MISSION PERMANENTE
DU SAINT-SIÈGE
AUPRÈS DE L'OFFICE DES NATIONS UNIES
ET DES ORGANISATIONS INTERNATIONALES

N. 11399/2014

The Permanent Mission of the Holy See to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and transmits the Verbal Note, N. 4322/2014/RS of 22 September 2014, from the Secretariat of State of the Holy See which presents the comments to the *Concluding Observations* as stipulated in art. 45 of the Convention on the Rights of the Child.

The Secretariat of State of the Holy See kindly requests that these comments be incorporated in the *Report of the Committee on the Rights of the Child* at its 65th Session and then forwarded to the General Assembly.

The Permanent Mission of the Holy See to the United Nations Office and other International Organizations in Geneva avails itself of the opportunity to renew to the Office of the High Commissioner for Human Rights the assurance of its highest consideration.

Geneva, 23 September 2014

MISSION PERMANENTE DU SAINT-SIEGE
GENÈVE

OHCHR REGISTRY
29 SEP 2014
Recipients: CRC

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SEGRETERIA DI STATO

SEZIONE
PER I RAPPORTI CON GLI STATI

N. 4322/14/RS

NOTE VERBALE

The Secretariat of State, Section for Relations with States, presents its compliments to the Secretariat of the United Nations and, pursuant to art. 45 (d) of the Convention on the Rights of the Child, intends to comment on certain passages contained in the *Concluding Observations* (CRC/C/VAT/CO/2; CRC/C/OPSC/VAT/CO/1; CRC/C/OPAC/VAT/CO/1), presented by the Committee on the Rights of the Child on 5 February 2014 (Enclosure).

In line with the ordinary procedures of the United Nations Treaty Bodies, the Secretariat of State kindly requests that the enclosed Document be incorporated in the *Report of the Committee on the Rights of the Child* on its 65th Session, which will be forwarded to the General Assembly.

The Secretariat of State, Section for Relations with States, avails itself of the opportunity to reiterate to the Secretariat of the United Nations the sentiments of its highest esteem.

From the Vatican, 22nd September 2014

Secretariat of the United Nations
c/o Office of the High Commissioner
for Human Rights

GENEVA

(with Enclosure)

Comments of the Holy See on the *Concluding Observations* of the Committee on the Rights of the Child

1. The Holy See is well aware of its position within the international juridical system, as a sovereign subject of international law, as well as of its obligations as a State Party to the Convention on the Rights of the Child (CRC) and its Optional Protocols, which has been clearly articulated in its *Reports*, *Written Replies* and statements made during the inter-active dialogue. At this point, and pursuant to art. 45 (d) of the CRC, the Holy See intends to comment on certain passages contained in the *Concluding Observations* (CRC/C/VAT/CO/2; CRC/C/OPSC/VAT/CO/1; CRC/C/OPAC/VAT/CO/1) presented by the Committee on the Rights of the Child (hereinafter "Committee"), on 5 February 2014.[1]

2. In specific regard to the *Concluding Observations* CRC/C/VAT/CO/2, the Holy See underlines that in executing the obligations under the CRC, its conduct has always been inspired by general principles of international law, which include respecting in good faith the obligations deriving from treaties.[2] The specific details are set out in the *Second Periodic Report* (CRC/C/VAT/2) and in the *Written Replies* to the *List of Issues* of the Committee (CRC/C/VAT/Q/2/Add.1). The Holy See has acted in a similar way in relation to the application of the Optional Protocols as specified in its *Initial Reports* (CRC/C/OPSC/VAT/1 and CRC/C/OPAC/VAT/1) and in the *Written Replies* of the Holy See to the *List of Issues* of the Committee (CRC/C/OPSC/ VAT/Q/2/Add.1).

3. The Holy See, in affirming its proper nature as a subject of international law, reiterates that the international obligations contracted upon adherence to the CRC, with reservations[3] and interpretative declaration[4], and its Optional Protocols are fulfilled first and foremost through the

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[1] The Committee on the Rights of the Child, *Concluding Observations on the Second Periodic Report of the Holy See on the Convention on the Rights of the Child*, CRC/C/VAT/CO/2, 31 January 2014; The Committee on the Rights of the Child, *Concluding Observations on the Initial Report of the Holy See on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, CRC/C/OPSC/VAT/CO/1, 31 January 2014; The Committee on the Rights of the Child, *Concluding Observations on the Initial Report of the Holy See on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, CRC/C/OPAC/VAT/CO/1, 31 January 2014.

