



Plenary Assembly Documentation

HOW AND WHY THE CHURCH SHOULD ADOPT A TRANSITIONAL JUSTICE FRAMEWORK TO ABUSE IN CATHOLIC CONTEXTS

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Introduction

This study builds upon my earlier paper on *Transitional Justice and the Church*, which was presented to the September 2023, plenary assembly of the Pontifical Commission for the Protection of Minors (PCPM). The PCPM commissioned further study of how the Church could adapt and use transitional justice in relationship to the now concluded pilot annual report (AR), which was approved at the March 2024, plenary assembly. Because this use of transitional justice is new to many in the Church, its use by the PCPM requires justification and explanation.

Transitional justice responds to the legacies of serious human rights violations. The term “transitional” refers to a necessary transition from a prior period of large-scale human rights abuse to a new and better situation. The primary pillars of transitional justice are truth, justice, reparation, and guarantees of non-recurrence.

As this study explains, the transitional justice concepts of transition, truth, justice, reparation and guarantees of non-recurrence, in combination with practices such as listening to survivors of human rights abuses, have precedent and analogue in Catholic teaching and practice.

Pope Francis and Pope Benedict XVI have employed Catholic analogues of transitional justice concepts in addressing abuse in Catholic contexts

Pope Francis recognized the necessity of spiritual conversion in addressing abuse in *Vos estis lux mundi*, stating:

“In order that [the crimes of sexual abuse], in all their forms, never happen again, a continuous and profound conversion of hearts is needed, attested by concrete and effective actions that involve everyone in the Church.... This responsibility falls, above all, on the successors of the Apostles....”¹

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¹ FRANCIS, Apostolic Letter *Motu Proprio Vox estis lux mundi*, (May 7, 2019), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

In addressing the PCPM in May 2023, Pope Francis reiterated: “Indeed, a culture of safeguarding will only take root if there is a pastoral conversion in this regard among the Church’s leaders.”²

Conversion can be thought of as the spiritual analogue to what the human rights concept of transitional justice calls transition. The essence of both involves turning away from evil and toward the good. As Pope Francis acknowledged, sexual abuse is indeed a crime and an evil of profound harm, as the “suffering of abused children and of all vulnerable persons” are associated “to that of the suffering Christ.”³ Indeed: “The crimes of sexual abuse offend Our Lord, cause physical, psychological and spiritual damage to the victims and harm the community of the faithful.”⁴

As Pope Francis has also recognized, abuse has been exacerbated by the failure of bishops and others to respond appropriately to reports:

“For those who were abused by a member of the clergy, I am deeply sorry for the times when you or your family spoke out, to report the abuse, but you were not heard or believed. Please know that the Holy Father hears you and believes in you. I deeply regret that some bishops failed in their responsibility to protect children. It is very disturbing to know that in some cases bishops even were abusers. I pledge to you that we will follow the path of truth wherever it may lead. Clergy and bishops will be held accountable when they abuse or fail to protect children.”⁵

Pope Francis here pledged to “follow the path of truth,” which references the first pillar of transitional justice.⁶ The truth in view is not just the truth of abuse and abusers, but also the truth of those who fail to protect children, and thereby enable abuse.

There are at least five essential concepts of transitional justice in human rights law: the necessity of a transition away from serious violations of human rights, and then the four pillars of truth, justice, reparations, and guarantees of non-recurrence.⁷ In addressing sexual abuse, Pope Francis has

² FRANCIS, *Address to the Members of the Pontifical Commission for the Protection of Minors*, (May 5, 2023) <https://www.vatican.va/content/francesco/en/speeches/2023/may/documents/20230505-pontcom-tutelaminori.html>.

³ Lisa Zengarini, *Pope Francis: Child sexual abuse concerns the entire society*, VATICAN NEWS (Sept. 25, 2023), <https://www.vaticannews.va/en/pope/news/2023-09/pope-child-sexual-abuse-concerns-the-entire-society.htm>.

⁴ FRANCIS, *Apostolic Letter *Motu Proprio Vox estis lux mundi**, (May 7, 2019), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

⁵ *Pope Francis’ Remarks to Victims of Sexual Abuse*, N.Y. TIMES (Sept. 27, 2015), <https://www.nytimes.com/2015/09/28/us/pope-francis-remarks-to-victims-of-sexual-abuse.html>.

⁶ Human Rights Council Res. 18/7, U.N. Doc. A/HRC/RES/18/7, (Sept. 29, 2011), https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/18/7.

⁷ See *ibid.* Memory or Memorialization is also sometimes listed as an additional element or pillar of transitional justice.

employed all five transitional justice concepts: conversion (the spiritual analogue of transition),⁸ truth⁹, justice,¹⁰ reparations,¹¹ and guarantees of non-repetition.¹²

The concepts of transitional justice from a Catholic perspective are analogues to the spiritual practices necessary to combat the most egregious forms of evil, as well-described by Pope Francis:

“Consecrated persons, chosen by God to guide souls to salvation, let themselves be dominated by their human frailty or sickness and thus become tools of Satan. In abuse, we see the hand of evil that does not spare even the innocence of children. No explanations suffice for these abuses involving children. We need to recognize with humility and courage that we stand face to face with the mystery of evil, which strikes most violently against the most vulnerable, for they are an image of Jesus. For this reason, the Church has now become increasingly aware of the need not only to curb the gravest cases of abuse by disciplinary measures and civil and canonical processes, but also to decisively confront the phenomenon both inside and outside the Church. She feels called to combat this evil that strikes at the very heart of her mission, which is to preach the Gospel to the little ones and to protect them from ravenous wolves.”

“Here again I would state clearly: if in the Church there should emerge even a single case of abuse – which already in itself represents an atrocity – that case will be faced with the utmost seriousness. Brothers and Sisters: in people’s justified anger, the Church sees the reflection of the wrath of God, betrayed and insulted by these deceitful consecrated persons. The echo of the silent cry of the little ones who, instead of finding in them fathers and spiritual guides encountered tormentors, will shake hearts dulled by hypocrisy and by power. It is our duty to pay close heed to this silent, choked cry.”¹³

Pope Francis also recognized that abuse of children in the Church “is utterly incompatible with her moral authority and ethical credibility.”¹⁴

Pope Benedict XVI also invoked all four pillars of transitional justice in regard to clerical abuse, in an October 2006 address to the bishops of Ireland:

“In your continuing efforts to deal effectively with this problem, it is important to establish the truth of what happened in the past, to take whatever steps are necessary to prevent it from occurring again, to

⁸ FRANCIS, Apostolic Letter *Motu Proprio Vox estis lux mundi*, (May 7, 2019), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

⁹ *Pope Francis’ Remarks to Victims of Sexual Abuse*, N.Y. TIMES (Sept. 27, 2015), <https://www.nytimes.com/2015/09/28/us/pope-francis-remarks-to-victims-of-sexual-abuse.html> (“I pledge to you that we will follow the path of truth wherever it may lead.”).

¹⁰ Ibid (“Clergy and bishops will be held accountable when they abuse or fail to protect children.”).

¹¹ *Pope meets with delegation of abuse victims from Nantes, France*, VATICAN NEWS (Nov. 28, 2023); Courtney Mares, *Pope meets with clerical abuse survivors, urges Church to hear victims’ ‘anguished cry’*, CATHOLIC NEWS AGENCY (Aug. 3, 2023), <https://www.catholicnewsagency.com/news/254988/pope-francis-meets-with-clerical-abuse-survivors-urges-church-to-hear-victims-anguished-cry>; FRANCIS, *Address to the Members of the Pontifical Commission for the Protection of Minors*, (May 5, 2023), <https://www.vatican.va/content/francesco/en/speeches/2023/may/documents/20230505-pontcom-tutelaminori.html> (directing a “spirituality of reparation”).

¹² FRANCIS, Apostolic Letter *Motu Proprio Vox estis lux mundi*, (May 7, 2019), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html (“never happens again”).

¹³ FRANCIS, *Address at the end of the Eucharistic concelebration*, (Feb. 24, 2019), https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html#_ftn2.

¹⁴ Ibid.

ensure that the principles of justice are fully respected and above all, to bring healing to the victims and to all those affected by these egregious crimes.”¹⁵

The words of Pope Francis and Pope Benedict XVI make clear that the human rights concepts of transitional justice are analogues to spiritual practices that are essential to combat this most monstrous evil found within the Church.

The commonalities between the human rights concept of transitional justice and Catholic teaching are not surprising, as the Church and the modern human rights movement share a fundamental commitment to the protection of the inherent dignity of the human person.¹⁶

Transitional justice as a human rights concept

Transitional justice as a human rights concept can be described as a means or set of tools for societies to respond to the legacies of large-scale and serious human rights violations.

