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«Violence against Children and the UNCRC ... an evolving story».

Introduction.

«... *gracious and merciful is he, slow to anger, rich in kindness, and relenting in punishment*».
(Joel 2:13)

Violence against children¹ can take many forms none so egregious as those which involve abuse of trust and systemic protection of perpetrators rather than child victims by powerful institutions. The Catholic Church is one such institution. In recent decades it has been confronted by a veritable tsunami of proven physical and sexual abuse of children within Catholic Church institutions, carried out by Church personnel and covered up by Church authorities. The damage to the children is unspeakable. The damage to the credibility of the Church is incalculable. It has potentially posed an existential threat to the Church particularly in the West.

Initially the institutional Church response was hesitant and self-protective but now the Holy See appears to be seriously engaged in trying to rebuild not just the shattered trust of the faithful but also its self-ideation as a champion of children in the mould of Christ. Its focus however has almost exclusively been on the issue of clerical child sex abuse and episcopal mismanagement.

I intend to argue here that despite these efforts the Holy See is still largely missing in action when it comes to constructing, embracing and embedding a credible children's rights ethos throughout the universal Church, in its law, its teachings, its practices and its polemic. From a time in 1990 when it offered enthusiastic support for the United Nations Convention on the Rights of the Child 1989 (UNCRC), the Holy See has now fallen far behind the curve of history as the developing story of children's autonomous rights and protections evolves at international and national levels in ways which would have seemed unlikely just a generation ago.

There are any number of cogent example of evolving attitudes to what constitutes violence against children and what constitutes a child's right to freedom from violence, from the contemporary global crusade against harmful LGBTI conversion therapies mainly practised

¹ The word "child" as used here is intended to mean a person aged under eighteen years. In Catholic Church canon law for the universal Church such a person is referred to as a "minor" (cf. CODE OF CANON LAW, 1983, canon 97 §1). In the Vatican City State which is governed by the Holy See a child is called a minor and is a person aged under eighteen years., In Article 1 of the United Nations Convention on the Rights of the Child 1989 (=UNCRC), a «child» is a person aged under eighteen unless adulthood is reached earlier under the law applicable in the jurisdiction in which they live.

by faith based organisations including the Catholic Church² to the even more advanced crusade against the use of corporal punishment in schools and in the home. Here are ready-made issues where Catholic Church leadership by actively engaging with modern research, intellectual discourse and especially the UN Committee on the Rights of the Child could help to change the face of the earth. The Committee on the Rights of the Child has emphatically told all State Parties that the Convention outlaws all forms of corporal punishment including by parent. It has warned that children and adolescents are especially vulnerable to the practice of «conversion therapy».³ Many State Parties have banned corporal punishment and increasing though still small numbers have outlawed conversion therapy where it involves those under eighteen⁴ or planning to do so⁵. The Catholic Church is on the wrong side of both practices according to the Committee on the Rights of the Child.

Looking more closely at corporal punishment where the evolution in thinking is well advanced, the Church's position is quite revealing. For centuries corporal punishment of children in schools and at home was taken for granted. It was not seen as a form of violence against children. It was not seen as abuse. It was not seen as an infringement of children's rights. Today in international children's rights law it is seen as all those things. It is undoubtedly still a vexed and contentious issue, an issue in transition.

Corporal punishment in schools is now outlawed in over one hundred countries but there remains a greater reticence around state intervention in its use by parents which has been prohibited in a only minority, albeit a growing number, of jurisdictions⁶.

According to Patrick Lenta in his recent philosophical work on corporal punishment, «World wide, four out of every five children aged between 4 and 14 experiences corporal punishment in the home. Many also in school». «You might think», Lenta remarks scathingly, «that this state of affairs might have attracted the attention of moral and social philosophers but in fact they have contributed.... No more than scattered remarks».⁷ He could have added Catholic theologians, canon lawyers, anthropologists, the Pontifical Council for the Family⁸, now part of the Dicastery for Family, Laity and Life, the former

² Cf. GLOBAL INTER-FAITH COMMISSION reports on 'conversion therapy' in Hungary and the Caribbean available at <https://globalinterfaith.lgbt/research-2/>. Sponsored by the Foreign, Commonwealth and Development Office, the 2022 Global Interfaith Commission on LGBT+ Lives (GIC+) commissioned the research in these two reports which provide hard evidence of the harm inflicted on LGBT+ people, particularly LGBT+ children and young people, in cultures that are hostile to them. The research was overseen by an Advisory Board of research professionals and conducted with the support of local non-governmental organisations. It shows the significantly higher levels of suicide attempts, suicidal thoughts and self-harm experienced by those who have undergone 'conversion therapy', often encouraged and practised by their parents, healthcare professionals and religious leaders, compared to those in the LGBT+ community who have not experienced any form of 'conversion therapy'.