[2] *See e.g.*, preamble and art. 26, *Vienna Convention on the Law of Treaties*, United Nations, Treaty Series, vol. 1155, p. 331 (23 May 1969).

[3] Reservations of the Holy See: *"a) [The Holy See] interprets the phrase `Family planning education and services' in article 24.2, to mean only those methods of family planning which it considers morally acceptable, that is, the natural methods of family planning.*

"b) [The Holy See] interprets the articles of the Convention in a way which safeguards the primary and inalienable rights of parents, in particular insofar as these rights concern education (articles 13 and 28), religion (article 14), association with others (article 15) and privacy (article 16).

"c) [The Holy See declares] that the application of the Convention be compatible in practice with the particular nature of the Vatican City State and of the sources of its objective law (art. 1, Law of 7 June 1929, n. 11) and, in consideration of its limited extent, with its legislation in the matters of citizenship, access and residence."

[4] Declaration of the Holy See on the CRC: "*The Holy See regards the present Convention as a proper and laudable instrument aimed at protecting the rights and interests of children, who are 'that precious treasure given to each generation as a challenge to its wisdom and humanity' (Pope John Paul II, 26 April 1984).*

"The Holy See recognizes that the Convention represents an enactment of principles previously adopted by the United Nations, and once effective as a ratified instrument, will safeguard the rights of the child before as well as after birth, as expressly affirmed in the `Declaration of the Rights of the Child' [Res. 136 (XIV)] and restated in the ninth preambular paragraph of the Convention. The Holy See remains confident that the ninth preambular paragraph will serve as the perspective through which the rest of the Convention will be interpreted, in conformity with article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969.

implementation of the aforementioned duties within the territory of the Vatican City State (VCS), over which the Holy See exercises full territorial sovereignty. Beyond this geographic territory, which it administers, the Holy See disseminates principles recognized in the CRC to all people of goodwill and to various local Catholic churches and institutions, which operate in different States in compliance with national laws. Therefore, the obligations of the Convention and its Optional Protocols refer to Vatican citizens, as well as, where appropriate, the diplomatic personnel of the Holy See or its Officials residing outside the territory of Vatican City State.[5] The Holy See does not have the capacity or legal obligation to impose the abovementioned principles upon the local Catholic churches and institutions present on the territory of other States and whose activities abide with national laws. The Holy See, in accordance with the rules of international law, is aware that attempting to implement the CRC in the territory of other States could constitute a violation of the principle of non-interference in the internal affairs of States.

4. In light of the above, the Holy See takes note with satisfaction that the Committee has considered this position, indicating that it is *"aware"* of *"the Holy See's ratification of the Convention as the Government of the Vatican City State, and also as a sovereign subject of international law having an original, non-derived legal personality independent of any territorial authority or jurisdiction"*, and that the Committee is *"fully conscious that bishops and major superiors of religious institutes do not act as representatives or delegates of the Roman Pontiff "* (CRC/C/VAT/CO/2, para. 8).

5. Indeed, as regards implementation of its obligations under the Convention and its Optional Protocols, the Holy See, for example, has made significant amendments to the criminal laws of Vatican City State. As was emphasized in the *Second Periodic Report on the CRC* and in the *Initial Reports on the Optional Protocols*, in the *Written Replies to the List of Issues of the Committee* as well as in the interactive dialogue with the Committee, the Holy See has executed its commitments within the territory of VCS, where it has the obligation to implement the Convention and its Protocols.

6. On the other hand, by rejecting the consistent position expressed in international law and practice, and despite repeated explanations of the Holy See in its *Reports*,[6] *Written Replies*[7] and interactive dialogue,[8] the Committee has overlooked important distinctions between the Holy See, Vatican

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"By acceding to the Convention on the Rights of the Child, the Holy See intends to give renewed expression to its constant concern for the well-being of children and families. In consideration of its singular nature and position, the Holy See, in acceding to this Convention, does not intend to prescind in any way from its specific mission which is of a religious and moral character".

[5] Apostolic Letter, issued *MOTU PROPRIO*, Roman Pontiff Francis, *On the Jurisdiction of Judicial Authorities of Vatican City State in Criminal Matters,* 11 July 2013, entered into force 1 September 2013.

[6] The Holy See, *Initial Report on the Convention on the Rights of the Child,* CRC/C/3/Add.27, March 28, 1994, at paras. 1-2; The Holy See, *Second Periodic Report on the Convention on the Rights of the Child*, CRC/C/VAT/2, October 22, 2012, at paras. 1-5; The Holy See, *Initial Report on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Prostitution,* CRC/C/OPSC/VAT/1, November 8 2012, at paras. 4-5; The Holy See, *Initial Periodic Report to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict,* CRC/C/OPAC/VAT/1, October 22, 2012, at paras. 4-5.