Transitional justice typically is applied after a transition—at a stage when these large-scale human rights violations have ceased. Often a political transition also has occurred, from one regime, or kind of regime, to another.¹⁷

Examples of large-scale human rights violations addressed by transitional justice would include the Dirty War and the Disappeared in Argentina (1976 – 1983),¹⁸ the Rwandan Genocide in 1994,¹⁹ the killings and numerous other rights violations from in Cambodia under Pol Pot and the Khmer Rouge (1975 – 1979),²⁰ and the genocides of the German Nazi regime during World War II.²¹

Transitional justice is also applied to transitions from authoritarian regimes to more democratic regimes, such as that in the Philippines from the Ferdinand Marcos regime of 1965 to 1986, to a more democratic regime.²²

In addition, transitional justice is also applied to the transition from civil war or internal armed conflicts to the post-conflict period, as a means of healing and reconciliation, assisting victims, addressing

¹⁵ BENEDICT XVI, *Address to the Bishops of Ireland on their Ad Limina Visit*, (Oct. 28, 2006), https://www.vatican.va/content/benedict-xvi/en/speeches/2006/october/documents/hf_ben-xvi_spe_20061028_ad-limina-ireland.html; quoted in *Transitional Justice: Responding to Child Abuse within the Catholic Church in Ireland*, THE NAT’L BD. FOR SAFEGUARDING CHILDREN, 6 (Nov. 2023),

https://www.safeguarding.ie/images/Pdfs/GAP_Papers/GAP%20PAPER%2012%20Transitional%20Justice.pdf.

¹⁶ CATECHISM OF THE CATHOLIC CHURCH, para. 356-357, 369, https://www.vatican.va/archive/ENG0015/_P1B.HTM; Universal Declaration of Human Rights, (1948) G.A. res. 217(A), preamble, art. 1.

¹⁷ *WHAT IS TRANSITIONAL JUSTICE? A Backgrounder*, UNITED NATIONS, 1 (Feb. 20, 2008), https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26_02_2008_background_note.pdf.

¹⁸ *Background: Thirty Thousand Gone, but “Never Again”*, INT’L CTR. FOR TRANSITIONAL JUST., <https://www.ictj.org/location/argentina>.

¹⁹ Lars Waldorf, *Transitional Justice and DDR: The Case of Rwanda*, INT’L CTR. FOR TRANSITIONAL JUST. (June 2009), <https://www.ictj.org/sites/default/files/ICTJ-DDR-Rwanda-CaseStudy-2009-English.pdf>.

²⁰ *Background: A Long Road to Justice*, INT’L CTR. FOR TRANSITIONAL JUST., <https://www.ictj.org/location/cambodia>.

²¹ David Cohen, *Transitional Justice in Divided Germany After 1945*, WAR CRIMES STUD. CTR., U.C. BERKELEY, <https://www.ocf.berkeley.edu/~wscw/wp-content/uploads/Papers/cohen-trans-justice-germany.pdf>.

²² *Disrupting Cycles of Discontent: TRANSITIONAL JUSTICE AND PREVENTION IN THE PHILIPPINES*, INT’L CTR. FOR TRANSITIONAL JUST. (June 2021), https://www.ictj.org/sites/default/files/ICTJ_Report_Prevention_Philippines.pdf.

human rights violations, and avoiding future violent conflict.²³ Transitional justice has been applied with varying degrees of success, to conflicts in Colombia, Sierra Leone, and Liberia.²⁴

Transitional justice has at least four pillars: truth, justice, reparation, and guarantees of non-recurrence.²⁵ Truth or truth-seeking involves methods, such as investigations, truth commissions, and acknowledgments of wrongdoing,²⁶ Justice typically includes criminal prosecutions, especially of those most responsible for large-scale abuses.²⁷ Reparation focuses on remedies for victims, including compensation, official apologies, and offering services.²⁸ Guarantees of non-recurrence involve reforms designed to avoid the repetition or continuation of violations and violence.²⁹

This study does not separately discuss the transitional justice concept of memorialization, viewing it as implicitly within the four pillars, although others view it as a fifth pillar.³⁰

As will be discussed below, transitional justice in more recent years has also been applied in circumstances similar to child abuse in institutional settings, such as some forms of illegal adoption.³¹

It is obvious that the constitutive concepts and pillars of transitional justice were not created in a vacuum. Indeed, there are correlates in most legal systems, and as we have already seen, correlates in Catholic theology as well. The elements are not in themselves new. Taken together, the concepts and pillars of transitional justice look backward to provide justice and reparations for past abuses and look ahead to prevent future abuses and violence and to provide societal reconciliation.³²

The Commission's work, including the Annual Report process, is intrinsically a transitional justice process

The work of the PCPM, including the Annual Report, includes in practice the concepts and pillars of transitional justice, regardless of whether it is labeled as such. This is true in two senses.

First, the Annual Report (AR) is a part of a process of creating and marking out a transition, a before and after. For the Church, the necessary transition is from the period when there are widespread abuses which are silenced, mishandled and covered up, allowing them to continue, to a new period when safeguarding, reporting, investigations, and care for victims make abuses rare and provide appropriate responses. But these transitions are not uniform throughout the global Church, and the transitions may be gradual rather than sudden and complete. Pope Francis' Apostolic Letter, *Vos Estis*

²³ *About transitional justice and human rights*, UNITED NATIONS, <https://www.ohchr.org/en/transitional-justice/about-transitional-justice-and-human-rights>.

²⁴ *Transitional Justice and Prevention: Summary Findings From Five Country Case Studies*, INT'L CTR. FOR TRANSITIONAL JUST. (June 2021), https://www.ictj.org/sites/default/files/ICTJ_Report_Overview_TJ_Prevention.pdf.

²⁵ *About transitional justice and human rights*, UNITED NATIONS, <https://www.ohchr.org/en/transitional-justice/about-transitional-justice-and-human-rights>.

²⁶ *Transitional Justice: Truth*, UNITED NATIONS, <https://www.ohchr.org/en/transitional-justice/truth>.

²⁷ *Transitional Justice: Justice*, UNITED NATIONS, <https://www.ohchr.org/en/transitional-justice/justice>.

²⁸ *Reparations*, UNITED NATIONS, <https://www.ohchr.org/en/transitional-justice/reparations>.

²⁹ *Transitional Justice: Guarantees of non-recurrence*, UNITED NATIONS, <https://www.ohchr.org/en/transitional-justice/guarantees-non-recurrence>.

³⁰ Human Rights Council U.N. Doc. A/HRC/45/45, (July 9, 2020), <https://www.ohchr.org/en/hrbodies/hrc/regular-sessions/session45/list-reports>.

³¹ See *infra* notes 105-07 and accompanying text; see, e.g., *Joint statement on illegal intercountry adoptions*, UNITED NATIONS, https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA_HR_28September2022.pdf.

³² *WHAT IS TRANSITIONAL JUSTICE? A Background*, UNITED NATIONS, 1 (Feb. 20, 2008), https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26_02_2008_background_note.pdf.

Lux Mundi, acknowledged such, stating: “Even if so much has already been accomplished, we must continue to learn from the bitter lessons of the past, looking with hope towards the future.”³³ Cardinal O’Malley’s May 2023 Address also acknowledges the progress made in the past while seeking, through the creation of a Universal Guidelines Framework, Capacity-Building, and an Annual Report, to make those transitions and gains universal throughout the global Church.³⁴

Second, what the Church has been doing, and what the PCPM is doing, already involves the pillars of transitional justice. This process is focused on assisting the various parts of the Church to seek the truth, rather than to cover-up the truth. This concern for truth presumably motivates the Holy Father’s wishes for an annual report, and for an audit function, as the truth provides transparency and accountability.³⁵ This concern for accountability is related to the concern for justice; the AR process is designed to assist the national and local churches in employing the overlapping justice mechanisms of referral to the civil authorities and use of internal Church canon law processes. As for reparations, the AR process and Memorare Initiative is designed to assist the national and local churches in increasing their training and capacities to listen to survivors, provide access to counseling and other forms of assistance, offer apologies, and offer accompaniment as a means of healing. Indeed, the AR process is designed to make safeguarding universal in the Church, while respecting cultural differences, as safeguarding relates directly to the goal of non-recurrence.