³ Cf. COMMITTEE ON THE RIGHTS OF THE CHILD (=CRC), "General Comment No. 20 on the implementation of the rights of the child during adolescence", 2016, paras. 34; 50. <https://www.refworld.org/docid/589dad3d4.html>

⁴ Eg. Albania, Argentina, parts of Australia, Brazil, Chile, Ecuador, France, Germany, Greece, India, Malta, Samoa, parts of Spain, Taiwan, New Zealand, parts of the United States and Uruguay.

⁵ Eg. Denmark, Finland, Ireland, Israel, Norway and the United Kingdom

⁶ Bans do not necessarily mean criminalisation or penalisation of corporal punishment. Practice varies from jurisdiction to jurisdiction. For up to date statistics see <https://endcorporalpunishment.org/countdown/>

⁷ PATRICK LENTA, *Corporal Punishment. A philosophical assessment*, (2020 Routledge Ny, Oxon),

⁸ The Pontifical Council for the Family has held many conferences, produced several publications including a Charter of the Rights of the Family (1983) but it never addressed corporal punishment of children though it did acknowledge the child's right to bodily integrity Cf. Cf. PONTIFICAL COUNCIL OF THE FAMILY, *Children. Springtime of the family*, II. The Council has never advised the Holy See on internal changes to Church law or teaching relevant to children's rights and

Congregation for Catholic Education⁹, and The Pontifical Commission for the Protection of Minors¹⁰. These are parties which might have been expected to have contributed something to this burgeoning debate but have contributed precisely nothing to it. Pope Francis has contributed only an off the cuff remark in favour of parental use of corporal punishment¹¹. Their failure to engage is all the more difficult to understand in the light of a series of comprehensive and disturbing Government commissioned reports, from the most sophisticated democracies in the world, which presented compelling portraits of systemic excessive and oppressive physical abuse in Catholic institutions and schools where corporal punishment was permitted by law¹². These reports alone should have pushed the Holy See into at the very least serious scholarly engagement with world expertise on the subject to say nothing of serious scholarly engagement internally on its laws and teachings.

There are other compelling reasons why the Holy See should be actively involved in this recasting of traditional longstanding perceptions of what constitutes violence against children. The first reason has to do with the substantive moral, pastoral, educational and welfare role the Holy See uniquely plays in the lives of children world wide. In that global context there are clearly conflicting views on corporal punishment from state to state, culture to culture and religion to religion.

The second reason is that the Holy See is a State Party to the United Nations Convention on the Rights of the Child (1989) and as such is obliged to respect and to implement in its (the Holy See's) jurisdiction the Article 19 provision which outlaws violence against the child. And here there is no room for doubt or debate. The unambiguous view of the Committee on the Rights of the Child which monitors State Party implementation of the Convention is that all forms of corporal punishment of children, no matter how light, no matter by whom or in what circumstances, are always wrong and are always a breach of the child's rights¹³. The Committee has discussed the matter with the representatives of the Holy See and has in strong terms said that Catholic Church teaching on the matter is wrong and that the Holy See is in breach of its State Party obligations under the Convention by continuing to condone corporal punishment within the teaching of the universal Catholic Church¹⁴.

I want to examine both of these compelling reasons for they are revealing of the Holy See's attitudes to children's rights in general, its nuanced attitude to violence against children in particular and the Holy See's self-ideation as a champion of children.

obligations. Its mission has been seen solely as concerned with the dissemination rather than the interrogation of Church teaching, laws and practice.

⁹ Pope Francis' Apostolic Constitution *Praedicate evangelium* of 5 May 2022, merged the Congregation for Catholic Education with the Pontifical Council for Culture to create the new Dicastery for Culture and Education.

¹⁰ When the Pontifical Commission for the Protection of Minors was first set up by Pope Francis in 2014 it formed a large number of working groups, later reduced to six, none of which it seems from author's recent enquiries have taken up the issue of corporal punishment.