[7] The Holy See, *Written Replies to the List of Issues in relation to its Second Periodic Report on the Convention on the Rights of the Child*, CRC/C/VAT/Q/2 Add.1, January 9, 2014, at paras. 6-8; The Holy See, *Written Replies to the List of Issues in relation to its Initial Report on the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Prostitution*, CRC/C/OPSC/VAT/Q/1 Add.1 January 9, 2014, at paras. 6-8.

[8] The Holy See, *Presentation of Reports to the Committee on the Rights of the Child at the Interactive Dialogue, 65th Session of the Committee on the Rights of the Child (13-31 January 2014),* 16 January 2014.

City State and the universal Catholic Church. This, *inter alia*, has led to a grave misunderstanding of the Holy See's international legal obligations under the Convention.[9]

7. The profundity of confusion regarding the nature of the Holy See, its internal legal order as well as its international legal personality, is fully revealed, for example, in *Concluding Observation* para. 8 (CRC/C/VAT/CO/2),[10] when "religious obedience",[11] in canons 331 and 590 of the *Codex Iuris Canonici* (CIC), is interpreted to construct a new form of "ecclesial governance,"[12] where the Holy See is required to control the daily activities of clerics, religious and laypersons, living in the territories of sovereign States.[13]

8. In reference to the abovementioned canonical norms, the Holy See, as a sovereign subject of international law, reserves to itself the exclusive competence to interpret its internal fundamental norms, in conformity with pertinent international law, including the freedom of religion, with specific reference to the exclusive power of faith communities to organize and govern their internal affairs.[14]

9. In addition, the Holy See wishes to underline that the treaty body has plunged into canon law, which is a juridical system, however, not equivalent to that of States. In other words, only the laws of the territory of Vatican City State are comparable to those of other States Parties to the Convention. Unsurprisingly, the position in para. 8 (CRC/C/VAT/CO/2) based on an erroneous interpretation of Canons 331 and 590, is fundamentally flawed, and in response, the Holy See reaffirms the following points found in either its *Reports*, *Written Replies* or statements during the interactive dialogue:

a. That canon law is a "complex unity of divine positive law, divine natural law and human law which reflect the Catholic Church: its origin, means, spiritual and moral mission, organizational structure, supernatural end, spiritual and temporal goods," signifies that it differs from the laws of other States, in fundamental respects;[15]

b. That the Church is a "communion" of mutual relationships means that interaction between the particular and the universal Church must "respect the principles of collegiality and primacy and the duties and rights in canon law of all members of Christ's faithful;"[16]

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[9] The "moral authority" or "moral leadership" of the Holy See, referred to several times by the Committee (*see e.g.*, CRC/C/OPSC/VAT/CO/1, *supra* note 1, at paras. 16, 21), does not constitute legally binding authority over anyone. Such leadership cannot be transformed into a treaty obligation. That the central organ of the Church has openly "*shared*" best practices, especially about child protection going well beyond its strict obligations under the CRC, should not be misinterpreted as suggesting that intra-Church matters fall within the mandate of a treaty body.

[10] CRC/C/VAT/CO/2, *supra* note 1, at para. 8; *see also* CRC/C/OPSC/VAT/CO/1, *supra* note 1, at para. 3; see the same line of reasoning in CRC/C/OPAC/VAT/CO/1, *supra* note 1, at para. 7, 13-14.

[11] *Id.*

[12] *Id.*

[13] *See e.g.*, CRC/C/VAT/CO/2, *supra* note 1, at para. 41 ("*The Committee is also concerned that in spite of its considerable influence on Catholic families the Holy See has still not adopted a comprehensive strategy to prevent abuse and neglect in the home*"). *See also* paras. 22; 32 (c); 41-43; 51.

[14] *See e.g.*, Human Rights Committee, *General Comment No. 22 (48) (art.18),* Doc. CCPR/C/21/Rev.1/Add.4.

[15] CRC/C/VAT/2, *supra* note 6, at para. 97.