The Church has used similar approaches in confronting other wrongs committed in Catholic contexts

The Church has in the recent past used processes analogous to transitional justice regarding other abuses. As an institution with its own legal and canonical system, the Church has regularly used both spiritual and legal means to deal with clerical misconduct and achieve transitions from periods of crisis to periods of justice: prominent examples would include the widespread sexual misconduct, including abuse, addressed by the Gregorian Reform, as well as the pervasive reforms in clerical discipline carried out during the Counter-Reformation. More recently, Saint John Paul II employed the transitional justice methodology of apologies in regard to historic wrongs against Jews, indigenous peoples, women, and others, despite the risks inherent in this method.³⁶ Such apologies elicit criticisms that too little or too much was said or done, or that such admissions “may look like acquiescence in the face of accusations made by those who are prejudicially hostile to the Church.”³⁷ Yet, Saint John Paul II’s efforts were based on a profound understanding of the eternal presence of the past, the mystical bonds across time and space of the Church, and the necessity before God of addressing the role of the Church in egregious and large-scale wrongs and sins.³⁸ Saint John Paul II also sought, it would seem, to create a “transition,”

³³ FRANCIS, Apostolic Letter *Motu Proprio Vox estis lux mundi*, (May 7, 2019), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

³⁴ Sean Patrick O’Malley, *Cardinal O’Malley on increased effort towards a culture of abuse prevention*, VATICAN NEWS (May 13, 2023), <https://www.vaticannews.va/en/vatican-city/news/2023-05/cardinal-o-malley-pontifical-commission-protection-minors-plenar.html>.

³⁵ FRANCIS, *Address to the Members of the Pontifical Commission for the Protection of Minors*, (Apr. 29, 2022), <https://www.vatican.va/content/francesco/en/speeches/2022/april/documents/20220429-pontcommissione-tutelaminori.html>.

³⁶ Alessandra Stanley, *Pope Asks Forgiveness for Errors Of the Church Over 2,000 Years*, N.Y. TIMES (Mar. 13, 2000), <https://www.nytimes.com/2000/03/13/world/pope-asks-forgiveness-for-errors-of-the-church-over-2000-years.html>.

³⁷ *International Theological Commission, MEMORY AND RECONCILIATION: THE CHURCH AND THE FAULTS OF THE PAST*, THE HOLY SEE (Dec. 1999),

https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20000307_mem_ory-reconc-itc_en.html.

³⁸ *Ibid.*; *HOMILY OF THE HOLY FATHER, "DAY OF PARDON"*, THE HOLY SEE (Mar. 12, 2000),

a before and after, in the hope that, across generations, public reckoning with corporate sin could change the trajectory of the Church in the present and future.³⁹

Similarly, Pope Francis' recent "penitential pilgrimage" to Canada, to deal with the historical role of Catholic institutions and religious in the Indigenous boarding school systems, is another adaptation of transitional justice principles.⁴⁰ Such efforts seek to change the trajectory of the Church, and to change relationships within the Church and between the Church and others. These efforts reflect a Catholic version of transitional justice, in seeking to create accountability, the admission of past guilt, and changed understandings within the Church that will prevent recurrences in the future, and in looking forward to intergenerational processes of reconciliation.

Transitional Justice is adaptable in order to accomplish its purposes

The Church necessarily adapts transitional justice principles in order to internalize and apply them effectively. There is nothing radical in that: as a concept, transitional justice is by practice and intent meant to be adapted to particular circumstances.⁴¹ The following sections illustrate how the Church may adapt transitional justice to the issue of abuse in Church contexts.

Two transitions

Transitional justice is dynamic since it focuses on change. **The first transition** is the change from periods of large-scale human rights abuses to better times without such large-scale human rights abuses. Transitional justice often presupposes that this first transition has already occurred: for example, a genocide that had ceased, or a political transition from a prior authoritarian regime that had engaged in large-scale human rights abuses, to a new (and presumably better) political regime.

Since transitional justice often is applied after this first transition has already occurred, it usually focuses nearly exclusively on the period after the first transition, the aftermath period. Thus, a major insight of transitional justice is that it is not enough to cease large-scale human rights violations; rather, the aftermath itself requires a set of tasks and changes. The changes necessary in the aftermath of large-scale human rights abuses are herein described as the **second transition**.

Periods of large-scale human rights abuses leave a legacy of profound and long-term consequences of traumas and harms for victims, the family and friends of victims, witnesses, communities, and even for those responsible for enabling and perpetrating the abuses. Transitional justice effectively addresses what is required in the aftermath. This second transition includes a process of coming to terms with what has occurred. Left unaddressed, past abuses will produce future harms. Transitional justice posits that this aftermath period requires truth-telling, justice, reparations, and guarantees of non-recurrence of a return of such abuses.

https://www.vatican.va/content/john-paul-ii/en/homilies/2000/documents/hf_jp-ii_hom_20000312_pardon.html; *Incarnationis Mysterium, BULL OF INDICTION OF THE GREAT JUBILEE OF THE YEAR 2000*, THE HOLY SEE (Nov. 29, 1998),

https://www.vatican.va/jubilee_2000/docs/documents/hf_jp-ii_doc_30111998_bolla-jubilee_en.html.

³⁹ Ibid.

⁴⁰ *Pope Francis concludes his penitential pilgrimage to Canada*, VATICAN NEWS (July 29, 2022),

<https://www.vaticannews.va/en/pope/news/2022-07/pope-francis-concludes-his-penitential-pilgrimage-to-canada.html>; Deborah Castellano Lubov, *Pope: Promote rights of indigenous peoples in Canada*, VATICAN NEWS (July 28, 2022, 12:55 AM), <https://www.vaticannews.va/en/pope/news/2022-07/pope-meets-authorities-diplomats-indigenous-in-quebec-francis.html>; see generally David M. Smolin, *Beyond Apologies: Children, Mothers, Religious Liberty, and the Mission of the Catholic Church*, 53 CUMB. L. REV. 101 (2023).

⁴¹ OHCHR: *Transitional justice and human rights*, UNITED NATIONS, <https://www.ohchr.org/en/transitional-justice> (transitional justice processes "must be context-specific, nationally owned, and focused on the needs of victims").

Often, the pillars of transitional justice have not been the primary means of making the first transition away from large-scale abuse. A genocide is finally stopped by force, or a regime is replaced by political means. There is no justice in the midst of a genocide, and no healing for victims who are merely attempting to survive in the midst of a genocide. Authoritarian regimes at the height of power do not allow themselves to be held accountable through justice.

The situation for the Church's adaptation of transitional justice to the problem of sexual abuse is quite different. Truth-telling, justice, reparations, and guarantees of non-recurrence are, applied creatively, helpful in achieving the first transition, from large-scale abuse to rare or no abuse, as well as helpful in the secondary transitions applicable to post-abuse contexts.

This dual role of transitional justice as to both transitions is made clearer by understanding the enabling conditions of clerical abuse. Clerical abuse is typically enabled by environments in which bishops or others in authority hide and silence reports of abuse, victims are ignored, coerced, or manipulated, and a practice of impunity allows perpetrators to continue to abuse with little or no consequences. Many perpetrators intentionally operate as predators within such enabling environments; indeed, perpetrators often control victims by presenting themselves as unstoppable. Impunity therefore enables the profoundly violative acts of perpetrators who intentionally seek to dominate the body, mind, and soul of victims. Secrecy is thus a primary enabling condition of abuse.⁴²

Enablers may perceive themselves as acting to protect the institution, including themselves, against what they perceive as a reputational threat. In addition, enablers may perceive the abusers as more important to the institution than the victims: they may view the priest as more important than the child, the coach as more important than the player, the teacher as more important than the student. Enablers of the abusers—in the Church context bishops or other church authorities—have failed to understand that, in the long term, their actions will create greater damage to the institutions they seek to protect. Enablers fail to perceive Christ in the person of the victims.⁴³

The practices of transitional justice are capable of dispelling this enabling environment, whether within the Catholic Church, or in other institutional contexts of abuse. Truth-telling is the opposite of hiding and silencing reports of abuse and brings a level of exposure that is critical to dispelling enabling environments. Justice is the opposite of impunity as it introduces means of accountability that serve as deterrents not only against perpetrators but also against those who hide abuse. Reparation requires listening carefully to victims and providing some measure of redress, which is the opposite of denying, minimizing, ignoring, coercing, silencing, and manipulating. Once victims can and do speak, and are heard and believed by the institution where the abuse occurred, and sometimes the wider society, the enabling environment/system will no longer continue to operate in the same manner.

The two transitions of transitional justice are analogous to the two kinds of conversion in Catholic theology

Conversion can be considered the spiritual analogue and grounding for what transitional justice calls transition. Indeed, upon examination, just as there are two transitions in transitional justice, particularly as applied to sexual exploitation, there are two conversions in Catholic theology.

The first conversion

⁴² See PONTIFICAL COMMISSION FOR THE PROTECTION OF MINORS, *Culture of Healing*, (2022).

⁴³ See FRANCIS, *Address at the end of the Eucharistic concelebration*, (Feb. 24, 2019), https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html#_ftn2 (“a change of mentality is needed to combat a defensive and reactive approach to protecting the institution and to pursue, wholeheartedly and decisively, the good of the community by giving priority to the victims of abuse in every sense...”).