¹¹ Cf. News report of Pope Francis remarks at a General Audience in St. Peter's Square on 4th February 2015, available from <https://www.cbc.ca/news/world/pope-francis-says-ok-to-spank-children-if-their-dignity-is-kept-1.2947099>

¹² Cf. For example GOVERNMENT OF IRELAND, Ryan report; Murphy report; Ferns report; Cloyne report; GOVERNMENT OF THE NETHERLANDS, Deetman report; GOVERNMENT OF VICTORIA, Cummins report; LAW COMMISSION OF CANADA, Restoring dignity report; GOVERNMENT OF AUSTRALIA, Royal Commission report.

¹³ Cf. CRC, *General Comment no. 8, The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, 21 August 2006 CRC/C/GC/8; *General Comment no. 13, The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13.

¹⁴ Cf. CRC, *Concluding Observations on the Second Periodic Report of the Holy See on the UNCRC*, 25; 39.

To return to the first reason which concerns the role of the Holy See as the source of governance, teaching and laws for the universal Catholic Church. The Catholic Church has over one billion three hundred thousand members distributed unevenly across five continents and many nations¹⁵; that is one in six of the world's population. It is the leading Christian denomination in the world. Among its adherents there are over three hundred million child members to whom it has a special duty of pastoral care precisely because they are children.¹⁶ Saint Pope John Paul II put it thus: «in the Christian view, our treatment of children becomes a measure of our fidelity to the Lord himself».¹⁷

The Catholic Church is the world's largest non-governmental provider of educational and welfare services to children (not all of whom are members of the Catholic Church)¹⁸. In 2015 there were around sixty million children in two hundred thousand Catholic schools spread across five continents.¹⁹ The Catholic Church with its extensive reach to children through home, parish, school and diocese, is one of the most significant non-governmental contributors to the lives of children on planet earth. It is already a world leader in campaigning against child poverty and lack of education, and in supporting international efforts to prevent child trafficking and child pornography and to protect children in conflict, child workers, and migrant children. Few organisations in the world are as perfectly placed to persuade against violence experienced by children in schools and homes and to give children a voice in the debate. Yet it remains aloof.

Corporal punishment has been such a widespread and historically accepted phenomenon especially where religious influence is strong, that it has been overlooked time and time again by the Holy See as significant factor in the creation and sustaining of cultures where children are silenced and rendered particularly vulnerable by powerful hierarchical social, state and ecclesial systems and practices which give prioritised agency and reduced accountability to privileged cohorts of adults, such as parents, pastors and teachers.²⁰

¹⁵ Cf. The Pontifical Yearbook for 2020 (Annuario Pontificio) estimated that the number of baptized Catholics in the world was about 1.329 billion at the end of 2018.

¹⁶ Precise statistics for the number of Catholics under age eighteen are difficult to obtain but since most are paedobaptized and the general cohort aged under fifteen accounts for 26% of the world population I have used a working estimate that there are over three hundred million child members of the Catholic Church based on at least 26 percent of the total Catholic population of 1.2 billion. Cf. UN DEPT. OF ECONOMIC AND SOCIAL AFFAIRS, POPULATION DIVISION, World population prospects. The 2017 revision, 1; POPULATION REFERENCE BUREAU, 2012 world population data sheet, 10. Demographic distribution of Catholic children differs by continent. For example, children under fifteen make up 41 percent of the population of Africa but only 26 percent of the total world population. Cf. UN DEPT. OF ECONOMIC AND SOCIAL AFFAIRS, POPULATION DIVISION, World population prospects. The 2017 revision, 10.

¹⁷ JOHN PAUL II, "Letter to the Secretary General of the United Nations on the occasion of the World Summit for Children", 22 September 1990, AAS 83 (1991) 358-361.

