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United Nations Committee on the Rights of the Child
Office of the High Commissioner for Human Rights
United Nations

To whom it may concern:

Re: Why victims of Catholic Clergy Sex Crimes are not receiving Justice in Australia

Victims of Catholic clergy sexual abuse in Australia face significant legal impediments and challenges in their attempts to seek justice. The Catholic Church and the legal system are set up such that, all too often, the church and its clergy offenders are protected at the expense of the victim. Lack of equal access to the Courts for these clergy victims is a human rights issue. Their original and ongoing clergy and church abuse and trauma are also human rights issues.

If a victim in Australia is seeking justice, there are several options available, including the criminal courts, civil litigation, the Catholic Church's own internal processes and the Victims of Crime Assistance Tribunal (Victoria) or its equivalents in other jurisdictions. Victims may seek compensation, an apology or conviction and punishment of the offender.

In relation to civil litigation, primary victims can apply for damages by way of monetary compensation for personal injury or for negligence due to a breach of duty of care. But this option is thwarted in Australia due to what is commonly known as the *Ellis Defence* (there is no legal entity of the Catholic church in Australia that can be sued especially for historic sex crimes) and the current law in relation to vicarious liability and non-

delegable duty of care.

The Catholic Church's internal complaints processes, Melbourne Response and Towards Healing, may offer to pay for counseling and other professional support for victims. The victim can also apply to the Church for monetary compensation by way of ex gratia payments requiring the victim to sign a Deed of Release. These church processes may also offer the victim an apology.

Catholic Church internal complaints processes

There are two internal Catholic Church complaints processes that investigate victims' complaints with a view to offering compensation and/or payment for counseling and medical expenses. The Melbourne Response commenced in 1996 and receives complaints from within the Melbourne Archdiocese. Towards Healing, a national process, also commenced in 1996. Both of these processes are hugely problematic in that they cause secondary abuse and trauma for the victims; the *ex gratia* compensation amounts are paltry compared with the courts; there is no independence; there is no review or appeal of decisions either internally or externally, and, the Catholic church should not be investigating criminal matters, rather, they should be being dealt with by the police, as they are a state matter, not a private matter.

Attached are two links: My submission to the Royal Commission into Institutional Responses to child sexual abuse (see below) on the Catholic Church's national internal complaints process, Towards Healing. This process is fundamentally flawed and causes serious abuse and trauma for the survivors and victims. And the second link is to an opinion piece responding to the Catholic Church's own submission to the Royal Commission on the Towards Healing process.

http://www.childabuseroyalcommission.gov.au/wp-content/uploads/2013/10/14-Judy-Courtin1.pdf

http://www.theage.com.au/comment/church-healing-is-strangling-victims-20131004-2uzqz.html

Civil litigation

In attempting to make use of civil litigation to obtain justice, the victim of clergy sexual assault is confronted with a raft of legal hurdles. Firstly, there are time limits on court actions. Secondly, the tort laws of vicarious liability and non-delegable duty of care in Australia severely thwart victim's attempts to seek justice, and, finally, there is no legal entity for the Church that can be sued for sex offences, especially historical sex offences.

The tort law of vicarious liability and non-delegable duty relates to the legal precedent in *Lepore*.[1] This case blocks victims' attempts to seek justice in the civil courts. Its effect is that employers (including school authorities) cannot be held liable, either through vicarious liability or a breach of a non-delegable duty, for his/her employee's criminal acts, such as rape or sexual assaults.

The other barrier to access to justice for clergy victims in Australia is what is known as the 'Ellis defence'. This legal defence emerged from a NSW Court of Appeal case in 2007,[2] in which the Catholic Archdiocese of Sydney successfully argued that the only legal entity for the Church, a Property Trust enshrined in legislation, could not be sued for the sexual crimes of the Archdiocese's clergy. This leaves victims of clergy sexual crimes without a legal entity for the Catholic Church to sue, particularly in relation to historical sex crimes.

Inquiries

There have been numerous calls for state-led inquiries into the Catholic Church in Australia in the last couple of years.

In the State of Victoria, a parliamentary inquiry was established in 2012. The report and its recommendations, titled 'Betrayal of Trust', were tabled in the state parliament in early November 2013. The links to the two-volume report are:

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[1] *NSW v Lepore* [2003] HCA 4; 212 CLR 511; 195 ALR 412; 77 ALJR (6 February) 2003.
[2] *Trustees of the Roman Catholic Church v Ellis and Another* [2007] NSWCA 117.

https://s3-ap-southeast-2.amazonaws.com/family-and-community-development-committee/Inquiry+into+Handling+of+Abuse_Volume+1_FINAL_web.pdf

https://s3-ap-southeast-2.amazonaws.com/family-and-community-development-committee/Inquiry+into+Handling+of+Abuse_Volume+2_FINAL_web.pdf

A Special Commission of Inquiry into matters relating to the Police investigations of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle was established in 2012. The report and recommendations of this inquiry will be delivered in February 2014.The link to this inquiry's website is:

http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/pages/sisa_index

A national Royal Commission into Institutional Responses to child sexual abuse was announced in November 2012. It commenced in 2013. The link to the Commission's website is:

http://www.childabuseroyalcommission.gov.au

Although the Victorian Parliamentary Inquiry was held into all religious and non-Government organisations, about 80% of the evidence presented to the inquiry related to the Catholic Church.

Generally, the recommendations from the Victorian Inquiry were well received and addressed most of the legal limitations facing victims of Catholic clergy sex crimes. Importantly though, because the recommended legal amendments and changes are not to be retrospective, justice for the existing survivor community is not possible in several ways. Firstly, they still won't have a legal entity for the Catholic Church to sue. Secondly, the recommended amendments for the crime of concealing a serious crime (the cover-up by the church's hierarchy) will not be retrospective, therefore, the needs of the existing survivors to have the hierarchy criminally accountable, is problematic.

There is now a wait to see what happens with the implementation of the recommendations.

Following is a link to a paper I presented to a Human Rights conference in Australia in July 2013 which outlines the above legal limitations and concerns with the church's internal complaints processes, especially that of Towards Healing. The same concerns exist for the Melbourne Response process.

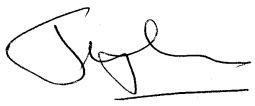
http://www.law.monash.edu.au/castancentre/conference/2013/courtin-paper.pdf

Conclusion

Victims and survivors of Catholic clergy sex crimes in Australia have faced, and continue to face, resistance from the Catholic Church in relation to victims finding justice. Not only do victims not find justice, they experience a whole new round of abuse and trauma, especially from within the church's two internal complaints processes.

Victims and survivors in Australia have fought so very hard for a Royal Commission and they have succeeded. This is but a first step and ongoing lobbying and campaigning are essential to make sure any recommendations made address victims' and survivors' needs and that they are then implemented effectively.

Yours sincerely,



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