“It is by faith to the Gospel and by Baptism that one renounces evil and gains salvation, that is, the forgiveness of all sins and the gift of new life.”⁴⁴ This first conversion is analogous to the first transition, when a state or society fundamentally turn away from some large-scale human rights violation.

The second conversion

“This *second conversion* is an uninterrupted task for the whole Church who, ‘... follows constantly the path of penance and renewal.’”⁴⁵ Such a path of conversion and penance “is accomplished in daily life by gestures of reconciliation, concern for the poor, the exercise and defense of justice and right, by the admission of faults...revision of life.”⁴⁶ The second conversion is the spiritual analogue to the second transition, whereby the large-scale human rights abuses have ceased, and yet there is much left to do. Indeed, reconciliation, protection of the poor and the vulnerable, defense of justice and right, and admission of faults are simultaneously tasks of the second conversion in Catholic theology and of the second stage of transitional justice.

The AR process, through use of the *ad limina* visits and other means, is intended to facilitate a continuing process of conversion, particularly by bishops, leaders of religious orders, and other church authorities, and then also by the Catholic community as a whole. Without church leaders living out this process of conversion in relationship to abuse, and also modeling it for the church, there will be little progress.

Churches are differently situated as to the two transitions

The regions, and even particular national churches, are differently situated in relationship to abuse. For some, the issue has been well publicized and notorious for more than a generation. For others, the issue has burst into public awareness and prominence within the last decade. Finally, there are societies where the issue of clerical abuse has received little public notice or publicity.

The first transition to no or few cases is not enough

First, where clerical abuse has been notorious for several decades, it is often asserted that cases are down significantly from peaks that may have occurred even many decades ago.⁴⁷ Pope Francis noted in 2022 that cases “have decreased for several years now” in parts of the world “where data and reliable resources are available.”⁴⁸ For some places, the first transition, at least as to clerical abuse of minors, may have been significantly achieved, even if some cases remain.

However, progress in eliminating new cases of abuse is not sufficient. Transitional justice teaches the necessity of the second transition, in terms of access to truth, justice, and reparations. Too often, survivors have not been listened to and have not received personal apologies. Spiritual accompaniment has not been offered. It is necessary to confront the profound harms that have occurred for the sake of survivors, the families of survivors, the churches, and society—this of course is a primary lesson of transitional justice.

⁴⁴ CATECHISM OF THE CATHOLIC CHURCH, n. 1427
https://www.vatican.va/archive/ENG0015/_P49.HTM.

⁴⁵ *Id.* at 1428.

⁴⁶ *Id.* at 1435.

⁴⁷ See, e.g., John Jay College of Criminal Justice, THE NATURE AND SCOPE OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES 1950-2002 (Washington, D.C.: United States Conference of Catholic Bishops 2004), <https://www.loc.gov/item/2019667266/>.

⁴⁸ FRANCIS, *Address to the Members of the Pontifical Commission for the Protection of Minors*, (Apr. 29, 2022), <https://www.vatican.va/content/francesco/en/speeches/2022/april/documents/20220429-pontcommissione-tutelaminori.html>.

The enablement of abuse by bishops and others in authority created profound alienation and distrust among the laity and society, a distrust that is further triggered whenever either revelations of past abuses, or an occasional new case, occur.

This is the lesson for all regions and nations: If churches from the outset establish a reputation for responding appropriately to reports of abuse, the existence of some number of abuse cases may be held primarily against the perpetrators rather than against the Church, even if the perpetrators are clergy or others within the Church. But due to decades of enablement and complicity by bishops and others in authority, all disclosures related to abuse in Church contexts, whether decades old or new, are viewed with deep suspicion and as a confirmation that “nothing has changed.”

Transitional justice may accomplish both transitions simultaneously

The second group of regions or national conferences, for which clerical abuse has been publicized for less than ten years, may be facing the necessity of making both the first and second transitions. In these churches, new cases may not yet have been reduced, meaning the first transition has not yet occurred. At the same time, access of victims to truth, justice, reparations, and guarantees of non-recurrence may also be lacking. The good news for such churches and regions is that transitional justice, particularly in the form of their Catholic spiritual analogues, may be applied to create both transitions simultaneously. The same transitional justice practices that assist victims will simultaneously destroy the enabling conditions that allow large-scale abuse to continue.

Evidence suggests that clerical abuse is often a large-scale and significant problem for decades before it becomes publicized.⁴⁹ Practices of ignoring and suppressing abuse reports may succeed for a time in delaying the time of reckoning. Cultural norms which make it unlikely that children or their families would come forward with accusations against priests inhibits publicity as well.⁵⁰ Abuse as an under the surface phenomenon usually, in time, rises to the surface, and when it does, the impact, though delayed, is even more destructive. The assumption that an absence of publicized reports means an absence of abuse is ill-advised and may lead to multi-generational harm both to victims and also to the place of the Church in society.

Societies where clerical abuse is not a publicized issue

The third situation is where clerical abuse has not yet emerged as a publicized issue. The absence of reports does not necessarily indicate that abuse is not prevalent. Churches should pay particular attention to addressing cultural norms that inhibit the reporting of abuse by child victims and vulnerable adults.⁵¹ It is particularly important that bishops and other church leaders not be involved in ignoring or suppressing reports that do arise. A commitment to truth, to victims, and to the special place of children expressed by Jesus in the gospels,⁵² will go far in avoiding the intergenerational harms that have occurred in so many parts of the global Church.

⁴⁹ See, e.g., John Jay College of Criminal Justice, THE NATURE AND SCOPE OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES 1950-2002 (Washington, D.C.: United States Conference of Catholic Bishops 2004), <https://www.loc.gov/item/2019667266/>; *Justice for survivors of child sexual abuse within the Catholic Church in Latin America*, CHILD RIGHTS INT’L NETWORK, <https://home.crin.org/issues/sexual-violence/child-sexual-abuse-catholic-church-latin-america>.

⁵⁰ Sr. Kayula Lesa, RSC, *Accompanying victims and survivors of child sexual abuse to healing*, PONTIFICAL COMMISSION FOR THE PROTECTION OF MINORS, *Culture of Healing*, 65 (2022) (victims of abuse by priests, deacons, etc., are stigmatized and blamed).

⁵¹ *Ibid.*

⁵² See, e.g., *Matthew* 18:1-6; 19:13-15; Hans Urs van Balthasar, *UNLESS YOU BECOME LIKE THIS CHILD* (Ignatius Press 1991).

Effectuating the elements of transitional justice in a victim-focused way

It is not possible here to be comprehensive about the application of the elements of transitional justice to abuse in Catholic contexts. **The sections below emphasize two points:**

First, the elements of transitional justice have correlates or analogues in Catholic concepts and practices. This has already been indicated through illustrations of how the elements of transitional justice have been used by Pope Francis, Pope Benedict XVI, and Pope John Paul II.

Second, as the Church applies the elements of transitional justice to abuse, the Church should be “focused on the needs of victims”⁵³— as well as focused on carefully listening to their experiences and viewpoints.⁵⁴

Truth in transitional justice and Catholic theology

Truth in transitional justice refers to the truth about the large-scale human rights abuses which have occurred. This truth must be told, heard, acknowledged, accepted and contemplated. This truth must reverberate throughout society.

The hidden nature of sexual abuse makes truth one of the most difficult steps. Many human rights abuses are notorious and known. Sexual abuse by contrast is typically hidden and secret. The domination of victims often is accomplished through manipulation and threats designed to make victims keep this terrible secret and internalize a self-blaming shame and guilt.⁵⁵

Equally important is the telling of the truth about the failures of bishops, leaders of religious orders, and other church authorities. If not for these failures of leadership, there would be no large-scale abuses, and indeed no need for the application of transitional justice. The leaders of the Church create and continue the enabling conditions of large-scale abuse.

Theologically, the Catechism grounds the imperative toward truth-telling in the Eighth Commandment, stating that the commandment “forbids misrepresenting the truth in our relations with others.”⁵⁶ “Offenses against the truth ... are fundamental infidelities to God and...undermine the foundations of the covenant.”⁵⁷ Perpetrators and enablers of abuse have engaged in such misrepresentations as a consistent pattern of such “infidelities to God...” through denials and cover-ups of the truth of what has been done to victims.

Jesus’s statements that He is “the truth,”⁵⁸ and that “the truth will make you free”⁵⁹ further frame what is at stake. The primary meaning of such texts is that Jesus, who is the truth, sets us free from our sins and “sanctifies” us.⁶⁰ Truth-telling about both the perpetrating and enabling of abuse is necessary to set the Church free from the continuation and legacy of these serious sins.

⁵³ OHCHR: *Transitional justice and human rights*, UNITED NATIONS, <https://www.ohchr.org/en/transitional-justice>.