¹⁸ Cf. HOLY SEE, SECRETARIAT OF STATE, CENTRAL OFFICE FOR STATISTICS OF THE CHURCH, *Annuario Statisticum Ecclesiae 2015*, 281-290; 355; CRC, *Summary record of the 1852nd meeting of 16 Jan 2014. Discussion of the Holy See's Second Periodic Report*, 27; Archbishop Silvano Maria Tomasi, then Permanent Observer of the Holy See Mission to the UN (Geneva), is reported in a non-verbatim summary to have told the CRC that sixty percent of pupils in Catholic Schools did not profess the Catholic faith; cf. CRC, *Summary record of the 1852nd meeting of 16 Jan 2014. Discussion of the Holy See's Second Periodic Report*, 28

¹⁹ Cf. HOLY SEE, SECRETARIAT OF STATE, CENTRAL OFFICE FOR STATISTICS OF THE CHURCH, *Annuario Statisticum Ecclesiae 2015*, 281-290. Over seven million were in 73,489 kindergartens, thirty-three million in ninety-five thousand elementary schools and twenty million in forty-seven thousand secondary schools

²⁰ JOINT LEARNING INITIATIVE ON FAITH AND LOCAL COMMUNITIES (JLI), *Evidence Guide on ending violence against children*, available at <https://www.unicef.org/blog/giving-children-voice-against-violence-role-of-faith-actors>

It is true that within the broad membership of the Catholic Church there exists a spectrum of views on the use of corporal punishment in Catholic schools and homes from adamantly in favour to adamantly against. An early opponent of corporal punishment was the famous Catholic educator Saint John Bosco in the late nineteenth century,²¹ and more recently Archbishop Gregory Aymond of New Orleans said, «*I do not believe the teachings of the Catholic Church as we interpret them in 2011 condone corporal punishment. It's hard for me to imagine in any way, shape or form, Jesus using a paddle*».²²

Contrast this with Pope Francis' words to a gathering of many thousands. 'One time, I heard a father say that in order to discipline his children, "At times I have to hit my children a bit, but never in the face so as not to humiliate them". The Pope's response to that was to say 'That's great. He had a sense of dignity. He should punish, do the right thing, and then move on».²³

Of the two views, Pope Francis' is the more consistent with the global historical perspective which tolerated and even encouraged corporal punishment as a necessary form of child discipline; a perspective which is still widely accepted. Archbishop Aymond's is more consistent with liberal contemporary thinking, influenced by the child's right to bodily integrity and modern scientific research which does not find corporal punishment to be damage neutral or effective but the reverse.²⁴

Crucially, it is Pope Francis' view that is consistent Church teaching which is to be found in the Catechism of the Catholic Church. In its section on parental disciplining of children²⁵, the Catechism, does not use the term «corporal punishment». It does not need to. Instead it quotes approvingly from the Old Testament Book of Sirach 30. 1-2 «He who loves his son will not spare the rod». This quotation is taken from a section of the Book of Sirach in which it is clear that physical punishment of children is not only regarded as an appropriate, effective and even desirable form of discipline but is a showcase of parental love and a way of securing obedience: «bow down his neck while he is young, and beat his sides while he is a child, lest he grow stubborn, and regard thee not, and so be a sorrow of heart to thee» (Sir: 12-13). The contrast between the Old and New Testaments regarding corporal punishment of children is noteworthy. The former repeatedly calls for the use of corporal punishment of children. The New Testament is silent on the matter. The Catechism's view that physical punishment of a child by a parent is a manifestation of love is unambiguous. Unambiguous too is the contradictory view of the Committee on the Rights of the Child. It present real difficulty for Pope Francis, the Holy See and the Catholic Church today. The Holy See is a State Party to the United Nations Convention on the Rights of the Child (1989). The Committee on the Rights of the Child which routinely and regularly monitors

²¹ Cf. DON BOSCO, "Il Sistema Preventivo Nella Educazione Della Gioventu", in *The Constitutions of the Society of St. Francis*, (Rome, 1984), 246-253.

²² Cf. <https://www.catholicnewsagency.com/news/22104/archbishop-aymond-bans-corporal-punishment-from-new-orleans-catholic-school#:~:text=Archbishop%20Gregory%20Aymond%20of%20New%20Orleans%20said%20that,though%20many%20parents%20and%20alumni%20support%20the%20practice.>

²³ Cf. News report of Pope Francis remarks at a General Audience in St. Peter's Square on 4th February 2015, available from <https://www.cbc.ca/news/world/pope-francis-says-ok-to-spank-children-if-their-dignity-is-kept-1.2947099>

²⁴ Cf. WORLD HEALTH ORGANISATION, "Corporal Punishment and Health" 23.11.2021 available at <https://www.who.int/news-room/fact-sheets/detail/corporal-punishment-and-health>