[16] CRC/C/VAT/Q/2/Add.1, *supra* note 7, at para. 8.

c. That the "religious obedience" of Bishops and religious Superiors concerns the unity of the doctrine of the Catholic faith and of the Catholic Church, founded and constituted as a society by Jesus Christ based on the communion of faith, sacraments and discipline, which are freely adhered to by members of the faithful[17];

d. That penal canon law provides certain sanctions for breaches concerning the public order of the ecclesial society (e.g. dismissal from the clerical state, penances) means it "differs greatly from State criminal law and [is] not intended to usurp or otherwise interfere with them or with State civil actions."[18] In specific regard to the distinctions between penal canon law and State criminal laws, the Holy See refers State Parties to its *Second Periodic Report* on the Convention on the Rights of the Child.[19]

10. Of general concern, for all States Parties, should be the fact that para. 8 (CRC/C/VAT/CO/2) offers a controversial new approach to "jurisdiction", which clearly contradicts the general understanding of this concept in international law.

a) In particular, para. 8 contends that "*by ratifying the Convention*"[20] a State Party has "*committed itself to implementing the Convention*" through "*individuals and institutions*" living and operating in the territories of other States.[21] In the case of the Holy See, this amounts to a sort of "universal legal jurisdiction" over most States Parties.

b) This interpretation is contrary to obligations under the CRC, which are *prima facie* territorial, taking into consideration the Vienna Convention on the Law of Treaties, and a facial reading of the treaty together with the general understanding of jurisdiction as previously discussed in the Holy See's *Written Replies*.[22]

c) Due to the grave implications of this erroneous approach for relations between States, the Holy See emphasizes, once again, that in accordance with international law and State practice, the Holy See does not ratify a treaty on behalf of every Catholic in the world, and therefore, does not have obligations to "implement" the Convention within

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[17] CRC/C/VAT/2, *supra* note 6, at para. 97; *see also e.g.,* Comité des droits de l'enfant, *Soixante-cinquième session Compte rendu analytique de la 1852e séance*, CRC/C/SR.1852, 21 janvier, 2014, at paras. 36, 41- 42.

[18] CRC/C/VAT/2, *supra* note 6, at para. 98.

[19] *Id.* at paras. 98 a-h.

[20] *See e.g., Convention on the Rights of the Child*, G.A. Res. 44/25, at art. 49 (2), U.N. Doc. A/Res/44/25 (20 November 1989). In addition, the argument is framed in a manner that contradicts the plain meaning of the Convention on the Rights of the Child, which, according to art. 49 (2) of the CRC, provides that States Parties are bound by their treaty obligations when the treaty enters *"into force on the thirtieth day after deposit by such [twentieth] State of its instrument of ratification or accession"*, and not upon ratification, as suggested by the *Concluding Observations*.

[21] CRC/C/VAT/CO/2, *supra* note 1, at para. 8; *see also* CRC/C/OPSC/VAT/CO/1, *supra* note 1, at para. 3; *see e.g.,* the same line of reasoning in CRC/C/OPAC/VAT/CO/1, *supra* note 1, at para. 7, 13-14.

[22] CRC/C/VAT/Q/2 Add.1, *supra* note 7, at para. 10; *Cf. Convention on the Rights of the Child*, *supra* note 20, at arts. 2; 10.2; 7.2, 20.2; 22.1, 44.2; 44.6.

the territories of other States Parties on behalf of Catholics, no matter how they are organized.[23]

d) Moreover, the Holy See's *religious* and *moral mission*, which transcends geographical boundaries, cannot be transformed into a sort of "universal legal jurisdiction", which somehow becomes a matter under the mandate of a treaty body.

11. Before moving on to other issues, the Holy See, while maintaining its position on jurisdiction set out in Written Reply no. 32, wishes to correct the statement made in Written Reply no. 34 (CRC/C/VAT/Q/2/Add.1), wherein it refers to the "*openness of the religious sisters to engage in discussions about issues of compensation, and their willingness to pay part of a compensation package developed by State authorities*". Rather, religious sisters had agreed with the Government of Ireland to pay a specific sum of money in relation to a "*redress scheme*" in 2002 concerning other entities, which did not include the institution under discussion.

12. As for the recommendations concerning the situations described in paragraphs 37-39 of the *Concluding Observations* (CRC/C/VAT/CO/2), such matters fall within the jurisdiction of the States in which the Catholic institutions operate. The functioning of these entities must be carried out in accordance with national laws and with respect for the competent State authorities tasked with investigating, prosecuting and punishing crimes or other illicit acts committed against children by members of these institutions.

13. As for para. 40 (b) (CRC/C/VAT/CO/2), the Holy See emphasizes that the criminal laws of Vatican City State punish acts of violence against children residing within this territory in accordance with due process and appropriate penalties upon findings of guilt: Law n. VIII, *Complementary Norms in Criminal Matter*, of 11 July 2013, Title II, and Law n. IX: *Law Modifying the Criminal Code and Criminal Procedure*, of 11 July 2013.