⁵⁴ FRANCIS, *Address to the Members of the Pontifical Commission for the Protection of Minors*, (Apr. 29, 2022), <https://www.vatican.va/content/francesco/en/speeches/2022/april/documents/20220429-pontcommissione-tutelaminori.html>.

⁵⁵ See generally PONTIFICAL COMMISSION FOR THE PROTECTION OF MINORS, *Culture of Healing*, (2022).

⁵⁶ CATECHISM OF THE CATHOLIC CHURCH, n. 2464 <https://www.vatican.va/archive/ENG0015/P8H.HTM>.

⁵⁷ Ibid.

⁵⁸ John 14:6.

⁵⁹ John 8:32.

⁶⁰ CATECHISM OF THE CATHOLIC CHURCH, n. 2466 <https://www.vatican.va/archive/ENG0015/P8I.HTM>.

Truth-telling is also fundamental to the healing journey of survivors, which can provide another kind of freedom. Survivors have spoken of “their desire for answers, a need to understand, their desire for truth, transparency, accountability and for their experiences to be heard.”⁶¹

Ascertaining the truth

The *ad limina* process is designed to facilitate the finding of truth about the perpetrating and enabling of abuse in Catholic contexts. These exchanges between the national churches and ecclesiastical institutions, and the PCPM, are a part of the auditing process that Pope Francis has instituted.

As a means of finding the truth, however, the *ad limina* process is incomplete. Particularly with a large-scale human rights violation that is committed, continued, and enabled in secret, multiple sources of information are essential. These include the following:

Victims/Survivors: It is necessary for the voices of the victims to be heard in various ways. These include:

- a. Victim/survivor focus groups that can provide feedback on their experiences of abuse and on the responses of Church leadership to disclosures and reports. Ideally, such focus groups should include geographical areas that represent the different regions and jurisdictions, and in particular those national churches that will be engaged in the *ad limina* process in a given year. In addition, such focus groups may be asked to comment upon aspects of the AR and/or AR process.
- b. Pre-existing victim/survivor groups, which generally have been created by survivors for purposes of support and advocacy, particularly from the nations that will be highlighted in a particular AR.
- c. The PCPM should continue its tradition of regularly engaging with and listening to victims/survivors, as well as selecting members of the PCPM whose professional activities allow them to be in contact with victims, whether publicized or not.

Disciplinary Section of the Dicastery for the Doctrine of the Faith

The Disciplinary Section of the Dicastery of the Doctrine of the Faith has publicly shared updates on procedures for cases of sexual abuse of minors committed by clerics. The Disciplinary Section (DS) has also publicly shared limited statistical information in annual reports. For example, the DS noted that in a recent year there were 749 cases of accusations of sexual abuse of minors by priests, constituting 80% of the cases involving the more serious category of crimes.⁶²

It would be very important, in the pursuit of the PCPM’s AR methodology, including the auditing function specified by the Holy Father, for the PCPM to have access to more specific statistical information from the Disciplinary Section. For example, it would be important to have access to the following information:

- a. Geographical breakdown of cases, by region and by nation, in order to compare information from the *ad limina* process.

⁶¹ Catherine O’Connell & Barbara Walshe, *A Restorative Response to the Abuse of Children Perpetrated by Joseph Marmion SJ*, *JESUIT*, 5 (Aug. 2023), <https://jesuit.ie/wp-content/uploads/2023/08/RESTORATIVE-RESPONSE-TO-ABUSE-OF-CHILDREN-BY-JOSEPH-MARMION-SJ-AUGUST-2023.pdf>.

⁶² *ACTIVITIES OF THE HOLY SEE 2022: DEPARTMENT FOR THE DOCTRINE OF FAITH*, THE HOLY SEE (2022), https://www.vatican.va/roman_curia/congregations/cfaith/attivita-cfaith/rc_dicasteri_ddf_20230203_attivita-2022_it.html.

- b. Statistical information on outcomes of cases.
- c. Statistical information on length of process.
- d. Comparative information over time of the above.
- e. Methodology by which the Disciplinary Section supports and informs victims regularly.
- f. Methodology by which the Disciplinary Section keeps bishops or relevant authorities informed regarding the progress and outcome of cases.
- g. Statistical information on cases involving those who have enabled, or covered-up, abuse of minors, under, for example, Art. 1(b) of *Vos estis lux mundi* which applies to “conduct... consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious” for sexual abuse of a minor.

Most likely the Disciplinary Section faces resource and capacity limitations which hinder the Disciplinary Section in fully meeting the increasing demands it faces. Hence, it is important for the Disciplinary Section to be provided with adequate resources and staff.

Reports by national, regional, or local Churches

Some national churches have themselves collected and publicized statistical and other information. Of course, this information would be particularly relevant in the year in which the national church is going through the *ad limina* process. However, even in other years, this data can be a useful comparison point. Consistency in the collection of information is critical so an accurate comparison can be made from one Episcopal Conference to another. The Universal Guidelines Framework (Guidelines) and its audit instrument may be helpful in this process.

Governmental reports and reports by independent ad hoc groups

Sometimes governments, as a consequence of investigations of one or more cases or more broadly, have issued useful reports or made information public.

Sometimes independent ad hoc groups create helpful and reliable reports that are also useful sources of information.

International organizations

The PCPM should access and analyze publicly available information from international organizations. The PCPM should approach international organizations likely to have additional information to ascertain if they are willing to share additional information or cooperate with the PCPM. Questions sent to international organizations should, to the degree applicable, include (but not necessarily be limited to) the kinds of questions sent to national churches through the *ad limina* process.

Global and local NGOs

The PCPM should access and analyze publicly available reports and information from global and local NGOs. The PCPM should approach NGOs likely to have additional information to ascertain if they are willing to share information or cooperate with the PCPM. Questions sent to international organizations should, to the degree applicable, include (but not necessarily be limited to) the kinds of questions sent to national churches through the *ad limina* process.

Media sources

The PCPM should research, evaluate and analyze media sources, particularly those of greater reliability. It may be relevant to approach media sources to ascertain if they have additional information they are willing to share.

Truth in case and context

Normally survivors already know the basic truth that they were abused and by whom.⁶³ Further, as Pope Francis has recognized, victims want to be believed. This creates certain tensions with procedures in which the perpetrators benefit from the presumption of innocence.⁶⁴ Presumably due to this presumption of innocence, the Disciplinary Section directs church officials not to make public or private statements that would appear to pre-judge cases still in process.⁶⁵ Further, for safeguarding purposes preliminary decisions must be made about the role of accused priests and religious, as to access to children and otherwise, in the interim before the Church or State can adjudicate cases.⁶⁶ This suggests that, in implementing the search for truth, there need to be different mechanisms focused on different goals. The mechanisms for supporting victims and for protecting children may access truth in a different way than the mechanisms for determining the guilt of perpetrators. The PCPM should assist the various parts of the Church in being victim-sensitive as they seek truth.

There are truths about which the victim may have little access: for example, the full facts as to the enabling of abuse.⁶⁷ Survivors may want to know who knew about their abuse, and what, if anything, was done in response. In addition, the victim's case may sometimes be linked to many other cases, where a perpetrator, enabled by various authorities, over time abused many victims. Finally, the individual's case may be a part of broader patterns in which many cases involving many bishops and many perpetrators were mishandled in a particular nation or even region.

Understanding these broader narratives and contexts may be important to survivors over the course of their healing journey.⁶⁸ In addition, such broader narratives and contexts are critically important to the spiritual and transitional justice journey of the Church, church authorities, and the church community. It is not enough to treat individual cases as atomized and separate cases, even if this is necessary for some procedures (such as disciplinary proceedings under canon law and criminal prosecutions.) The truth about the large-scale enabling of abuse must also be told.⁶⁹

Transitional justice is particularly suited to this need to construct broader narratives and information beyond those of individual cases, as one part of discerning the truth about abuse. The PCPM does not play a role in adjudicating individual cases, which instead is accomplished by the Disciplinary Section

⁶³ Except in cases where deep trauma causes a victim to deny for a time, even to themselves, their own abuse. Marie Grant, *A survivor's perspective and experience in listening to victims/survivors*, COMMISSION FOR THE PROTECTION OF MINORS, Culture of Healing, 145 (2022).

⁶⁴ See, e.g., FRANCIS, Apostolic Letter *Motu Proprio Vox estis lux mundi*, art. 12(7) (May 7, 2019) https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

⁶⁵ DICASTERY FOR THE DOCTRINE OF THE FAITH, VADEMECUM: ON CERTAIN POINTS OF PROCEDURE IN TREATING CASES OF SEXUAL ABUSE OF MINORS COMMITTED BY CLERICS, Ver 2.0, June 5, 2022, art. 45-46, https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_dof_doc_20220605_vademecum-casi-abuso-2.0_en.html ("Since ... in this phase the possible guilt of the accused person has yet to be established, all care should be taken to avoid – in public statements or private communication – any affirmation made in the name of the Church, the institute or society, or on one's own behalf, that could constitute an anticipation of judgement on the merits of the facts.") (cf. art. 44).

