case, nor is he likely to.

Another unexpected revelation came from a well-known colleague of Atty. Mallonga’s who held a political appointment to a department in the government. When said colleague’s action resulted to the displeasure of a high-ranking church official, the latter sent a recommendation to President Arroyo for his removal. Visiting the official in hopes for a reconciliatory dialogue, what Atty. Mallonga’s colleague received instead was a scathing remark of “*Akala ko pa naman magaling ka d’yan dahil galing kang seminaryo*” (I thought that you would have been good for that position since you came from the seminary-). He recounted this with a heavy heart and with bitter recollection of how his tertiary studies in a Catholic Major Seminary, rather than make him a better person, most likely led to his being gay since he was sexually abused there. The priest-abuser in his case, who was a foreigner, was coddled by the religious order that ran the prestigious seminary. Despite the fact that the priest is now dead, the emotional and mental scars are very much alive in his victim who feels doubly betrayed by his church.

OVERVIEW OF REPORTED CASES OF PHILIPPINE CLERGY SEXUAL ABUSE OF CHILDREN AND YOUNG PEOPLE

Davao City, 1991:- Fr. Rex Mansmann, an American priest in his mid-fifties who heads the Sta. Cruz Mission in Lake Sebu, was accused of raping a 13-year old T’boli⁴² girl.⁴³ The wife of the town’s mayor defended the priest saying that the accusations were unfounded.

Zamboanga City, 1992:- The city prosecutor recommended the filing of child abuse and maltreatment charges against a Canadian priest who heads a missionary home for abandoned children in Pasonanca Park. Fr. Arthur Winicoff, president-director of the St. Francis Home of our Blessed Mother of Victory Mission Foundation, Inc., was named respondent in the alleged abuse from June 1989 to March 1992. The complaint stated that the maltreatment and abuse of the children ranged from slapping, kicking, punching, depriving them of meals for several hours, making them kneel for long hours and other forms of cruel and unusual punishment.⁴⁴

Tacloban City, 1993:- Deportation proceedings were filed against an American Catholic missionary worker with the Perpetual Mother Congregation based in Naval, Biliran. Brother Steve Michael Greinte, 38, who headed this congregation, faced a criminal case for acts of

⁴² T’bolis are indigenous peoples in Lake Sebu, Mindanao, Philippines.

⁴³ Earl K. Wilkinson, *People Priests and Pedophiles* (Manila: International Research Foundation, 1994) 84-85.

⁴⁴ *Ibid.*, 85.

lasciviousness against a 19-year old Filipino boy. Under covert surveillance by authorities, several photos were taken of Greinte having oral sex with other teenage members of the Congregation on the beach of Naval.⁴⁵

May 2002: A woman sought child support from Fr. Nicanor Sta. Maria, who once served as principal of the Don Bosco High School in Makati City. She said she had a relationship lasting close to five years with Sta. Maria while she was working as his secretary.⁴⁶

June 2002: A soldier accused Fr. Eleuterio Carton, parish priest of Tigbauan, Iloilo, of sexually harassing him in 1996 when he was only 17. The soldier executed an affidavit addressed to Jaro Archbishop Angel Lagdameo. His mother also issued a separate affidavit in support of her son's accusations against the priest. Carton denied the allegations, saying he did not even know the soldier. On 4 October, Carton hit back at his accusers by suing them for libel and perjury.⁴⁷

July 2002: Florida officials issued a warrant for the arrest of Fr. Polienato Bernabe, 61, a native of Pangasinan, who had been charged with sexually abusing an 8-year-old girl more than two decades ago in Gulfport, Florida. Under Florida laws, if convicted, Bernabe could face life in prison. Bernabe, a member of the Archdiocese of Lingayen-Dagupan, was a visiting priest who served at the Holy Name Catholic church in Gulfport and the Holy Family Catholic church in St. Petersburg in the 1970s and 1980s. The victim, Melissa M. Price, said Bernabe began abusing her in late 1978 when she was 8. Price, who allowed newspapers to use her name, told investigators that the abuse, which escalated into sexual intercourse, took place hundreds of times at her mother's home in Gulfport. According to the St. Petersburg Times, Bernabe took her on a three-week vacation to the Philippines when she was 12. On her 16th birthday, she said, he gave her a used car but later replaced it with a brand new Volkswagen Cabriolet.⁴⁸

