

The Rights of the Victims: International Standards and the Need of a Holistic Approach

Fabián Salvioli

Abstract

This article underlines the importance of pursuing a holistic approach to properly addressing rights violations committed against minors within the framework of religious institutions. To this end, it identifies international standards that must be respected in matters of truth, justice, reparations, guarantees of non-repetition and memory, in order to effectively ensure the rights of victims of abuse within a religious area or space.

Keywords: truth; justice; reparations; guarantees of non-repetition; rights of victims; child sexual abuse; penal procedures; convention on the rights of the child

1. Introduction

Since its beginnings, international human rights law has generated a very important body of norms, principles and standards that must be complied with by all actors in the international community, mainly states – as full subjects of international law. This new paradigm focuses, fundamentally, on two main duties: the obligations to respect and ensure the exercise of the rights of all people under its jurisdiction.¹

The individual stands at the centre of international human rights law. The obligation *to respect* human rights requires that states *abstain* from interfering with the exercise of persons' rights. Purely by being people, persons have an intrinsic dignity protected by a nucleus of rights, and public powers are forbidden to violate those rights or to interfere in their full enjoyment.

A cross-cutting element of this legal framework is, naturally, the focus on victims and the protection of their rights. Violations of their human rights call for new public and institutional policies.

1 The concept of “jurisdiction” means in its territory and/or under its control – even outside the territory.

Human rights violations have a deep impact on the victims – and people close to them –, as such violations are perpetrated by the states and institutions whose purpose should be to generate the conditions for people to enjoy their human rights.

Victims are therefore surprised because in the case of such abuses, they are emotionally subordinated to those in power. After they suffer abuse and their rights are violated, they often feel guilty – and even responsible – for what happened to them.

The general obligation *to ensure* the free exercise of human rights is divided into the following four main duties:

- The first is to take all measures *to prevent* violations.
- The second is *to investigate* the violations committed.
- The third is *to make full reparation* for such violations.
- The fourth is to *take all measures to ensure that the violations are not repeated* (non-recurrence).

Non-compliance with the duty to respect a human right also entails the failure to prevent such violations and to ensure the protection of victims' rights. Both types of general obligations are inextricably related.

The *obligation to ensure* human rights is broadly recognised in international human rights law, and one of its essential components is the obligation of *judicial protection* for the victims in a framework of human rights standards.

All these measures – prevention, investigation, reparation and guarantees of non-recurrence – must be carried out from a perspective that favours the individual, with absolute respect for the victims' rights, making them participate fully in the proceedings, avoiding defencelessness, and especially avoiding their re-victimisation.

According to an established rule of *ius gentium*, a state may not invoke the provisions of its domestic law as justification for its failure to perform the fulfilment of an international obligation it has assumed.²

As a result of this principle, there is a customary rule in international human rights law that prescribes that, if a state has ratified a human rights instrument, it must introduce the necessary modifications in its domestic law to ensure the faithful fulfilment of the obligations accepted. Conversely, states must abstain from adopting norms in the future that are

2 UN, Vienna Convention on the Law of Treaties, art. 27, (23 May 1969), available on <https://www.refworld.org/docid/3ae6b3a10.html>, access 13.09.2022.

incompatible with the international human rights obligations they accepted to comply.

Therefore, the obligation to ensure human rights also – in addition – requires the adoption of all necessary normative measures to effectively achieve the enjoyment of human rights, which implies – in terms of the rights of the victims of violations – the reviewing of norms and procedural rules in light of international standards (“*conventionality control*”), in order to repeal or reform those rules that are incompatible with the international human rights obligations that bind the state.

2. The Role of the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-Recurrence in Relation to Abuses Perpetrated in Catholic Institutions

The United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-Recurrence has received a significant number of complaints from different countries around the world, including Belgium, Canada, Chile, Germany, Mexico, Colombia, Argentina and the United States of America, denouncing various acts of abuse committed in churches and other Catholic institutions, as well as the actions of agents of the Catholic Church regarding those acts.