⁶⁶ *Id.* at n. 58–65; FRANCIS, Apostolic Letter *Motu Proprio Vox estis lux mundi*, art. 15 (May 7, 2019) https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

⁶⁷ See *Transitional Justice: Responding to Child Abuse within the Catholic Church in Ireland*, THE NAT'L BD. FOR SAFEGUARDING CHILDREN, 8, 12, 14 (Nov. 2023),

https://www.safeguarding.ie/images/Pdfs/GAP_Papers/GAP%20PAPER%2012%20Transitional%20Justice.pdf.

⁶⁸ See *ibid.*

⁶⁹ *Ibid.*

and civil authorities. The role of the PCPM instead is to provide an audit function and facilitate positive change, which involves, as to truth, monitoring the larger trends and broader narratives.

Truth, privacy and rights of reputation

One complication with truth-telling is the countervailing interests of privacy and reputation, in conjunction with the presumption of innocence of the accused in secular law and in canon law. Prior to December 2019, the Pontifical Secret had been applied to abuse cases of minors, apparently as a way of protecting the privacy of victims, the reputation of the accused prior to conviction, and the integrity of the processing of cases.

In December 2019, Pope Francis lifted the pontifical secret as to “accusations, trials and decisions” involving the abuse of minors, which is an important and positive step for the application of transitional justice.⁷⁰

In particular, Pope Francis specified that confidentiality “shall not prevent the fulfillment of the obligations laid down in all places by civil laws, including any reporting obligations, and the execution of enforceable requests of civil authorities.”⁷¹ This change facilitates all four pillars of transitional justice, insofar as it enables civil authorities to be involved in providing procedures to provide truth, justice, reparations, and guarantees of non-repetition.

In addition, Pope Francis indicated that “[t]he person who files the report, the person who alleges to have been harmed and the witnesses shall not be bound by any obligation of silence with regard to matters involving the case.”⁷² These changes are critically important in a context where abuse occurred in secret, and abusers manipulated and coerced victims into silence. Releasing victims from an obligation of silence is also important because, far too often, bishops and others in authority manipulated, pressured or coerced victims into silence as a way of avoiding accountability.⁷³

Surviving justice

Catholic concepts of justice are enriched by multiple sources, including the Biblical emphasis on protections for vulnerable persons,⁷⁴ the prophetic texts,⁷⁵ and the Social Teachings.⁷⁶ Pope Francis has recognized that “the evil that does not spare even the innocence of children” requires in response

⁷⁰ RESCRIPTUM EX AUDIENTIA SS.MI: Rescriptum of the Holy Father Francis to promulgate the Instruction on the confidentiality of legal proceedings, 17.12.2019, THE HOLY SEE (Dec. 6, 2019), <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217b.html#>.

⁷¹ Ibid.

⁷² Ibid.; see also FRANCIS, Apostolic Letter *Motu Proprio Vox estis lux mundi*, art. 4, sec. 3 (May 7, 2019) https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

⁷³ At the same time, Pope Francis still required that “the information is to be treated in such a way as to ensure its security, integrity and confidentiality in accordance with the prescriptions of canons 471, 2° CIC and 244 §2, 2° CCEO, for the sake of protecting the good name, image and privacy of all persons involved.” RESCRIPTUM EX AUDIENTIA, *supra* note 70. From a transitional justice perspective, victims should have the option of confidentiality and privacy, particularly as to their identity.

⁷⁴ See, e.g., *Exodus* 22:21-26; *Leviticus* 19:9-10; *Matthew* 25:31-46; *James* 1:27.

⁷⁵ See, e.g., *Isaiah* 25:4-5, 58:1-9; *Amos* 2:6-8, 5:21-24.

⁷⁶ See, e.g., PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE Church, (2004), https://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_2006052_6_compendio-dott-soc_en.html; FRANCIS, FRATELLI TUTTI, ON FRATERNITY AND SOCIAL FRIENDSHIP (2020), https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_ enciclica-fratelli-tutti.html.

“disciplinary measures and civil and canonical processes.”⁷⁷ Further, Pope Francis has promised that “[c]lergy and bishops will be held accountable when they abuse or fail to protect children.”⁷⁸

Nonetheless, for survivors civil and canonical processes can be difficult and slow, as they tend to focus more on allegations and perpetrators than on the present needs of survivors. It is important for survivors to be properly accompanied and supported. Thus, one aspect of the AR process will be to assist Church authorities in considering how to supplement the civil and canonical processes that supply justice with additional processes that more fully include the experiences, perspectives, and needs of victims. Justice should not come with the cost of further trauma.⁷⁹

Reparations

Pope Francis’s May 2023 address to the PCPM called for a “spirituality of reparation.”⁸⁰

“What is broken must not stay broken...Mending the torn fabric of past experience is a redemptive act, the act of the suffering Servant...This is the path of healing and redemption: the path of Christ’s cross....Now is the time to repair the damage to previous generations and to those who continue to suffer...”⁸¹

Pope Francis indicated that this work of reparation would require listening carefully to survivors and the use of “skills and expertise.”⁸² The PCPM has been active in promoting, through the Memorare Initiative, training and support for churches of the Global South. The AR process is also designed to assist the Churches in developing, in conjunction with survivors, approaches to this delicate process of facilitating the healing of victims from harms suffered within the Church and often by consecrated persons. The AR process can facilitate reflection and provide an audit function as to what is and is not available to victims, and how those gaps can be filled.

Some survivors may not want, for periods of time, or even for a lifetime, to be accompanied by the Church. The Church cannot and should not force survivors to participate in any particular service or form of contact. At the same time, in many societies with limited social services and mental health services, the Church may be the only provision for healing supports and services.

The Church should not abandon those harmed as children in church contexts. Therefore, the Church should be proactive in developing resources within and outside of the Church to assist the healing of survivors.

The role of apologies, formal and informal, is closely linked to the necessity of listening. Pope Francis himself models and directs this combination of listening to survivors and apologizing to survivors, as a means of healing.⁸³ Those wounded by clergy who have enabled and perpetrated abuse need the

⁷⁷ FRANCIS, *Address at the end of the Eucharistic concelebration*, (Feb. 24, 2019), https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html#_ftn2.

⁷⁸ *Pope Francis Remarks to Victims of Sexual Abuse*, *supra* note 5.

⁷⁹ *See Transitional Justice: Responding to Child Abuse within the Catholic Church in Ireland*, *supra* note 67, at 16.

⁸⁰ *Pope Francis Remarks to Victims of Sexual Abuse*, *supra* note 5; FRANCIS, *Address to the Members of the Pontifical Commission for the Protection of Minors*, (May 5, 2023), <https://www.vatican.va/content/francesco/en/speeches/2023/may/documents/20230505-pontcom-tutelaminori.html>.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Pope Francis Remarks to Victims of Sexual Abuse*, *supra* note 5; FRANCIS, *Address to the Members of the Pontifical Commission for the Protection of Minors*, (May 5, 2023), <https://www.vatican.va/content/francesco/en/speeches/2023/may/documents/20230505-pontcom-tutelaminori.html>; FRANCIS, *Address to the Members of the Pontifical Commission for the Protection of*

opportunity to tell their stories to leaders of the Church, and to hear those leaders apologize.⁸⁴ Paradoxically, this is powerful even if those individuals who listen and apologize are not the same individuals who perpetrated and enabled the abuse.

For the Church, transitional justice should aim at the repair of victims, not the restoration of perpetrators. The redemption of perpetrators and enablers of abuse is not the responsibility of survivors.⁸⁵

Survivors sometimes face accusations of harming the Church or harming priests by reporting abuse, as a part of a culture of stigmatizing victims.⁸⁶ Churches should make clear, to survivors and to the church community, that survivors act rightly in reporting abuse and that perpetrators, not victims, are responsible for the abuse and for the consequences to the perpetrators of abusing.

Survivors should not be pressured into forgiving their abusers, nor asked to plead for leniency on behalf of their abusers. As the UN Special Rapporteur on transitional justice has noted, “victims cannot be pressurized into engaging in transitional justice processes in the name of reconciliation or other larger social goals.”⁸⁷

While forgiveness may be significant for the long-term healing of survivors,⁸⁸ forgiveness should not be used to avoid accountability for those who perpetrate or enable abuse. It can be important for the healing journey of survivors to see abusers and enablers held to account, which also constitutes an important validation of the survivor and can combat the tendency of some survivors to doubt or blame themselves. Accountability is also an important step for abusers and enablers, who for their own good need to understand the consequences and harms of their actions. Accountability is also necessary to avoid the negative practices of placing abusers back into positions where they have access to new victims. Forgiveness, however important from a long-term spiritual perspective, properly understood should not negate the necessity of truth, justice, reparations for victims, and guarantees of non-recurrence.⁸⁹

Indeed, the Church must be concerned with the spiritual redemption of perpetrators and enablers of abuse, since the concern of the Church is for all, and the abusers are indeed sons and daughters of the Church. But that task of restoring abusers, who “have the moral duty of a profound personal conversion, that leads to recognition of their vocational infidelity ...”⁹⁰ is not the burden of survivors and should not be done in ways that re-traumatize or harm survivors.