²⁵ Cf. *Catechism of the Catholic Church*, (1989), para.2223.

implementation of the UNCRC by State Parties is emphatic that the corporal punishment of children in all settings whether school, home or judicial, for whatever reason and no matter how light, is wrong and is contrary to international human rights law, contrary to the rights of the child.²⁶ In the view of the Committee it offends the child's dignity and is not justified as a disciplinary technique, nor by appeals to religious freedom for as Lenta points out, «Some Christians, ... interpret the tenets of their faith as permitting, encouraging and even requiring, the use of corporal punishment as a disciplinary technique».²⁷ The Catholic Church is foremost among such Christians.

The Holy See having previously freely discussed and indeed spontaneously raised contentious issues of Church teaching and canon law, with the CRC now claims that the CRC has no right whatever under the Convention to deal with internal Church matters like its teachings and its canon law. It also claims that as a religious, spiritual entity it is only obliged to implement the Convention in the place where it has a physical territory, that is the Vatican City State²⁸ and beyond that its only obligation is to advocate on behalf of the Convention to a global audience. The Committee on the Rights of the Child rejects these limitations on the Holy See's State Party obligations out of hand²⁹.

It is all a far cry from 1980 when the idea for the Convention was mooted and its drafting strongly influenced by children's champion and Catholic priest Canon Joseph Moerman. The Holy See «participated actively in the travaux préparatoires»³⁰ and when the United Nations General Assembly opened the Convention to the nations of the world for signature and ratification³¹, the Holy See was one of the very first to sign and ratify it stating in an accompanying Declaration that; «The Holy See regards the present Convention as a proper and laudable instrument aimed at protecting the rights and interests of children».³²

The Holy See accepts that its ratification effectively created two State Parties, the international spiritual entity that governs the Catholic Church world wide known as the Holy See and the tiny Vatican City State, the smallest state in the world, about the size of an eighteen-hole golf course, which the Holy See governs and where it locates its administrative headquarters.

It is true that the Holy See is not like most other State Parties. While it has a long history of collaborating with many United Nations subsidiary bodies, specialised agencies and international inter-governmental organizations³³ it is not a member state of the United

²⁶ Cf. CRC, *General Comment no. 8; General Comment no. 13*.

²⁷ Cf. Lenta, above.

²⁸ Cf. HOLY SEE, *Comments on the Concluding Observations of the CRC on the Second Periodic Report on the UNCRC*, 6.

²⁹ Cf. CRC, *Concluding Observations on the Second Periodic Report of the Holy See on the UNCRC*, IV A. 14.

³⁰ HOLY SEE, *Initial Report to the CRC on the UNCRC*, 12. Cf. S. DETRICK – J. DOEK – N. CANTWELL ed., *The UNCRC. A guide to the travaux préparatoires* (Dordrecht 1992).

³¹ The United Nations Convention on the Rights of the Child (UNCRC) was adopted by United Nations General Assembly on 20th November 1989. It entered into force on 2nd September 1990.

³² Cf. Instrument of Accession of the Holy See to the UNCRC, 20th April 1990.

³³ Cf. UNGA, Fifty-eighth session, *Resolution A/58/314 Participation of the Holy See in the work of the United Nations*, 16 July 2004. The UNGA noted the extensive membership of the Holy See in various United Nations subsidiary bodies, specialized agencies and international intergovernmental organizations, including the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, the United

Nations. However alone of the world's faith systems it has Permanent Observer status at the United Nations a status it insisted on obtaining. This confers on it substantial participation rights in the work of the United Nations General Assembly.³⁴ As a Permanent Observer it can sign and ratify United Nations treaties. When it does so it takes on the same obligations as every other State Party.

All State Parties, that is all those who have ratified the UNCRC, freely pledge in Article 2.1 to «*respect and ensure the rights set forth in the present Convention to each child within their jurisdiction*»³⁵. State Parties are obliged by Article 4 to «*undertake all appropriate legislative, administrative, and other measures for the implementation of the rights*»³⁶ set out in the treaty. These obligations are intended to ensure the realising of the UNCRC rights within the domain of the individual State Party. State Parties must account for their progress in implementing the Treaty through regular reports to the UNCRC monitoring body, the Committee on the Rights of the Child³⁷.