In Cebu City, three former altar boys of the Basilica Minore del Sto. Niño and another youngster wrote Cebu Archbishop Ricardo Cardinal Vidal, accusing former basilica rector Fr. Apolinario Mejorada of sexually abusing them between 1995 and 1998.⁴⁹

About a week later, Mejorada's superiors admitted he was involved in some "transgression" and paid Php 120,000 pesos in settlement. Shortly thereafter Fr. Mercurio Montenegro was accused by a 29-year-old man and more than 30 other altar boys of abusing them from 1987 to 1997. Montenegro, the former parish priest of the town of Cordova on Mactan Island, denied the accusation.⁵⁰

The alleged sexual abuse of Rita Milla by seven priests in 1983 was in the news when she asked Roger Cardinal Mahoney of Los Angeles to help her find the priest who got her pregnant. The would-be nun earlier said the late Fr. Santiago Tamayo Jr. and six other priests sexually abused her when she was 16 years old. She said the diocese tried to cover up the abuse by arranging for her trip to the Philippines to keep her pregnancy a secret. She delivered the baby at the Ilocos Norte Provincial Hospital. She later returned to the United States.⁵¹

⁴⁵ Ibid., 84.

⁴⁶ *Priests in the news*, http://www.inq7.net/opi/2003/jun/23/text/letter_5-1-p.htm

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

- A sexual harassment case was filed by three students and an instructor of the Cagayan State University against Fr. Ranhilio Aquino, CSU vice president for academic affairs. Aquino had filed complaints of irregularities, graft and mismanagement against some university officials being investigated by the House committee on good government. On 4 February 2000, the Ombudsman dismissed the sexual harassment charges against Aquino.⁵²
- In Northern Samar, Fr. Eugenio Talavera Jr., parish priest of Allen, was relieved of his pastoral duties in the Diocese of Catarman in the wake of charges of rape and illegal detention filed against him by his niece on 14 January 1999. Nemia, the daughter of the priest's first cousin, said she was sexually abused between December 1996 and early 1997.⁵³

A priest who handles psychotherapy sessions for “erring” priests and bishops admitted in a confidential interview⁵⁴ that he witnessed a fellow diocesan priest in a “sexual act” with an adolescent boy. This priest-abuser was reported and the bishop made him undergo therapy that went on for three years--a fact known only to a select few. Others were simply told that he was taking “further studies.” The priest who gave this interview was certain that some therapy was also provided for the victim but was more confident about the healing that his fellow priest underwent. In fact, the priest interviewed is concerned about how the priest-offender now faces serious challenges because talk seemed to have erupted in the diocese among fellow priests that he abused some minors. It came out in the interview that the bishop is seriously considering a transfer of diocese for the priest-offender. Several questions posed were left unanswered: How does anyone know that an erring priest such as one’s colleague has really fully recovered? Why does the thinking that it may have been just an isolated case pervade? How can one be sure that the abuse will not happen again? How does one ensure the victim’s healing and complete recovery? What are the guidelines by which a transfer, if any, will occur? Shouldn’t the receiving diocese be told about the priest-offender’s history as a preventive measure? Why maintain “silence”?

Ms. Ma. Elena Caraballo, Deputy Executive Director of the CWC, mentioned that her office recently received a facsimile inquiry from a US lawyer regarding a Fr. Arwin Diesta from the Archdiocese of Bicol.⁵⁵ A 35-year old man, who is a client of the US lawyer, alleged that Diesta abused him in the US when he was still a boy. Interestingly, the communication merely requested for information on whether Diesta was still based in a seminary. Caraballo’s contact from the DSWD Region V Director informed her that Diesta was now with a parish. Caraballo further requested the Department of Justice (DOJ) and the National Bureau of Investigation (NBI) to confirm Diesta’s whereabouts. To date, she has not heard from either the DOJ or the NBI. When asked if the CWC would include cases of clergy sexual abuse of minors in the Philippine Report to the UN Committee on the Rights of the Child. Caraballo replied that this is unlikely since the report is already long and that these cases are “isolated” at best.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ 20 October 2004. Katipunan, Quezon City, Philippines.

⁵⁵ Telephone conversation on 21 October 2004.