Minors, (Apr. 29, 2022), <https://www.vatican.va/content/francesco/en/speeches/2022/april/documents/20220429-pontcommissione-tutelaminori.html>; FRANCIS, *Address to Participants in the Meeting Organized by the Italian Episcopal Conference for the Protection of Minors and Vulnerable People*, (Nov. 18, 2023), <https://www.vatican.va/content/francesco/en/speeches/2023/november/documents/20231118-incontro-tutelaminori.html>.

⁸⁴ *Ibid.*

⁸⁵ *Compare Transitional Justice: Responding to Child Abuse within the Catholic Church in Ireland*, *supra* note 67, at 6.

⁸⁶ Sr. Kayula Lesa, RSC, *Accompanying victims and survivors of child sexual abuse to healing*, PONTIFICAL COMMISSION FOR THE PROTECTION OF MINORS, *Culture of Healing*, 61, 65 (2022).

⁸⁷ Human Rights Council, U.N. Doc. A/HRC/51/34, para. 28, (July 12, 2022), <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session51/list-reports>.

⁸⁸ See Jennifer Wortham, *Pastoral care for families impacted by clergy sexual abuse*, PONTIFICAL COMMISSION FOR THE PROTECTION OF MINORS, *Culture of Healing*, 83,94 (2022).

⁸⁹ Human Rights Council, U.N. Doc. A/HRC/51/34, para. 28, (July 12, 2022), <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session51/list-reports>.

⁹⁰ FRANCIS, *Address to Participants in the Meeting Organized by the Italian Episcopal Conference for the Protection of Minors and Vulnerable People*, (Nov. 18, 2023),

Too often the impetus to protect and redeem the clergy was made central to abuse cases, with the well-being of survivors subverted and ignored. Reports of abuse were hidden, and victims manipulated and coerced, ostensibly for the purposes of protecting the Church and protecting clergy.⁹¹ In this way, bishops, religious superiors, and others enabled abuse by creating impunity and opportunities for perpetrators to continue abusing—to the harm not only of victims but also the spiritual harm of the abusers themselves. Hence, Pope Francis has insisted: “no silence or concealment can be accepted on the subject of abuse”—this is a non-negotiable matter.⁹² Indeed: “[A] change of mentality is needed to combat a defensive and reactive approach to protecting the institution and to pursue, wholeheartedly and decisively, the good of the community by priority to the victims of abuse in every sense.”⁹³

Guarantees of non-recurrence

Vox estis lux mundi had a fundamental purpose that the “crimes of sexual abuse...never happen again...”⁹⁴ This goal is equivalent to the fourth pillar of transitional justice: guarantees of non-recurrence. Similarly, Pope Francis has noted: “if in the Church there should emerge even a single case of abuse – which already in itself represents an atrocity – that case will be faced with the utmost seriousness.”⁹⁵

At the same time, Pope Francis has pointed to statistics indicating a decrease of clerical abuse cases “for several years ... in those parts of the world where data and reliable sources are available” as a sign that “[t]he seeds that have been sown are starting to bear great fruit.”⁹⁶ Progress needs to be marked, even when it is incomplete, as an encouragement to further efforts, which of course is one purpose of the AR process.

As indicated throughout this report, the pathway to preventing future cases involves application of the other practices and pillars of transitional justice: conversion, truth, justice, and reparation. As Pope Francis noted, “justice and prevention are complementary.”⁹⁷ Abuse was enabled in an environment of secrecy and concealment, and abuse will be prevented in an environment of truth, accountability, justice, listening to victims, and reparative services.

Safeguarding and child protection measures will be addressed in more detail through the Universal Guidelines Framework. The AR audit function will provide a mechanism for improvement of

<https://www.vatican.va/content/francesco/en/speeches/2023/november/documents/20231118-incontro-tutelaminori.html>.

⁹¹ FRANCIS, *Address at the end of the Eucharistic concelebration*, (Feb. 24, 2019),

https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html#_ftn2.

⁹² FRANCIS, *Address to Participants in the Meeting Organized by the Italian Episcopal Conference for the Protection of Minors and Vulnerable People*, (Nov. 18, 2023),

<https://www.vatican.va/content/francesco/en/speeches/2023/november/documents/20231118-incontro-tutelaminori.html>.

⁹³ Ibid

⁹⁴ FRANCIS, *Apostolic Letter Motu Proprio Vox estis lux mundi*, (May 7, 2019),

https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

⁹⁵ FRANCIS, *Address at the end of the Eucharistic concelebration*, (Feb. 24, 2019),

https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html#_ftn2.

⁹⁶ FRANCIS, *Address to the Members of the Pontifical Commission for the Protection of Minors*, (Apr. 29, 2022), <https://www.vatican.va/content/francesco/en/speeches/2022/april/documents/20220429-pontcommissione-tutelaminori.html>.

⁹⁷ Ibid.

safeguarding, in particular through the *ad limina* process. The Memorare program will assist Churches in the Global South in providing safeguarding training.

Safeguarding should reflect the Church's understanding of the special relationship of children to Christ. Jesus insisted that children not be hindered in coming to Him (Matt.19:13-15), and taught that adults must become like children to enter the Kingdom of Heaven (Matt. 18:1-4). Jesus issued the sternest of warnings to those who would harm one of the "little ones:" "it would be better for him to have a great millstone fastened around his neck and be drowned in the depth of the ocean."⁹⁸ The centrality of children to the Kingdom, and hence to the Church, is clear.⁹⁹

The process of protecting children from abuse therefore cannot be done in a way in which the clergy, or adults generally, distance themselves from children, or implicitly stigmatize children as dangerous. This delicate balance of protecting children from abuse, while nurturing them in families, churches, schools, neighborhoods, camps, and institutions, must be done in a culturally appropriate way that integrates these norms of both nurturing and protecting children.

Pope Francis has indicated that clericalism is another enabling condition for abuse, critiquing:

"... a peculiar way of understanding the Church's authority, one common in many communities where sexual abuse and the abuse of power and conscience have occurred. Such is the case with clericalism, an approach that 'not only nullifies the character of Christians, but also tends to diminish and undervalue the baptismal grace that the Holy Spirit has placed in the heart of our people.' ...To say 'no' to abuse is to say an emphatic 'no' to all forms of clericalism."¹⁰⁰

Many of the transitional justice approaches to guarantees of non-recurrence require the active participation of the laity, including reporting mechanisms, the inclusion of the laity in boards that review accusations against clergy, and the role of the laity in safeguarding procedures. But procedures on paper will mean nothing without a conversion of attitude, by laity and clergy alike.¹⁰¹

Addressing potential objections to the use of transitional justice

Sincere objections to the use of transitional justice by the Church can be made. The sections above should overcome most of them, for the fundamental point is that transitional justice is a secular analogue to longstanding practices of the Church. Nonetheless, the sections below note objections and provide responses.

The Legal Status of the Holy See and Roman Catholic Church in International Law

The Roman Catholic Church has legal personality in international law, but beyond the tiny area of Vatican City is not a State but only an analogy to a State. This statement is not intended to minimize or undermine the very important role of the Holy See in international relations. However, in relation to abuse of minors, the distinction between the functions and roles of Church and State is critically important. The Church is responsible for the selection, training, supervision, and internal discipline of clergy, but lacks the authority for criminal prosecution outside of Vatican City. The State lacks authority over how religious groups select clergy, but has authority over criminal prosecution and law enforcement. Cooperation between the Church and State, including the Church's responsibility to make reports of allegations to the State, must be set in the context of recognizing the distinction.

⁹⁸ *Matthew* 18:5-6.

⁹⁹ See generally, Hans Urs von Balthasar, *UNLESS YOU BECOME LIKE THIS CHILD* (Ignatius Press 1991).

¹⁰⁰ FRANCIS, *Letter to the People of God*, (Aug. 20, 2018).

¹⁰¹ Reese Dunklin, Mitch Weiss & Matt Sedensky, *Catholic boards hailed as fix for sex abuse often fail*, ASSOCIATED PRESS (Nov. 20, 2019), <https://apnews.com/article/wa-state-wire-mi-state-wire-id-state-wire-ct-state-wire-wv-state-wire-66ffb032675b4e599eb77c0875718dd4>.