According to the Committee on the Rights of the Child on ratification of the UNCRC, the Holy See «made a commitment to implement [the UNCRC] not only within the territory of the Vatican City State, but also as the supreme power of the Catholic Church world-wide through individuals and institutions under its authority».³⁸

Nations Conference on Trade and Development, the World Intellectual Property Organization, the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization and the International Committee of Military Medicine. The UNGA also noted the Holy See's participation as an observer numerous UN and international specialized agencies including the Food and Agriculture Organization, the International Labour Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the United Nations Industrial Development Organization, the International Fund for Agricultural Development and the World Tourism Organization, as well as in the World Trade Organization. Also noted was the Holy See's full membership of the Organization for Security and Cooperation in Europe and guest observer participation in the Council of Europe, the Organization of American States and the African Union and the fact that it is regularly invited to take part in the main meetings of the Asian-African Legal Consultative Organization

³⁴ *The United Nations Charter*, the founding document of the United Nations signed on 26th June 1945 and which came into effect on 24th October 1945, made no provision for the status of Permanent Observer. It is based on custom and practice derived from the early days of the UN and was originally devised to allow Switzerland to become involved with the work of the UN. Subsequently Austria, Finland, Italy and Japan were designated as Permanent Observers. They like Switzerland eventually became full members of the UN. The Holy See became a nonmember Permanent Observer State at the UN on 6 April 1964 as a result of an exchange of correspondence initiated by Paul VI between the Holy See and UN Secretary General U Thant. From that time on the Holy See has been invited to participate in the meetings of all the sessions of the UNGA. That status was affirmed and expanded by resolution of the UNGA on 16 July 2004. While the Holy See does not have a vote at the UNGA, it can attend and participate in debates, exercise a right of reply, circulate its documents and position papers as well as co-sponsor resolutions and decisions. (Cf. United Nations General Assembly, Fifty-eighth session, Resolution A/58/314, p\articipation of the Holy See in the world of the United Nations, 16 July 2004)

³⁵ UNCRC, art. 2.1.

³⁶ UNCRC, art. 4.

³⁷ UNCRC, art. 44.1, b

³⁸ CRC, *Concluding Observations on the Second Periodic Report of the Holy See*, 8

Among the UNCRC's provisions is Article 19 which obliges State Parties to «*take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence*».

The Convention does not specifically mention corporal punishment but the Committee on the Rights of the Child which acts as a guide and interpreter of its provisions has issued two General Comments on corporal punishment,³⁹ both of which tell State Parties that they must «move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and they must undertake the necessary legislative and other awareness-raising and educational measures» necessary to end the practice of corporal punishment».

The current state of play between the Holy See and the CRC on this subject is one that reflects no credit or credibility on the Holy See. Here are the simple facts.

Under the terms of the UNCRC the Holy See should by now have submitted seven periodic reports to the CRC setting out and discussing with the committee how it has implemented the Convention. In fact, so far it has submitted only two periodic reports, the first in 1994 and the second in 2011. The third was due in 2017 but has yet to be submitted.

The first reporting cycle was a very tame affair. Neither side mentioned the clerical abuse scandals within the Church. Corporal punishment was raised by the CRC in an oral session held in Geneva with representatives of the Holy See. Fr. Raymond Roch for the Holy See would not condemn it outright arguing that the matter was complex and depended on how the punishment was administered; if done lovingly, in an age sensitive way with moderation and discretion it was acceptable but if motivated by hatred then it was not. He argued that corporal punishment should not be banned until there was agreement among all the relevant professionals.⁴⁰ The delegation was left in no doubt that the CRC disagreed with this view. The discussion concerned universal Church teaching.

Implementing the Convention in the Vatican City State was dismissed as irrelevant in the Holy See's written report on the basis it asserted that the VCS was a mere workplace for Vatican officials. The implication was that it had no children and therefore the Convention did not apply.

The Second Period Report was submitted in a very changed context. The clerical abuse scandals were to the fore. The Holy See had meanwhile ratified and submitted reports on two additional optional protocols to the UNCRC, one on the sale of children (OPSC) and the other on children in armed conflict (OPAC). It has not ratified a third optional protocol which set up a complaints procedure (OPCP)⁴¹.

The Initial Reports on the two protocols and the Second Report on the UNCRC were submitted and now contained for the first time substantially expanded information on the Vatican City State including the disclosure that there in fact were a quite number of children

³⁹ Cf. CRC, *General Comment no. 8* and *General Comment no. 13*.