This prompted the sending of an official communication to the Holy See³ expressing great concern about institutional attempts by the Catholic Church to shield alleged offenders from secular justice, in some cases by receiving them in the Vatican and denying them extradition, or transferring them to places where they cannot face criminal prosecution. Deep concern was also expressed by the Special Rapporteur regarding the official positions of states on not fully complying with the improvement of national frameworks for investigating, prosecuting and obtaining redress for victims

3 UNCHR, Mandats du Rapporteur spécial sur la promotion de la vérité, de la justice, de la réparation et des garanties de non-répétition; du Rapporteur spéciale sur les droits des personnes handicapées; de la Rapporteuse spéciale sur la vente et l'exploitation sexuelle d'enfants, y compris la prostitution des enfants et la pornographie mettant en scène des enfants et autres contenus montrant des violence sexuelles sur enfant; et du Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, AL VAT 1/2021 (7 April 2021), available on <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26316>, access 29.08.2022.

of sexual abuse. Also concerning are the claims to enforce statutes of limitations in cases of large-scale and systematic abuse.

This communication from the Special Rapporteur is in line with concerns expressed by the Committee on the Rights of the Child when examining the second periodic report by the Vatican City State (Holy See), as well as with concerns expressed by the Committee against Torture when examining the Vatican's initial state report. Concluding observations by both United Nations treaty bodies were issued in 2014.⁴ It is also important to highlight the communiqué sent to the Vatican City State (Holy See) by the Special Rapporteur on the Sale and Sexual Exploitation of Children, including Child Prostitution, Child Pornography and other Child Sexual Abuse Material in 2019.⁵

I have noted with great interest the steps taken since February 2019 by Supreme Pontiff Francis to seriously address the sexual abuse crisis in the Church, as well as the modifications to canon law—which came into effect in 2020. These positive steps have been necessary, meaningful and of great importance, and mark the beginning of a transition that must be consolidated and deepened.

It must be emphasised that the above regulations, even though still valuable as first steps, are insufficient to effectively address the facts of the past, in order to bring justice to the victims of abuse and human rights violations committed in Catholic institutions and by Catholic agents.

I have also raised concerns, jointly, to other states and the Vatican City State, about past abuses committed in Catholic institutions, pointing out the important cooperative role that the Catholic Church can play in clarifying the facts, especially by making available relevant archives that may be in its possession.⁶

4 CRC, Concluding observations on the second periodic report of the Holy See, CRC/C/VAT/CO/2, (25 February 2014); and CRC, Concluding observations on the report submitted by the Holy See under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict CAT/C/VAT/CO/1, (25 February 2014).

5 UNCHR, Mandat de la Rapporteuse spéciale sur la vente et l'exploitation sexuelle d'enfants, y compris la prostitution des enfants et la pornographie mettant en scène des enfants et autres contenus montrant des violences sexuelles sur enfant, AL VAT 1/2019, (2 April 2019).

6 Specifically, the Indian residential school system established in Canada and administered by the Catholic Church from the late 19th century until the late 1960s. See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27141&LangID=E> access 29.08.2022.

This Special Rapporteur is still receiving persistent complaints regarding the Catholic Church's obstruction of and lack of cooperation on judicial proceedings in several states, which hinder the identification of the perpetrators and the establishment of their responsibility, and impede the full reparation of the victims.

The scope of the abuses and their recurrence over the years require holistic and comprehensive measures to strengthen the rights of the victims, including actions to ensure that the five pillars of transitional justice are achieved: truth, justice, reparations, guarantees of non-recurrence and memory processes.

3. Victims' Rights in Cases of Large-Scale or Systematic Violations of International Human Rights Law and International Humanitarian Law

Among the sources of international law are the general principles of law, as clearly stated in the Statute of the International Court of Justice, which is the main judicial organ of the United Nations.⁷

It is a general principle of law, among all legal branches, that *any harm suffered must be duly repaired*. When dealing with large-scale and systematic human rights violations, however, their scope and intensity require a series of additional imperative measures to be taken, as these actions do not only affect the victims themselves but society as a whole.

The first right of victims that emerges in this type of cases is *the right to truth*. This right has a dual dimension – individual and collective –, and the right-holders are: first of all, the individual – victim and close family –, the collective to which the individual belongs, and society – as a whole. In international human rights law, the *right to truth* is to be found in numerous instruments.⁸

Hence, these issues cannot be addressed through criminal or administrative proceedings alone. “*Truth Commissions*” are mechanisms composed by people of high moral standing and credibility in the eyes of victims

⁷ ICJ, Statute of the International Court of Justice, art. 38 (26 June 1945).

⁸ In particular: the *International Convention for the Protection of All Persons Against Enforced Disappearance* and the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. The United Nations' Human Rights Council frames the right to truth in the context of the fight against impunity.

and society, which must also be put in place through criminal and/or administrative proceedings. When states and institutions decide to establish a truth commission and give full support to its effective functioning, a very positive message is sent to society. Such actions make clear the states' explicit condemnation of the facts and indicate their willingness to deal with those facts, as well as to assume responsibility for and remedy their negative actions.