The differences between States in the international legal order, and the Holy See, Roman Catholic Church, and any part of such, also raises questions of the applicability of transitional justice as a legal obligation. For purposes of the PCPM's work, it is not necessary to determine whether, or to what degree, the Holy See or Roman Catholic Church, or any particular part of the Roman Catholic Church, are legally bound, in a manner similar to a State, to follow the principles of transitional justice.

For the PCPM and the Church generally, transitional justice concepts and norms are applicable because they restate obligations the Church already has according to scripture and tradition: obligations to God. Such obligations are primary regardless of whether the Holy See or Church, in a technical legal sense, are actors bound by norms that are primarily applicable to States. The use of transitional justice in the PCPM's AR methodology thus presumably relates to the internal religious obligations of the Church, and should be understood, in this document, as such.

Transitions

The Catholic Church has not experienced a regime change or violent internal conflict of the sort discussed in transitional justice. Indeed, the Roman Catholic Church is arguably the oldest large-scale organization of any kind, religious or secular, in the world. From a Catholic perspective the principles of Petrine succession and apostolic succession are the basis of a two-thousand-year continuity in basic governing principles, despite very substantial historical developments over time.¹⁰²

Nonetheless, as was discussed extensively above, the concept of a transition is particularly useful in the AR methodology in making intentional the process of change in relationship to abuse in Catholic settings. The strong theological links between the transitional justice concept of transition and Roman Catholic theological concepts like conversion, repentance, and the sacrament of penance and reconciliation make the transitions in transitional justice particularly key to the AR methodology for facilitating positive change.

Child abuse as a major human rights violation

While child sexual abuse in church settings is a very serious human rights abuse, it is different from genocide and many of the kinds of rights violations traditionally addressed by transitional justice. For these reasons, some may initially perceive the application of the term transitional justice to the Church as a kind of insult or even libel, intended more to harm than to help the Church.

Transitional justice did not traditionally address child sexual abuse in family, school, religious or institutional settings even when such was thought to be endemic. One problem is the difficulty of identifying the kind of responsible party that transitional justice usually addresses. State parties typically are not intentionally responsible for endemic child sexual abuse; state liability could be based on knowingly failing to respond to sexual abuse, but this theory typically has not been pursued. Most private institutions in which child abuse occurs are not large-scale enough, in themselves, to address legally through transitional justice, although some may indeed be large enough to justify application of a transitional justice approach.

By contrast, transitional justice has addressed sexual violence as an act of genocide and in the context of war, particularly when used as a deliberate tactic of war. The connections of sexual violence against adults or minors to such intentional acts and strategies make them come more easily within the traditional scope of transitional justice. More recently, it has been argued that sexual exploitation and

¹⁰² CATECHISM OF THE CATHOLIC CHURCH, para. 77, 815–16, 822–33, https://www.vatican.va/archive/ENG0015/_INDEX.HTM.

abuse by intervenors—such as international peacekeeping or humanitarian staff—operating in the aftermath of armed conflict should also be included within transitional justice mechanisms.¹⁰³

From this perspective, addressing child sexual abuse in the Catholic Church through the lens of transitional justice, without proof that the issue is more endemic than in other religions, or indeed in secular institutions that interact with children and youth through schools, sports programs, childcare facilities, summer camps, recreation centers, etc., would seem unfair. The unique size and hierarchal structure of the Catholic Church can appear to make it a target of critics using transitional justice, where equivalent scrutiny under transitional justice may not be applied to equivalent problems that occur in other settings.

This sense of being treated unfairly may be exacerbated if critics use the problem of abuse in the Catholic Church to demand changes as to practices like clerical celibacy, a male-only priesthood, or doctrines related to marriage, without proof that abuse occurs less in religious or secular contexts that lack those religious practices or views.¹⁰⁴ Without a comparative, empirical basis, linking abuse to such issues may engage controversies extrinsic to the purposes of transitional justice.

There are several responses to these concerns.

First, there is the response, as noted above, that the PCPM's AR methodology is employing transitional justice not because of demands from outside of the Church, but because of internal theological and ethical considerations. Transitional justice is a secular legal correlate of approaches the Church has applied, and is applying, particularly to address serious issues within the Church. For the Church to do what is right to address serious issues within the Church, as an internal Church matter, is not an unfair punishment nor an infringement of the institutional autonomy of the Church.

Second, clerical abuse within the Catholic Church in some nations is one of the leading concerns of the Catholic laity, causing extreme spiritual and moral distress even beyond the victims and their families. Clerical abuse is a significant factor in Catholics leaving the Church—not merely among survivors and their families, but beyond that for those who become aware of it. Further, from the long-term historical perspective of a two-thousand-year-old institution, the crisis has just begun, and has not yet impacted the Church everywhere—but in fact may do so in more and more places. The real harm to the Catholic Church would be failing to appropriately address abuse, and transitional justice, interpreted through a Catholic lens, offers methodological insights as to how to bring the Church through the necessary transitions.

Finally, there are new trends in the legal development of transitional justice as a secular legal theory that are already expanding the scope of the doctrine beyond traditional areas of concern like genocide and the wrongs of authoritarian regimes.

For example, recent developments in the use of transitional justice regarding illegal adoption provide a useful analogy. In September 2022, a Joint Statement on illegal intercountry adoptions was issued by various parts of the United Nations Human Rights system, including the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence.¹⁰⁵ The Joint Statement

¹⁰³ See Jessica Anania, *Transitional Justice and the ongoing exclusion of sexual exploitation and abuse by international intervenors*, 98 INT'L AFFAIRS 893, 893–913 (2022), <https://academic.oup.com/ia/article/98/3/893/6564933>.

¹⁰⁴ Cf. James Gallen, *Jesus Wept: The Roman Catholic Church, Child Sexual Abuse and Transitional Justice*, 10 INT'L J. OF TRANSITIONAL JUST., 332, 332–349, <https://academic.oup.com/ijti/article-abstract/10/2/332/2356890> (arguing, without coming to a conclusion, that “[T]he impact of specific Catholic doctrines, such as the celibacy of religious personnel ... should also be examined.”).

¹⁰⁵ *Joint statement on illegal intercountry adoptions*, UNITED NATIONS,

repeatedly invoked the various elements and applications of transitional justice, including the “right to know the truth,” truth mechanisms such as independent commissions, justice in the form of criminal prosecutions, investigations which serve truth and justice, the right to reparations for victims including compensation for economic damage, medical and psychological care, and counseling, and guarantees of non-recurrence through reform.¹⁰⁶

One member of the Commission, in her former role as UN Special Rapporteur on the sale and sexual exploitation of children, presaged this use of transitional justice in her Report on Illegal Adoptions by noting that “quests for truth, justice, reparation and guarantees of non-recurrence” were applicable to any instances of large-scale illegal adoptions, where “tolerated or directly committed by the State.”¹⁰⁷

Adoption, like the Church, is intended for good purposes. Adoption, like the Church, is viewed at least by its proponents as a good and positive context. Adoption, like the Church, is not inherently related to issues related to political regime change or civil war or genocide, although like the Church, adoption can be deeply impacted by such contexts. Yet, both adoption and the Church can be and have been contexts for large-scale abuses that contradict those positive purposes and represent a profound betrayal of trust.

This analogy to illegal adoption suggests that transitional justice is fully appropriate for addressing sexual abuse in the Church.

Conclusion

Safeguarding children from sexual abuse is not a distraction from the gospel message,¹⁰⁸ but rather is an expression of the gospel. Directly facing the destruction caused by the perpetration and enablement of abuse within the Church is not a distraction from the work and mission of the Church but is a deep expression of gospel truths. As Pope Francis has stated:

“Mending the torn fabric of past experience is a redemptive act, the act of the suffering Servant, who did not avoid pain, but took upon himself the iniquity of us all (cf. Is.53:1-14).”¹⁰⁹

The use of transitional justice by the Church to address sexual abuse in Catholic contexts is an application of spiritual practices that have been repeatedly invoked when the Church confronts abusive practices within the Church. For: “Now is the time to repair the damage done to previous generations and to those who continue to suffer.”¹¹⁰

https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA_HR_28September2022.pdf.

¹⁰⁶ Ibid.

¹⁰⁷ Human Rights Council, U.N. Doc. A/HRC/34/55, para. 86–88, (Dec. 22, 2016), https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/55.

¹⁰⁸ See CATECHISM OF THE CATHOLIC CHURCH, para. 2, 3, https://www.vatican.va/archive/ENG0015/_P2.HTM.

¹⁰⁹ FRANCIS, *Address to the Members of the Pontifical Commission for the Protection of Minors*, (May 5, 2023) <https://www.vatican.va/content/francesco/en/speeches/2023/may/documents/20230505-pontcom-tutelaminori.html>.

¹¹⁰ Ibid.