⁴⁰ CRC, *Summary Record of 256th meeting held on 14 November 1995. Discussion of Holy See's Initial Report*, 23.

⁴¹ OPAC=Optional Protocol on the involvement of children in armed conflict, A/RES/54/ 263 of 25 May 2000; OPSC=Optional Protocol on the sale of children, child prostitution and child pornography, A/RES/54/263, adopted 25 May 2000; OPCP=Optional Protocol on a communications procedure, A/RES/66/138, adopted 19 December 2011.

resident there.⁴² The Holy See itself was first to raise the issue of clerical child abuse during the discussion on the OPSC Report. It voluntarily referenced the new child protection measures the Church had introduced for the universal Church and cross-referenced its teaching as set out in the Catechism of the Catholic Church. There was in the correspondence and discussions no hint or suggestion that the Holy See believed these discussions to be ultra vires the remit of the CRC as it would later claim in 2014. They were manifestly not confined to discussion of the Vatican City State.

There was dismay on the part of the CRC when at the end of the Second reporting cycle the Holy See markedly revised its understanding of its State Party obligations. Over twenty years after ratification the Holy See claimed for the first time that implementation needs a territory and it is only obliged to implement the UNCRC and its Optional Protocols in its sole territorial entity that is the Vatican City State. Outside of that its only State Party obligation as the governing authority of the Catholic Church is in a general way, as a global moral authority to promote the principles of the UNCRC to the world at large. It has no obligation to change its universal teachings or canon law to conform to the UNCRC. Moreover discussion of its teachings and canon law are ultra vires the domain of the CRC. The CRC could not have been more surprised or disagreed more strongly.

It did not help that on the subject of corporal punishment which the CRC had again raised, this time in writing, the Holy See misled the CRC. Here is how the Holy See replied in writing to the CRC's query about its teaching on corporal punishment:

«On the international level, the Holy See does not promote corporal punishment» and with regard to corporal punishment by parents, it said in «the Catechism of the Catholic Church (CCC, 2221-2223) the terms «corporal punishment» or «punishment» are not used»⁴³. Both statements are, to put it diplomatically, misleading. The Catholic Catechism unambiguously supports, even encourages, parental use of corporal punishment. It has never championed the ending of corporal punishment on the international level. The CRC pursued the matter with the Church's delegation and Archbishop Tomasi and Bishop Scicluna agreed at the oral hearing in Geneva to take the issue of corporal punishment back to the Holy See for discussion.

In its hard-hitting Concluding Observations the CRC criticized the failure of the Holy See to acknowledge that corporal punishment is outlawed by the UNCRC and asked it to enact: «guidelines and rules clearly banning corporal punishment of children in Catholic schools or Catholic institutions working with and for children and in the home». It recommended that the Holy See: «ensure that an interpretation of the Scriptures as not condoning corporal punishment is reflected in the teaching and other activities of the Church and incorporated into all theological education and training»⁴⁴. To date it has not done so although in 2019 the Holy See banned corporal punishment of children by Vatican employees in the Vatican

⁴² HOLY SEE, *Initial Report to the CRC on the OPSC*, 59 «As of 8 February 2008, there were five hundred and fifty-two citizens; fourteen citizens were less than 14 years of age, and seventeen were less than 18 years of age. There were two hundred and sixty-three residents; nine were less than 14 years of age and seventeen were less than 18 years of age»

⁴³ HOLY SEE, *Replies to the List of Issues raised by the CRC on the Second Periodic Report on the UNCRC*, 38.

⁴⁴ Cf. CRC, *Concluding Observations on the Second Periodic Report of the Holy See on the UNCRC*, 39-40.

City State. That will not be enough to meet the expectations of the Committee on the Rights of the Child but one does wonder why if the Holy See has outlawed corporal punishment in the Vatican City State it does not make the same change in its teaching for the universal Church. It has created its own anomaly.

As a leading global moral voice and the leading Christian global voice, which is facing terminal decline in the West partly fuelled by its history of ignoring the plight of child victims, here is a God given issue on which the Holy See could bring light to the darkness of millions of children world wide, could be the children's champion par excellence. But it is not.