Truth commissions must be equipped with sufficient human and material resources, as well as with specialised technical teams. Truth commissions must also have the capacity to take a sensitive, supportive and thoughtful approach towards the victims. Truth commissions must have sufficient working time to be able to establish, through a rigorous method of research, the general truth about what happened.

Truth commissions are not intended to establish criminal responsibility, and they are not a substitute for the fulfilment of the right to justice.

Victims also have the *right to justice*. Human rights violations must be investigated and sanctioned when such acts constitute crimes under the domestic criminal law of the states in which they were committed, or when international instruments require them to be criminalised. Applicable penalties must reflect the seriousness of the acts committed, to avoid “*de facto*” impunity.

The investigation and sanction of human rights violations are part of the victims' right to an effective remedy.⁹ Failure to investigate and prosecute such violations is a breach of the human rights standards contained in human rights treaties. Impunity for such violations is a negative factor that may contribute to their recurrence. If sanctions are not commensurate with the seriousness of the acts committed, impunity may result.

As mentioned above, victims have the *right to reparation* from the violations they have suffered. The evolution of international human rights law makes it possible to affirm the existence of a very solid legal basis for the right of victims to seek remedies and reparations.¹⁰

9 UNHRC, General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, para. 18 (26 May 2004), available on <https://www.refworld.org/docid/478b26ae2.html>, access 13.08.2022.

10 See: Universal Declaration of Human Rights (adopted 10 December 1948), UNGA Res 217 A(III) (UDHR) art 8; the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (ICCPR) art 2; the Convention against Torture and Other Cruel, Inhuman

While criminal responsibility is subjective, reparations to victims of human rights violations should not depend on the establishment of a criminal conviction. Therefore, states must repair and provide effective remedies as a consequence of the establishment of the violation itself, as state responsibility is objective and arises from proven facts, regardless of whether the perpetrators have been identified or not.

In any case, proven violations automatically give rise to the obligation of full reparation to the victims and/or their families. Full reparation may include an array of various measures, as appropriate.

Where there have been large-scale abuses, a registry of victims must be established and a mechanism of easy registration must be created. Such a registry must remain open over time, as victims of very traumatic events such as sexual abuse, sexual slavery and rape – among others – only denounce their abuse when they find the courage to do so. Sometimes, it takes decades, as has been proven in recent years with the many cases of victims of abuse and rape committed in Catholic institutions in various countries.

Reparations must be holistic,¹¹ according to the standard of *full reparation* enshrined in international human rights instruments. This requires the abuses to be met with the restitution of the rights violated – if possible –, as well as with measures of rehabilitation (psychological, psychiatric and medical treatment with professionals that the victims trust) for certain types of very traumatic abuse. These measures extend to the people closest to the direct victims. Measures of satisfaction (public acts of acknowledgement of responsibility, public apologies, etc.) are also part of full reparation.

Measures or guarantees of non-recurrence refer to the reform of the norms that gave rise to the violations in the first place, have allowed impunity or prevented reparation being conceded. Non-recurrence also refers to the institutional changes needed to ensure due diligence in the face of any threat of a recurrence of the violations. It calls for the removal from their position of those who have been found responsible for or complicit in

or Degrading Treatment or Punishment (adopted 10 December 1984), UNGA Res 39/46, art 14; and the International Convention on the Rights of the Child (adopted 20 November 1989), UNGA Res 44/25, art 39.

11 The *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* refer to five types of measures: restitution, rehabilitation, compensation, satisfaction and guarantees of non-recurrence.

the abuses, or of those who failed to act properly within the institution in order to investigate and sanction the facts – “*vetting process*”.

The fifth element is *memory*. Memorialisation processes must include the victims’ and victim associations’ full consent. Such processes must preserve the memory of what happened to the victims and help counteract attempts at denialism.¹² Memory processes cut across all aspects of full reparation.

Such a holistic approach enables society to reconcile itself with the state and its institutions and also enables them to regain the trust that was lost. This ensemble of measures should not be perceived as a threat to the state’s institutions. On the contrary, these measures represent a great opportunity to recover the legitimacy of the institutions before society, and it is the only possible way to handle the past with due respect to the victims’ dignity.

4. *International Standards Regarding Criminal Proceedings for the Prosecution and Sanction of Victims’ Human Rights Violations*

Fighting against impunity towards crimes that constitute human rights violations is a state duty, especially when the victims were in a position of inferiority and subordination at the moment that the acts occurred. Such is the case with children and adolescents because of their age.