14. In regard to recommendations concerning the accession to international instruments contained in *Concluding Observations* (CRC/C/VAT/CO/2), paragraphs 44 (j) and 62, the Holy See reaffirms that it operates within the international community like other subjects of international law, while maintaining its specific mission and end. For this reason, the Holy See has always sought to become a part of international multilateral conventions regulating various areas, also on behalf of Vatican City State, with the necessary evaluation of these conventional norms in respect to its nature and to the particular function of its internal juridical system. Pursuant to the principles and rules of international law, the Holy See accedes to conventions that do not contradict the character of its mission and the nature of its own internal juridical system or that directly support specific norms within its juridical system. Moreover, it is noteworthy to recall the well-known position of the Holy See that it becomes a State Party to certain conventions in order to contribute with its moral support in the construction of an *opinio juris* to encourage a rapid entry into force of the conventions and their effective observance.

15. Moreover, the Holy See highlights that the Committee makes certain recommendations that disregard principles of international law that underpin every treaty (e.g. the sovereign equality and independence of all States, the non-interference in the domestic affairs of States as well as the principles of free consent, good faith and *pacta sunt servanda* rule).[24] For example, certain

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[23] *See e.g.*, CRC/C/VAT/CO/2, *supra* note 1, at paras.16; 18; 20; 22; 24; 30; 32; 34; 40; 42; 49; 51; 53; 57; 59; 61; 63; CRC/C/OPSC/VAT/CO/1, *supra* note 1, at paras. 16, 18, 24, 26; CRC/C/OPAC/VAT/CO/1, *supra* note 1, at paras. 7, 13-14, 18.

[24] *See. e.g.*, the recognition of these principles in the preamble of the Vienna Convention on the Law of Treaties, *supra* note 2.

Concluding Observations (CRC/C/VAT/CO/2) : a) disregard a State Party's own account of what it consented to when it ratified a treaty;[25] b) adopt an erroneous view of the State Party based on an unusual interpretation of what was perceived to be the internal law of a State Party;[26] c) recommend investigations, the enactment of laws, and the development of policies within the territorial jurisdiction of other States[27] (with indifference to the territorial sovereignty of other States and the principle of non-interference in the domestic affairs of other States); and d) ignore the reservations and interpretative declaration of a State Party. [28]

16. The Holy See is concerned about the lack of respect for the text of a treaty, which has been carefully drafted by States Parties, including the Holy See itself (the fourth State Party to ratify the CRC). In this regard, the Holy See in its *Second Periodic Report* and *Written Replies* has duly noted the introduction of new terms or principles by the Committee, which in its view marks a departure from the ordinary meaning of the words in the text.[29] The Holy See ratified the Vienna Convention on the Law of Treaties and is bound to follow the rules of interpretation therein. In addition, the Holy See reaffirms its own reservations, interpretative declaration as well as long standing principles recognized in international law as well as the Convention.[30]

17. Of particular concern in the *Concluding Observations* is the advancement of controversial new expressions not contained in the Convention, and related principles, which contradict the ordinary meaning of the words in the text, and fail to respect the spirit of the CRC. In addition, these particular expressions are the subject matter of much debate on the international level, and certainly, have not been agreed to or otherwise accepted by the Holy See.[31]

a) In a clear and open violation of the *"ordinary meaning"* of the terms of the CRC *"in their context and in the light of its object and purpose"*,[32] the *Concluding Observations* advocate for *"abortion."*[33] This is completely unacceptable and such a recommendation is incompatible with the fundamental purpose and function of the international legal order.[34] According to the CRC, children, defined as under 18 (art.

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[25] CRC/C/VAT/CO/2, *supra* note 1, at para. 8; *See also* CRC/C/OPSC/VAT/CO/1, *supra* note 1, at para. 3.

[26] *Id.*

[27] *See e.g.*, CRC/C/VAT/CO/2, *supra* note 1, at paras. 16; 18; 20; 22; 24; 30; 32; 34; 40; 42; 49; 51; 53; 57; 59; 61; 63.

[28] CRC/C/VAT/CO/2, para.12 (reservations, generally); para. 31 (reservation on the rights and duties of parents); paras. 36, 56 (reservation on family planning); para.55 (interpretative declaration on the right to life).