In truth however the Holy See's next report to the CRC will have to deal with much more than corporal punishment. The debate on violence against children has moved on meanwhile to other related issues like for example conversion therapy, misogyny and homophobia in which the Church is deeply implicated. There is also an extensive list of outstanding issues the CRC expects the Holy See to have dealt with⁴⁵. They include insistence that the Holy See establish a comprehensive review of its normative framework including canon law to ensure it is fully compliant with the UNCRC. It has not done so to date though it has introduced minor changes to canon law to provide new abuse reporting procedures and accountability mechanisms for bishops and religious superiors⁴⁶ as well as new crimes and punishments for clerical sex abuse offenders⁴⁷. Nor has it introduced as recommended by the CRC, a high-level mechanism to coordinate implementation of children's rights throughout the Church and its institutions though in 2013 it created a special office in the Vatican City State to oversee the implementation of international agreements to which the Vatican City State is a State Party. That includes the Convention on the Rights of the Child, leading to the other Holy See created anomaly that the three dozen children in Vatican City State can rely on the protection of the Convention because the Holy See is a State Party but the three hundred million children who are Catholics cannot. The Holy See has yet to introduce training on the Convention into Catholic schools, educational programmes, teacher training programmes and seminaries. The Holy See agreed to review canon law with a view to abolition of the status of illegitimacy. It has not yet done so. The CRC will be particularly interested in the changes made recently to the Pontifical Commission for the Protection of Minors created by Pope Francis in 2014⁴⁸. The

⁴⁵ Cf. CRC, *Concluding Observations on the Second Periodic Report of the Holy See on the UNCRC*.

⁴⁶ Cf. POPE FRANCIS, Apostolic Letter issued *Motu proprio, Vos estis lux mundi*, 7 May 2019. Available at https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

⁴⁷ CF. CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Norms on delicts reserved to the Congregation for the Doctrine of the Faith* (11 October 2021); *Vademecum on certain points of procedure in treating cases of sexual abuse of minors committed by clerics* (5th June 2022). Version 2. Available at https://www.vatican.va/roman_curia/congregations/cfaith/doc_doc_index.htm

⁴⁸ FRANCIS, chirograph *Institution of the Pontifical Commission for the Protection of Minors*, 24 Feb. 2014, in AAS 107 (2014) 562-563. The Pontifical Commission for the Protection of Minors is a policy advisory body only. It has no remit with regard to receiving or adjudicating on individual allegations. Prior to agreeing the Commission's remit Archbishop Tomasi is reported as having told the CRC that the newly established Pontifical Commission for the Protection of Minors could be regarded as «a first step towards setting up an independent body to receive complaints from minors directly». CRC, *Summary record of the 1852nd meeting of 16 Jan 2014*.

CRC welcomed its creation but urged that it should be an independent body capable of investigating allegations of clerical child abuse and administrative mishandling of such cases. It is none of those things. It has had nothing to say on the subject of corporal punishment or conversion therapy and while it initially operated independently of the Curia, in 2022 it was subsumed into the disciplinary section of the Congregation for the Doctrine of the Faith, a Curial body which a former member of the Commission, Marie Collins, accused of obstructing the Commission's work, as a result of which she resigned⁴⁹.

There has, to date, been no resolution of the impasse in the relationship between the CRC and the Holy See. The latter remains a State Party to the Convention on the Rights of the Child with all the obligations that entails. In that regard it has been a poor performer but worse than that it threw away its credibility as a champion of children and a champion of Christ. The Holy See now has a mountain to climb if it is to get that credibility back. For the sake of children and for the sake of Christ, corporal punishment could be a good place to start and an even better place to help end the most enduring, pervasive and ill-conceived form of violence against children.

Discussion of the Holy See's Second Periodic Report, 25. Its now established remit, clarifies that it is an advisory body on policy and has no role in dealing with individual complaints. Cf. SECRETARY OF STATE, *Statute of the Pontifical Commission for the Protection of Minors* 21st April 2015, AAS 107 (2015) 564-567. The Holy See has not ratified the UNCRC (Third) Optional Protocol on a Communications Procedure (2011) which established a rudimentary complaints mechanism.

⁴⁹Cf. PATSY MCGARRY, "Marie Collins resigns from Vatican child protection body", *The Irish Times*, 1st March 2017, available at <https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/marie-collins-resigns-from-vatican-child-protection-body-1.2993428>