Attacks on the sexual integrity of children are some of the most serious crimes, and the consequences are devastating for them and their closest relatives and friends. They are also unacceptable for society and the international community.

Victims have the *right to justice*. Some elements that guarantee this right are the following:

- Victims must take *active participation* in the process at all moments and phases. The state’s institutions must support them empathically and in solidarity.
- When victims provide their testimony, it must be done in a *context that is not intimidating, with psychological and legal support provided by the persons they choose and trust*.

12 See also: UNHRC, Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence A/HRC/45/45 (9 July 2020).

- The criminal investigation *must not incur revictimisation of the persons affected*. Action protocols must be clear in focusing the investigation on the accused person's conduct and its consequences and that none of the victims' actions or attitudes can justify sexual abuse.
- Victims must have, through their counsel, *full access* to the judicial and/or administrative proceedings.

Investigations must be conducted in a proper manner, taking into account the context of the facts and circumstances, as well as applying the following criteria:

- *Contradictions and inconsistencies that are eventually present during the narration of the circumstances regarding the facts must not be considered as a lack of credibility*, as the victims are usually overwhelmed and traumatised. Additionally, difficulty in remembering outlying facts could be provoked by the passage of time. The main focus during the testimony must be directed specifically towards the acts of abuse.
- *When a victim has initially denied the abuse but later on admits to having been abused, this must not be considered an insurmountable contradiction*. Plenty of times, stigmatisation and shame, as well as social and family rejection, induce the victims to deny the facts for a prolonged time.
- *Psychological expertise, especially when related to post-traumatic stress, must be given a high probative value*.
- *Circumstantial evidence of such crimes and abuses is of great importance for the proceedings*. As the abuses are mostly committed within the private sphere of the persons involved, perpetrators rely on the absence of testimony.
- *The burden of proof cannot rest solely on the victim*. The person investigating must actively resort to existing documentation and archives and search for other testimonies. In some cases, victims do not have knowledge of the complete name of their abuser, as they only know their first or nickname, which sometimes does not match their official identity. Nevertheless, the Catholic Church has, if diligent, all the necessary means at its disposal to correctly identify the accused person.

Not complying with the international standards indicated constitutes a violation of the victims' human rights.

Finally, victims have both *the right to compensation and the right to justice*. Victims cannot be put in a position of choosing between one or the other. Under no circumstance is it acceptable to conduct agreements

of a monetary or other nature that include dispositions which make it impossible to accuse or criminally prosecute the perpetrators.

5. Some Recommendations of Good Practices that, if Followed, Effectively Ensure the Rights of Victims of Abuse Within a Religious Area or Space

To establish agile and secure reporting and accusation mechanisms, and disseminate them to the Catholic community by all means available, including at the moment of preaching.

To determine transparent, expeditious and independent mechanisms for the procedures to be followed with respect to the complaints received.

To guarantee the victims' and their representatives full access to the mechanisms mentioned before.

To act (investigate, prosecute, sanction) *ex officio* when there are sufficient elements to presume the commission of the violation of victims' rights, even if no complaint has been filed or presented.

To establish clear and diligent rules of conduct for those in a position of control of the places in which the acts or abuses were perpetrated, as well as to regulate the responsibilities of their superiors. These rules must comply with both the obligation to respect the victims' rights and the obligation to guarantee/ensure those rights, such as preventive and investigative measures, as well as guarantees of non-recurrence.

To determine action protocols in accordance with international human rights standards.

To train investigators, prosecutors and judges to carry out their functions according to human rights standards, eliminating the prejudices and stereotypes that place the responsibility for the abuse on the behaviour of the victims.

To facilitate state national authorities access to the documents required for them to carry forward criminal proceedings.

To refrain from taking any public, private or confidential measures aimed at procuring that the accused persons evade prosecution or justice in the states where the crimes were committed.

To create programs for the victims of abuse on full and comprehensive reparation in accordance with the international standards detailed above.

To ensure the victims' human rights by adopting such measures as may be necessary to bring canon law into line with the legal framework of international human rights law.

6. Concluding Remarks

The historical evolution of international human rights law has given increasing legal standing to victims of human rights violations, while simultaneously expanding the recognition of their rights both under domestic and international jurisdictions.

States and institutions must comply with their obligations to respect and ensure human rights. These duties derive from the Charter of the United Nations – which is binding for all its states, both full and observer members—,¹³ as well as from the principal human rights treaties and conventions, including: the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).