ANNEX B
SELECTED RESOURCES

Ateneo Human Rights Center, *Human Rights Treatise on Making Country Reports Under Human Rights Conventions*. Makati City, Philippines: Ateneo Human Rights Center, 2003.

Ateneo Human Rights Center, *Human Rights Treatise on the Legal and Judicial Aspects of Impunity: Conference Proceedings and Related Articles*. Makati City, Philippines: Ateneo Human Rights Center, 2001.

Ateneo Human Rights Center, *Situation Analysis on Children in Conflict with the Law and the Juvenile Justice System*. Manila: UNICEF, 1998.

Berry, Jason. *Lead Us Not into Temptation : Catholic Priests and the Sexual Abuse of Children*. Chicago, IL: University Press, 2000.

Bruni, Frank and Elinor Burkett. *A Gospel of Shame: Children, Sexual Abuse, and the Catholic Church*. New York: Viking Penguin, 1993.

Catholic Bishops' Conference of the Philippines. *Hope in the Midst of Crisis*. 7 July 2002. <<http://www.cbconline.net/documents/2000s/2002-hope.html>>

----- . *Pastoral Guidelines on Sexual Abuses and Misconduct by the Clergy*. 1 September 2003. <http://www.cbconline.net/documents/2000s/2003-SEXUAL_ABUSES_AND_MISCONDUCT.htm>, accessed 15 December 2004.

Catholics for a Free Choice. *The Holy See and the Convention on the Rights of the Child: A Shadow Report*. Washington, D.C.: Catholics for a Free Choice, 2002.

Cozzens, Donald. *Sacred Silence: Denial and Crisis in the Church*. Collegeville, Minnesota: The Liturgical Press, 2002.

Gonsiorek, John C., editor. *Breach of Trust: Sexual Exploitation by Health Care Professionals and Clergy*. California: SAGE Publications, 1995.

Jenkins, Philip. *Pedophiles and Priests: Anatomy of a Contemporary Crisis*. New York: Oxford University Press, 1996.

Pope John Paul II. Apostolic Letter *Sacramentorum Sanctitatis Tutela*. 30 April 2001. <<http://www.bishop-accountability.org/resources/resource-files/churchdocs/SacramentorumEnglish>>

United Nations. *Convention on the Rights of the Child*. 2 September 1990.

Wilkinson, Earl K. *People Priests and Pedophiles*. Manila: International Research Foundation, 1994.

----- . *Priestly Pedophiles*. Printed in Hong Kong: Published by Book of Dreams Verlag, Germany, 2003.

ANNEX C

SOURCES OF PHILIPPINE LAWS

- Act No. 3815. *The Revised Penal Code of the Philippines. An Act Revising the Penal Code and other Penal Laws.* 8 December 1930
<http://www.chanrobles.com/revisedpenalcodeofthephilippines.htm>, accessed 15 December 2004.
- Presidential Decree No. 603. *The Child and Youth Welfare Code.* 10 December 1974.
<http://www.chanrobles.com/childandyouthwelfarecodeofthephilippines.htm>, accessed 15 December 2004.
- Philippine Constitution (1987)
<http://www.chanrobles.com/philsupremelaw1.htm>, accessed 15 December 2004.
- Republic Act No. 7610. *An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes.* 17 June 1992.
<http://www.chanrobles.com/republicactno7610.html>, accessed 15 December 2004.
- Republic Act No. 7877. *An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes.* 8 February 1995. <http://www.chanrobles.com/legal4antisexualharassmentact.htm>, accessed 15 December 2004.
- Republic Act No. 8353. *An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes.* 30 September 1997.
<http://www.chanrobles.com/republicactno8353.htm>, accessed 15 December 2004.
- Republic Act No. 9208. *An Act To Institute Policies To Eliminate Trafficking In Persons Especially Women And Children, Establishing The Necessary Institutional Mechanisms For The Protection And Support Of Trafficked Persons, Providing Penalties For Its Violations, And For Other Purposes.* 2003.
<http://www.preda.org/work/resolution/ra9208.htm>, accessed 15 December 2004.
- Republic Act No. 9262. *An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes.* 8 March 2004.
<http://www.dswd.gov.ph/images/articles/RA9262.pdf>, accessed 15 December 2004.