[29] *See e.g.,* CRC/C/VAT/2, *supra* note 6, at paras. 18; 36 and both sets of *Written Replies*, generally: CRC/C/VAT/Q/2 Add.1 and CRC/C/OPSC/VAT/Q/1 Add.1, *supra* note 7.

[30] *See e.g.,* CRC/C/VAT/2, *supra* note 6, at paras. 23 a-n: (e.g. equality between women and men; special protection due to the family, the natural and fundamental unit of society; the right to life of the child, before as well as after birth; and the prior right of parents before the State to educate their child).

[31] In particular regard to these disputed terms, the Holy See takes the opportunity once again to reaffirm its position: *"The three Reservations and the Interpretative Declaration are even more important given the attempted redefinition or creation of new terms and/or rights and/or principles, which do not correspond to an authentic and holistic vision of the human person and his or her rights and duties, nor present a good faith interpretation of the Convention's text. The Holy See has never agreed to such terms, rights or principles often contained in the Committee's General Comments and its Concluding Observations, and they certainly do not enjoy international consensus."* (CRC/C/VAT/2, para. 18).

[32] Vienna Convention on the Law of Treaties, *supra* note 2, at art. 31. 1.

[33] *See e.g.*, CRC/C/VAT/CO/2, *supra* note 1, at para. 55.

[34] *See e.g., Rome Statute of International Criminal Court*, U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, 17 July 1998, U.N. Doc. A/CONF. 183/9 (1998), art. 7.2. f

1), require *"legal protection, before as well as after birth,"* (preamble para. 9). By doing do, the *Concluding Observations* derogates from the child's *"right to life"* (art. 6) as well as his or her right to *"pre-natal and post-natal health care"* (art. 24.2.d). In addition, it deviates from the principle that children should not be discriminated against on the basis of *"birth"* (art. 2).

b) The Holy See recognizes the variety of situations in which people live, and many due to tragic circumstances, however, the *Concluding Observations* promote *"diverse forms of family"*[35] as a matter of principle. This expression is not found in the Convention, nor is it defined. It is worth noting that according to the International Bill of Human Rights both States and society have an obligation to protect the family, based on marriage between one man and one woman, the *"natural and fundamental group unit of society"*.[36] The Convention recognizes this principle when it incorporates the International Bill of Human Rights in preamble paragraphs. 3-4 and acknowledges the family as *"the fundamental group of society and the natural environment for the growth and well-being of ...children,"* which *"should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community"* (preamble para. 5, CRC).

c) In further regard to the natural family, the term *"family planning"* is used in the Convention. The Holy See pursuant to its reservation interprets the expression to mean only morally acceptable methods, that is, the natural methods.[37] The expression *"contraception"*[38] is not contained in the text of the CRC.

d) With respect to the rights of parents, *"both parents have common responsibilities for the upbringing and development of the child"* (art. 18 CRC), they have prior rights *"to choose the kind of education that shall be given to their children"* (preamble para. 3, CRC incorporates UDHR art. 26.3 by reference) and education should include *"development of respect for the child's parents"* (art. 29 (1) (c) CRC). However, a State Party is urged to ensure *"sexual and reproductive health education"* and *"sexual and reproductive health and information."*[39] These expressions are not found in the text of the Convention nor are they defined in international law. On this matter, the Holy See takes the opportunity to reaffirm that the education of children (defined in art.1 CRC), boys and girls, including education about authentic human love, human sexuality, married love and related matters are primarily and fundamentally the right,

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(situations that are relevant to pregnancy *"shall not in any way be interpreted as affecting national laws relating to pregnancy"*).

[35] *See e.g.*, CRC/C/VAT/CO/2, *supra* note 1, at para. 48.

[36] *Universal Declaration of Human Rights*, G.A. Res. 217 (III) A, at art. 16, U.N. Doc. A/RES/217 (III) (10 December 1948); *International Covenant on Civil and Political Rights*, G.A., Res. 2200A (XXI), at art. 23, U.N. Doc. A/6316 (16 December 1966); *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200 (XXI) A, at 10., U.N. Doc. A/6316 (16 December 1966).

[37] In its first reservation the Holy See stated the following: (" *[The Holy See] interprets the phrase `Family planning education and services' in article 24.2, to mean only those methods of family planning which it considers morally acceptable, that is, the natural methods of family planning*").. See also the Holy See's response to the Committee on this topic CRC/C/VAT/2, *supra* note 6, at para. 51.

[38] *See e.g.*, CRC/C/VAT/CO/2, *supra* note 1, at para. 56-57.