When the violations of human rights are large-scale and systematic, victims are protected by a set of rights, such as the five pillars mentioned above: the rights to truth, justice, reparations, guarantees of non-recurrence and memory. Some elements of these five pillars also represent the rights of society and thus have the characteristics of both individual and collective rights.

The protection of these rights requires that states and institutions act according to their duties and obligations. One of the most effective ways to comply with such obligations is the establishment of a *formal process of transitional justice* that holistically addresses all of these elements and the protection of the victims' rights. In such a process, victims and their representatives have the right to participate fully in the design, implementation and monitoring stages, and re-victimisation must be avoided throughout all the stages.

A transitional justice process implies precisely that the institutions that decide to carry it out transition from a situation of disregard for rights to a new situation where the rights of the people under their jurisdiction or control are fully respected and ensured, especially towards the victims of systematic and serious human rights violations.

In the event that a comprehensive transitional justice process is not carried forward, institutions are still obliged to *protect and ensure* the human rights identified *supra* – with all the components of each one.

13 UN, Charter of the United Nations, 1 UNTS XVI, (24 October 1945) arts 55 and 56.

The general obligation to ensure the victims' human rights entails that those institutions must take all adequate measures to prevent, investigate, sanction and fully repair the consequences of the crimes, as well as to adopt effective policies of non-recurrence.

As regards the victims' right to justice, all administrative and criminal proceedings – including the investigation phase – must be carried out in accordance with the international human rights standards identified above, in order to avoid re-victimisation of the persons affected and impunity for the perpetrators.

Substantive and procedural rules governing criminal and administrative procedures to prosecute human rights abuses must comply with the international human rights obligations; all relevant measures must be carried out in order to achieve this.

Biography

Prof. Dr. Fabián Salvioli Ph.D. in Juridical Science; International Law and Human Rights Professor; Director of the Institute of Human Rights and Director of the Master's Degree in Human Rights, Faculty of Law of the National University of La Plata, Argentina; Former President of the UN Human Rights Committee (2015–2016); UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. Working paper presented to the seminar organised by Tutela Minorum, Pontifical Commission for the Protection of Minors.

References

- Committee on the Rights of the Child (2014): Concluding observations on the report submitted by the Holy See under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, CAT/C/VAT/CO/1, 25 February 2014.
- Committee on the Rights of the Child (2014): Concluding observations on the second periodic report of the Holy See, CRC/C/VAT/CO/2, 25 February 2014.
- Statute of the International Court of Justice, (ICJ Statute 1945) (International Court of Justice [ICJ]), 26 June 1945.
- International Convention on the Rights of the Child (adopted 20 November 1989), UNGA Res 44/25.
- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (ICCPR).
- UN (1945): Charter of the United Nations, 1 UNTS XVI, (24 October 1945).
- UN (1969): Vienna Convention on the Law of Treaties, art. 27, (23 May 1969), <https://www.refworld.org/docid/3ae6b3a10.html>.

- UNCHR (2019): Mandat de la Rapporteuse spéciale sur la vente et l'exploitation sexuelle d'enfants, y compris la prostitution des enfants et la pornographie mettant en scène des enfants et autres contenus montrant des violences sexuelles sur enfant, AL VAT1/2019, 2 April 2019.
- UNCHR (2021): Mandats du Rapporteur spécial sur la promotion de la vérité, de la justice, de la réparation et des garanties de non-répétition; du Rapporteur spéciale sur les droits des personnes handicapées; de la Rapporteuse spéciale sur la vente et l'exploitation sexuelle d'enfants, y compris la prostitution des enfants et la pornographie mettant en scène des enfants et autres contenus montrant des violence sexuelles sur enfant; et du Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants, AL VAT 1/2021, 7 April 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26316>.
- UN General Assembly (2005): Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (adopted 16 December 2005), UNGA Res 60/147.
- UN General Assembly (1984): Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984), UNGA Res 39/46.
- UN General Assembly (2010): International Convention for the Protection of All Persons Against Enforced Disappearance (adopted 23 December 2010), UNGA Res 47/133.
- UNHRC (2004): General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, para. 18, 26 May 2004, <https://www.refworld.org/docid/478b26ae2.html>.
- UNHRC (2020): Memorialization processes in the context of serious violations of human rights and international humanitarian law: the fifth pillar of transitional justice. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence A/HRC/45/45, 9 July 2020.
- Universal Declaration of Human Rights (adopted 10 December 1948), UNGA Res 217 A(III) (UDHR).