[39] *Id.*, at para. 57 (c).

duty, and responsibility of parents.[40] The international principle regarding religious freedom recognizes that parents have the right to ensure that their child receives a religious and moral education in conformity with their own convictions, which also guarantees the freedom to teach a religion or belief. [41]

e) In the *Concluding Observations*, the principle of equality between men and women (boys and girls) (art. 2 CRC; cf. preamble para. 5, UDHR) and the principle of non-discrimination on the grounds of sex (preamble para. 3, art. 2, CRC) are discussed within the context of "*gender*", which is a word not contained in the text, and apparently employed to incorporate a larger ideological platform. In this latter regard, references to inherent dignity (preamble paras. 1-2, CRC) and inherent equality between the two sexes are dismissed as examples of "*gender-based discrimination*"[42], while subjective lifestyle choices and attractions are promoted as a matter of "rights": "*same sex couples*";[43] "*sexual orientation*".[44] With reference to the term "*gender*", the Holy See reiterates its position set out in para. 36 of its *Second Periodic Report*.[45]

18. The fundamental premises contained in *Concluding Observation para. 8* distort the entire *Concluding Observations* and launch the Committee into matters protected by the right to freedom of religion.[46] For example, suggestions are made relating to: a) the interpretation of scripture;[47] b) changes to faith and morals;[48] d) amendments to canon law;[49] and e) revision of ecclesial governance.[50]

19. Moreover, many of the recommendations noted in paras. 16-17 *supra*, may also be viewed through the prism of religious freedom, in particular regard to the autonomy of religious communities to express their doctrine, manifest their faith and worship. From this perspective, the Holy See offered a more profound understanding of inherent human dignity, as founded on the image and likeness of God, and equality between men and women, as being in harmony with the fundamental complementarity of men and women and their call to communion. In response,

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[40] *Id.*, at para. 30-31; *See also* the Holy See's Position on the Conference Outcome Document at the Fourth World Conference on Women in Beijing (1995); *See also* the Holy See's Position on the Outcome Document at the International Conference on Population and Development in Cairo (1994).

[41] International Covenant on Economic, Social and Cultural Rights *supra* note 36, at art. 13.3; *See also* HRC, *General Comment No. 22 (48) (art.18),* Doc. CCPR/C/21/Rev.1/Add.4, at paras. 6 and 8.

[42] *See e.g.,* CRC/C/VAT/CO/2 , *supra* note 1, at para. 27-28.

[43] *Id.*, at para. 25.

[44] *Id.*, at para. 26.

[45] CRC/C/VAT/2, *supra* note 6, at para. 36 ("*The Holy See understands gender "according to ordinary usage in the United Nations context, associates itself with the common meaning of that word, in languages where it exists...[as] grounded in biological sexual identity, male or female....").*

[46] *See, e.g.* Universal Declaration of Human Rights, *supra* note 36, at art. 18; International Covenant on Civil and Political Rights, *supra* note 36, at art. 18.

[47] CRC/C/VAT/CO/2, *supra* note 1, at para. 40.d.

[48] *See e.g.,* the *Concluding Observations* take issue with: "*statements and declarations on homosexuality*" (CRC/C/VAT/CO/2, *supra* note 1, at para. 25); the principle of "*complementarity and equality in dignity*" between the two sexes (*Id.*, at para. 22); promotion of the family, based on marriage between one man and one woman (*Id.*, at para. 48); the Holy See's "*position on abortion*" and "*contraception*" (*See e.g. Id.*, at paras. 55, 56, respectively).

[49] *See e.g.,* CRC/C/VAT/CO/2, *supra* note 1, at paras. 14; 40.b; 40; *See also e.g.* CRC/C/OPSC/VAT/CO/1, *supra* note 1, at paras. 11-12, 30.

[50] CRC/C/VAT/CO/2, *supra* note 1, at paras. 16; 18; 20; 22; 24; 30; 32; 34; 40; 42; 49; 51; 53; 57; 59; 61; 63.

however, the *Concluding Observations* state: "*complementarity and equality in dignity [are] two concepts which differ from equality in law and practice*" and "*justify discriminatory legislation and policies.*"[51] In addition, the Holy See emphasizes that the "*concept of human rights*" cannot be juxtaposed with the freedom of religion, as if the latter did not constitute a fundamental human right.

20. Other comments, for example, made in the *Concluding Observations* promote negative stereotyping and manifestations of intolerance against members of the Catholic religion. For example, the *Concluding Observations* allege that the "*complementarity*" between the two sexes and the "*equality in dignity*" of males and females "*justify discriminatory legislation and practices*".[52] In addition, promotion of the protection of the family, based on marriage between one man and one woman means that "*Church run institutions*" discriminate against "*children on the basis of their family situation.*"[53] A reasonable observer might argue that the principle of non-discrimination has been applied in an unprincipled way, namely as a sword against freedom of religion.

21. Moreover, many of the recommendations noted in paras. 17-20 *supra*, deal with matters to which the Holy See has entered reservations and interpretative declaration, and therefore do not respect arts. 2 (d); 19-21 of Vienna Convention on the Law of Treaties.[54] Indeed, they completely disregard the Declaration of the State Party at the moment of its accession to the CRC, according to which "*...the Holy See, in acceding to this Convention, does not intend to prescind in any way from its specific mission which is of a religious and moral character.*"[55]

22. The *Concluding Observations* include inaccurate statements that have no evidentiary foundation.[56] Moreover, many materials presented by the Holy See, especially regarding child protection were dismissed or ignored.[57] Lastly, it is noteworthy, that answers given by a State Party not considered in line with certain suggestions does not mean that a reply to a question has not been given. For example, the Holy See was repeatedly asked the same query on various matters (e.g. discrimination based on sex, views of the child, the meaning of family, reservations, new expressions not accepted by the State Party, and matters falling within the territorial jurisdiction of other States). Indeed, the interactive dialogue largely involved the repetition of questions in the Committee's *List of Issues* to which the Holy See had previously responded in its

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[51] *Id.*, at para. 27 (The Holy See argued that each "human being is created in the image and likeness of God". Moreover, it contended that the principle of complementarity between the two sexes better reflected an objective reality and avoided two extreme views of equality: one that would promote indistinct uniformity, on the one hand, or perpetuate irreconcilable and conflicting differences, on the other hand).

[52] *Id.*, at paras. 27-28.

[53] *Id.*, at paras. 48-49.

[54] Vienna Convention on the Law of Treaties, *supra* note 2, at art. 2, (d): ("'*Reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State*").

[55] *See e.g.*, Declaration of the Holy See to the Convention on the Rights of the Child, *supra* note 5.

[56] *See e.g.*, CRC/C/VAT/CO/2, *supra* note 1, at paras. 29; 43; 60; 60.c; *See also e.g.* CRC/C/OPSC/VAT/CO/1, *supra* note 1, at paras. 9, 29.b.

[57] *See e.g.*, CRC/C/VAT/2 *supra* note 6, at paras. 96-99; CRC/C/OPSC/VAT/1 *supra* note 6, at paras. 26-31; CRC/C/VAT/Q/2 Add.1, *supra* note 7, at paras. 43-51; CRC/C/OPSC/VAT/Q/1 Add.1, *supra* note 7, at paras. 10.4-10.4.b; CRC/C/SR.1852, *supra* 17, at paras. 36, 38, 40-43, 46; and Committee on the Rights of the Child, *Sixty-fifth Session, Summary Records of the 1853rd meeting*, CRC/C/SR.1853, at paras. 9,15, 29, 31, 33, 36, 38, 41, 46, 50, 51, 53, 55, 56, 65, 67.

Written Replies, which, in turn, left the impression that the interactive dialogue was predetermined by *Concluding Observations* that had already been prepared.

23. In conclusion, as was clearly explained during the interactive dialogue with the Committee on 16 January 2014, and keeping in mind the concerns raised in paras. 6-10; 15-22 *supra*, the Holy See:

a) Reiterates its commitment to make protection of the child a priority, in all situations, and continue to take appropriate measures pursuant to the Convention and its Optional Protocols, as unequivocally set out in its *Reports*, *Written Replies* and statements during the interactive dialogue;

b) Confirms its willingness to implement the Convention and its Optional Protocols, in accordance with its own nature and mission, and to consider, in a similar way, the pertinent suggestions proposed by the Committee, in line with its moral and religious mission, for a better implementation of its treaty obligations and for a systematic preparation and presentation of its *Periodic Reports*;

c) Reaffirms also as a sovereign of the Vatican City State, that implementation of the norms of the Convention and its Optional Protocols, as well as the relevant recommendations by the Committee, will be exclusively considered in light of its specific nature and mission (see paras. 3 and 6 *supra*), as recognized by the international juridical system.[58]

[58] It is worth emphasizing, that the specific nature of the Holy See was known during the drafting phases of the Convention and its Optional Protocols, accepted by the States Parties to the Convention and recognized at the time of the ratification, including its reservations and interpretative declaration made in accordance with the Vienna Convention on the Law of Treaties, *supra* note 2.